

# OREGON BULLETIN

Supplements the 2009 *Oregon Administrative Rules Compilation*

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**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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# EXECUTIVE ORDERS

## EXECUTIVE ORDER NO. 09-10

### AMENDING EXECUTIVE ORDER 03-01 REGARDING REGULATORY STREAMLINING

On February 20, 2003, I executed Executive Order 03-01, establishing the Office of Regulatory Streamlining, reporting to the Department of Consumer and Business Services. Since its inception, the Office has streamlined regulatory processes and procedures; created consistency where administrative rules are duplicative or overlap; made investments in online technologies to improve permitting; and helped to coordinate administrative rule changes that require fiscal impacts with stakeholders.

With the cooperation and support of state agencies and businesses, the Office has catalogued a list of over 300 separate regulatory improvements that have removed barriers to business. Importantly, these improvements were achieved without compromising standards for environmental protections, consumer rights, or the health and safety of Oregon workers.

To a large extent, state agencies have institutionalized regulatory streamlining practices into their daily business model and existing performance management systems. However, more can still be done.

While the Office of Regulatory Streamlining will cease to exist on June 30, 2009, this Order amends and supersedes Executive Order 03-01, to shift elements of regulatory streamlining efforts to the Economic Revitalization Team (ERT).

### NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. On an ongoing basis, state agencies that regulate business activities in Oregon shall review their regulations and regulatory processes and identify opportunities to streamline those processes to reduce regulatory burdens without compromising regulatory standards. A reviewing agency shall look for ways to achieve:

- a. Consistency in interpretation and predictability in application of regulations on a statewide basis;
- b. Flexible and problem-solving approaches in applying regulatory requirements, while maintaining compliance with underlying standards;
- c. Better coordination and communication where government agencies have overlapping regulatory authority;
- d. Faster resolution of conflicting standards;
- e. More timely, understandable and fair permit and approval processes;
- f. Elimination of any unnecessary paperwork, reporting or review requirements; and
- g. "User-friendly" processes, including increased use of technology to facilitate doing business with government.

2. State agencies that regulate business activities in Oregon shall periodically report to the ERT Director, as requested, on regulatory streamlining activities and results achieved in a form to be established by the ERT.

3. The Director of the ERT shall designate individuals to continue key aspects of the work of the Office of Regulatory Streamlining in a way that is consistent with ERT's statutory mission, including:

- a. Acting as a liaison between the Department of Agriculture, Oregon Business Development Department (formerly known as

the Economic & Community Development Department), Department of Consumer and Business Services, Department of Energy, Department of Environmental Quality, Oregon Housing and Community Services, Department of Land Conservation and Development, Oregon Department of Transportation, Department of State Lands, and Department of Water Resources (collectively referred to as the "ERT Agencies"), local governments, tribal governments, businesses and other regional partners to facilitate communication about regulatory barriers and challenges;

b. Developing mechanisms to increase coordination among ERT Agencies with overlapping regulatory authority on common regional, tribal, and local government programs and activities; and

c. Proposing ways to create regulatory efficiencies and problem solve during the rulemaking activities of ERT Agencies.

4. ERT's biennial reports to the Legislative Assembly shall include recommendations for legislative measures to increase flexibility and achieve greater regulatory efficiencies.

5. This Order amends and supersedes Executive Order 03-01 Relating to Regulatory Streamlining.

Done at Salem, Oregon, this 25th day of June, 2009.

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

ATTEST

/s/ Kate Brown  
Kate Brown  
SECRETARY OF STATE

## EXECUTIVE ORDER NO. 09-11

### OREGON HEALTH AUTHORITY PLANNING AND IMPLEMENTATION

I have signed into law House Bill 2009, which was passed by the 2009 Legislative Assembly. This law lays out a compelling policy agenda for short-term reforms and longer-term plans to make high quality health care affordable and accessible to all Oregonians by 2015 and provides a new organizational framework for the state to accomplish this goal. Specifically, House Bill 2009 authorizes the creation of a new health care agency, the Oregon Health Authority (OHA), and provides for the transfer to the OHA of the duties, functions and powers with respect to health and health care, now under the Department of Human Services (DHS), the Public Employees' Benefit Board and the Oregon Educators Benefit Board, now under the Department of Administrative Services, the Oregon Medical Insurance Pool and their Board, now under the Department of Consumer and Business Services, and the Family Health Insurance Assistance Program, now under the Office of Private Health Partnerships.

The Directors of the Departments of Human Services, Administrative Services and Consumer and Business Services and the Administrator of the Office of Private Health Partnerships are directed to work together to establish and complete a timeline for the transfer of duties, functions and powers pursuant to House Bill 2009. All of the changes necessary to accomplish the transfers will be reflected in the Governor's Recommended Budget for the 2011-2013 biennium.

I intend to appoint Bruce Goldberg to be the Director of the Oregon Health Authority at the point that the transition is complete. The position of Director of the Oregon Health Authority is not currently funded and will remain vacant until the transition is completed.



## EXECUTIVE ORDERS

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### **NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:**

1. The Department of Human Services and its Director shall be the lead agency and director respectively for this planning and transition process.

2. The Director of the Department of Human Services shall work cooperatively with the Directors of the Department of Administrative Services and Consumer and Business Services and the Administrator of the Office of Private Health Partnerships on the planning and transition process in accordance Section 20 of House Bill 2009.

3. I delegate to the Director of the Department of Human Services my executive authority to carry out the statutory duties assigned to the Director of the Oregon Health Authority in House Bill 2009

until such time as I appoint the Director for the Oregon Health Authority.

4. This Executive Order shall remain in effect until July 1, 2011.

Done at Salem, Oregon this 7th day of July, 2009.

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

ATTEST

/s/ Kate Brown  
Kate Brown  
SECRETARY OF STATE

## OTHER NOTICES

### REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION DETERMINATION, FORMER HR JONES VENEER MILL, GRAND RONDE, OREGON

**COMMENTS DUE:** 5 pm, September 1st, 2009

**PROJECT LOCATION:** 28925 Salmon River Highway Grand Ronde, Oregon

**PROPOSAL:** The Oregon Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further action is required for investigation or cleanup of contaminated soil and groundwater at the former HR Jones veneer mill at 28925 Salmon River Highway in Grand Ronde, Oregon.

**HIGHLIGHTS:** The Confederate Tribes of Grand Ronde enrolled in DEQ's Independent Cleanup Program (ICP) to ensure the cleanup of the former HR Jones veneer mill was done in accordance with Oregon's laws governing the cleanup of contaminated sites. DEQ provided oversight of the cleanup to verify that no unacceptable risks remain at the site. DEQ's review of the site assessment and cleanup indicated the site no longer poses unacceptable risk to human health or the environment.

The 29.5-acre site is located along the Salmon River Highway (State Highway No. 18) south of the confluence of the Yamhill and Rogue rivers in Polk County, Oregon. The site was in use as a wood products manufacturing facility from sometime prior to 1948 to 2002. The site was owned by HR Jones Veneer, Inc. between 1988 and 2002. HR Jones sold the property to the Confederated Tribes of Grand Ronde in 2002. This transaction initiated the environmental site assessment, which identified a number of areas that had soil stained with petroleum products. Petroleum-contaminated soil (PCS) was excavated and removed from the seven locations and transported to the Riverbend Landfill in McMinnville, Oregon. Approximately 408 tons of PCS were removed from the site and disposed under the site-specific landfill permit. The excavation pits were sampled to confirm all the soil with contaminants that exceeded DEQ risk based concentrations was removed. All machinery and equipment were removed from the site.

Sampling results from beneath the soil excavations and from the groundwater beneath the site indicated that the cleanup activities removed all soil and groundwater with contamination that exceeded DEQ's relevant cleanup levels for this site. DEQ is proposing no further action for this cleanup.

**HOW TO COMMENT:** A DEQ Staff Report presenting details about the site and cleanup activities supports the decision to approve the No-Further-Action determination. The document supporting this proposal can be viewed in DEQ's Environmental Site the staff report is available for review, electronically (<http://www.deq.state.or.us/lq/ECSI/ecsidetail.asp?seqnbr=4484>), by contacting the DEQ project coordinator, Ian Balcom at 541-687-7347 or at [ian.balcom@state.or.us](mailto:ian.balcom@state.or.us), or the report can be viewed in person at the DEQ Eugene office by appointment at the Western Region Cleanup Division, 165 E. 7th Ave, Suite 100, Eugene, OR 97401. Comments on the proposed determination need to be received by the Eugene Office, attn: Ian Balcom, by 5 pm on September 1st, 2009. Fax or email comments are acceptable. The Fax number is 541-686-7551. **THE NEXT STEP:** Upon completion of the comment period, the comments will be addressed. Once the comments have been adequately addressed, the DEQ may approve, modify, or deny the no-further-action determination for assessment and/or cleanup of the Former HR Jones Veneer Mill.

**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](mailto:deqinfo@deq.state.or.us).

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

### DEQ NOTICE OF AGREEMENT

The Oregon Department of Environmental Quality (DEQ) has entered into a Prospective Purchaser Agreement (PPA) with Tillamook County (the County) for a property located at 34310 Highway 101 South in Cloverdale, Oregon. The property was historically operated as a retail gasoline service station. Investigations conducted by DEQ using U.S. EPA Brownfields assessment funds through a State grant, in addition to prior site investigations by private parties and Leaking Underground Storage Tank Trust funding, revealed soil and groundwater contamination at the property attributed to releases from former gasoline underground storage tanks (USTs), which were decommissioned in 2003.

Under the PPA, the County will install monitoring wells, remove any contaminated soil discovered during site redevelopment activities, and monitor those wells to evaluate residual groundwater contamination. If continued monitoring indicates the need for further remedial action, the County will seek grant funding for such action. The County is in the process of purchasing the property, which it will redevelop into a county park, identified as Noble Wayside. The park will provide a gateway to the community of Cloverdale, and will provide opportunities for river side viewing, fishing and picnicking activities. This park is the result of the collaborative efforts of the community of Cloverdale, the property owner, Tillamook county, and DEQ, and is the culmination of years of efforts by the citizens of Cloverdale. DEQ is pleased to have been able to assist with this project.

DEQ's Prospective Purchaser Program was created in 1995 through amendments to the state's Environmental Cleanup Law. The Prospective Purchaser Agreement is a tool which facilitates the cleanup of contaminated property and encourages property transactions which would otherwise not likely occur because of the liabilities associated with existing contamination. DEQ has approved over 100 Prospective Purchaser Agreements throughout the State since the program began.

For additional information on DEQ's Prospective Purchaser Program, contact Charlie Landman, Oregon DEQ, at (503) 229-6461.

### CHANCE TO COMMENT ON... PROPOSED CONDITIONAL NO FURTHER ACTION PORTLAND ROAD AND DRIVEWAY, EAST PARCEL (ECSI #5177)

**COMMENTS DUE:** September 1, 2009

**PROJECT LOCATION:** 10500 SE Jennifer Street, Clackamas, Oregon; Clackamas County Assessor Parcel #00485776, Map #22E 15B 00200

**PROPOSAL:** Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on its proposal to issue a conditional no further action (NFA) for the Portland Road and Driveway, East Parcel site (ECSI File #5177).

**HIGHLIGHTS:** The site is owned by CalPortland and is approximately 4.5 acres. The site largely consists of a reclaimed gravel pit up to 100 feet deep that resulted from surface gravel mining from about 1970 to 2005 conducted by the previous owner/operator, Portland Road and Driveway Company.

CalPortland entered DEQ's Voluntary Cleanup Program in 2009 to determine whether fill activities conducted to reclaim the gravel pit caused an unacceptable risk to human health and the environment. In 2005, DEQ approved disposal of petroleum contaminated soil at the site under terms of Solid Waste Permit Exemption. An excess of 100,000 cubic yards of soil containing low to moderate levels of Bunker C fuel oil and creosote was placed at the site. Testing of the soil prior to disposal site showed that contaminant levels in the fill were well within permit exemption limits, with the majority below levels of concern for human health.

CalPortland completed additional testing of the fill material prior to purchasing the property. The results were consistent with previous results and showed that the fill material did not present a significant risk to human health. However, contamination was detect-

## OTHER NOTICES

ed throughout the fill and in groundwater in contact with the fill. In addition, methane was detected in some soil borings.

DEQ reviewed the existing environmental information for the site and concludes that the site currently does not present an unacceptable risk to human health or the environment, and that a conditional no further action determination (NFA) is warranted for the site. The conditional NFA would identify soil management requirements for any contaminated soil excavated during future subsurface maintenance or re-development activities, further evaluation of groundwater quality at the site if future industrial groundwater use is contemplated, and further evaluation of methane and its potential for accumulation in the event enclosed structures or other features with the potential to accumulate methane are constructed.

**HOW TO COMMENT:** To access additional detail on the site, please view the DEQ Staff Report in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet at <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>. Enter 5177 in the "Site ID" box and click "Submit" at the bottom of the page. Next, click the link labeled 5177 in the Site ID/Info column. Next, click on the staff report under Site Documents. You can review the administrative record for the proposed conditional no further action at DEQ's Northwest Region office located at 2020 SW 4th Avenue, Suite 400, Portland, Oregon. For an appointment to review the files call (503)229-6729; toll free at (800)452-4011; or TTY at (503)229-5471. Please send written comments to Mark Pugh, Project Manager, DEQ Northwest Region, 2020 S.W. Fourth Ave., Suite 400, Portland, Oregon, 97201 or via email at: [pugh.mark@deq.state.or.us](mailto:pugh.mark@deq.state.or.us). DEQ must receive written comments by 5 p.m. on September 1, 2009.

DEQ will hold a public meeting to receive verbal comments if 10 or more persons, or a group with membership of 10 or more, requests such a meeting. Interest in holding a public meeting must be submitted in writing to DEQ. If a public meeting is held, a separate public notice announcing the date, time, and location of any public meeting would be published in this publication.

DEQ is committed to accommodating people with disabilities at our hearings. 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 and Outreach at (503) 229-5696 or toll free in Oregon at (800) 452-4011. People with hearing impairments may call DEQ's TTY number, (503)229-5471.

**THE NEXT STEP:** DEQ will consider all public comments received by the deadline. In the absence of comments, DEQ will issue a conditional No Further Action for the site.

### NOTICE OF SELECTED AMENDED CLEANUP SELECTED AMENDMENT TO CLEANUP APPROACH AND SETTLEMENT FOR JOHNSON LAKE

**PROJECT LOCATION:** 5850 NE 92nd Drive, Portland, OR

**DECISION:** The DEQ has amended the cleanup approach for contamination at the Owens Brockway Glass Container Inc. property and adjacent Johnson Lake and is finalizing the associated consent judgment with Owens. The consent judgment includes settlement of Owens' potential liability at the Site and for contribution to sediment contamination in the Columbia Slough beyond Johnson Lake, as well as associated natural resource damages for the Site and the Slough. In October 2007, DEQ issued a record of decision (ROD) for remedial action at the Site consisting of excavation of contaminated soil and sediment, confinement in an upland portion of the Owens property, and long-term management. Based on data collected during design activities for this action, the sediment portion of the remedy was re-evaluated. Rather than excavating a portion of Johnson Lake sediment, DEQ is now proposing to cap the entire lake with clean sand.

**HIGHLIGHTS:** Johnson Lake extends over 18 acres and is directly connected to Whitaker Slough, which flows into the Columbia Slough. The Owens facility is a glass manufacturing plant located on the south shore of Johnson Lake. Potential sources of contamination to the lake included historical overflows of Owens' former settling ponds, and stormwater runoff and stormwater outfall discharges from

the Owens property and from neighboring properties located east and west of Johnson Lake.

To implement the remedy, and address off-site contamination in the slough, DEQ is entering a settlement with Owens for implementation of the amended ROD. The settlement, in the form of a consent judgment, requires Owens to satisfactorily complete cleanup and source control measures as identified in the amended ROD and pay DEQ specified amounts to be used by DEQ for off-site remediation work in the slough. In addition, DEQ and Owens propose to settle natural resource damage claims for the site and the slough through payment to DEQ of a specified amount to be dedicated to habitat restoration at and around the lake. In return, Owens will receive a covenant not to sue from the State of Oregon and contribution protection as to third parties regarding the matters addressed by the settlements.

Investigations completed at the site, beginning in 1994 as part of the general Columbia Slough project, have detected polychlorinated biphenyls (PCBs), metals, polycyclic aromatic hydrocarbons, pesticides, and petroleum hydrocarbons at elevated levels in Johnson Lake sediment. Elevated levels of PCBs were also detected in soil adjacent to the Johnson Lake downgradient of an electrical substation. Fish tissue samples contained PCBs at concentrations that may make fish caught in the lake unsafe to eat. Sediment testing suggested that portions of the lake may contain contaminants at levels toxic to sediment dwelling organisms.

The previously selected remedial action included excavation of surface sediments over approximately one fourth of Johnson Lake and capping the excavated sediment in an upland portion of the site away from the lake. Sediment sampling conducted as part of remedial design activities indicated that the thickness of sediment to be removed was more than twice the original estimate and the average concentration of PCBs in those areas was lower than the original estimate. This new data indicates that, in order to achieve the remedial action objectives associated with reduction of average PCB concentration in lake sediment, five to six times as much sediment as originally estimated would need to be excavated. The feasibility and costs associated with removing and managing this large volume of sediment warranted re-evaluation of the sediment remedy. Based on this re-evaluation, an amended remedial action consisting of placing a thin-layer cap over all of the sediment in Johnson Lake, with the exception of a portion of the lake near the connection to the Slough as indicated below, has been selected. Various enhancements will be evaluated during the remedial design for capping the higher PCB concentrations within sediments in the southern portion of the Johnson Lake. Fish tissue samples would be collected and analyzed 5 years following remedial action.

The selected remedy is considered to be consistent with Oregon rule and statute and, if properly implemented, protective to humans, fish and wildlife.

**PUBLIC REVIEW:** A DEQ staff report outlining the proposed amended cleanup approach and draft consent judgment were made available for public review at the downtown Portland Public Library and Park Rose High School library, and the DEQ Northwest Region Office in Portland beginning May 1, 2009. The public comment period ended June 1, 2009. DEQ received one verbal comment on the amended cleanup. The City of Portland Bureau of Environmental Services noted that there is evidence, based on observance of shells, that native mussel species utilize the site and would be suffocated by placement of a sediment cap. In response to this comment, DEQ has modified the remedy to leave a portion of the lake connected to the Slough uncapped to support the benthic organisms that may be present and to facilitate regeneration of the benthic community in the lake after the remedial action is completed. DEQ received one verbal comment on the draft Consent Judgment. The Port of Portland commented that the Port would like to provide input on any natural resource mitigation plans in this area to assess any potential impacts on the airport. DEQ plans to provide the proposed resource mitigation plans to the Port for review and input.

**THE NEXT STEP:** The ROD and Consent Judgment will be made available at [www.deq.state.or.us/lq/cu/nwr/johnsonlake/index.htm](http://www.deq.state.or.us/lq/cu/nwr/johnsonlake/index.htm). Owens is preparing remedial action work plan documents for DEQ

## OTHER NOTICES

review and initiating permitting coordination for lake capping and upland soil removal.

**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](mailto:deqinfo@deq.state.or.us).

People with hearing impairments may call Oregon Telecommunications Relay Service 1-800-735-2900.

### A CHANCE TO COMMENT ON A PROPOSED CONSENT JUDGMENT FOR REMEDIAL ACTION COSTS AT THE ALKALI LAKE CHEMICAL DISPOSAL SITE, ALKALI LAKE IN LAKE COUNTY, OREGON

**COMMENTS DUE:** September 3, 2009, 5:00 p.m. PST

**PROJECT LOCATION:** Alkali Lake in Lake County, Oregon

**PROPOSAL:** The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Judgment pursuant to ORS 465.325 with Bayer CropScience, Inc. regarding a portion of DEQ's remedial action costs (cleanup costs) at the Alkali Lake facility, located in Lake County, about 35 miles southeast of Christmas Valley, Oregon. The Alkali Lake facility is referenced in DEQ's Environmental Cleanup Site Information database as ECSI #291.

**HIGHLIGHTS:** The Alkali Lake facility became the repository of wastes from a herbicide chemical manufacturing facility, located in Portland. Bayer CropScience is the successor corporation to Rhodia, Inc. Rhodia, through its Chipman Division, owned and operated a herbicide manufacturing facility located in Portland. Chipman contracted with Chemical Waste Storage & Disposition for disposal services. Wastes were subsequently transported to the Alkali Lake Chemical Disposal Site beginning in February 1969.

In October 1976, DEQ took possession of the Alkali Lake Facility which included an estimated 25,000 drums of herbicide distillation residues. In November 1976, DEQ buried the drums and waste on-site. Since that time, DEQ has owned and maintained the facility. Following completion of a remedial investigation and risk assessment, DEQ completed a Record of Decision (ROD) in April 2007 documenting that the final remedy for the site achieves Oregon's acceptable risk levels and is protective of human health and the environment.

**HOW TO COMMENT:** To access the proposed Consent Judgment and other project file information in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter ECSI 291 in the Site ID box and click "Submit" at the bottom of the page. The proposed Consent Judgment may also be reviewed at DEQ's Office in The Dalles and at DEQ's Headquarters Office.

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

Written comments concerning the Consent Judgment should be sent to Jeff Christensen at DEQ Headquarters, 811 SW 6th Avenue, Portland, Oregon 97204. Questions may be directed to Jeff Christensen at the DEQ Headquarters address or by calling (503) 229-6391. Written comments must be received by 5:00 PM Pacific Standard Time on September 3, 2009 in order to be considered in DEQ's decision.

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

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

### REQUEST FOR COMMENTS PROPOSED CONDITIONAL NO FURTHER ACTION DECISION FOR MACS STORE STUKEL, OREGON

**COMMENTS DUE:** August 31, 2009 by 5:00 p.m.

**PROJECT LOCATION:** 2450 Hwy 39S, Stukel (Klamath Falls)

**PROPOSAL:** Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a risk-based conditional no further action (NFA) determination for the Macs Store site located at 2450 Hwy 39S in Stukel (Klamath Falls), Oregon.

**HIGHLIGHTS:** The Leaking Underground Storage Tank Program has reviewed information pertaining to the decommissioning of underground storage tanks, soil and groundwater treatment, and site assessment activities performed at the site. Residual PCS remains at the soil/groundwater interface. The shallow groundwater aquifer has been impacted by petroleum products but is not used for beneficial purposes at the site. All of the potential exposure concerns have been addressed through their elimination during development of the site-specific Conceptual Site Model. A deed notice will be placed on the property.

**HOW TO COMMENT:** The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 475 NE Bellevue St, Suite 110, Bend, OR 97701. Project reports are available in DEQ's LUST database <http://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp> under LUST No. 18-89-0005.

To schedule an appointment to review the file or to ask questions, please contact David Anderson at (541) 633-2012. Written comments should be received by August 31, 2009 and sent to David Anderson, Project Manager, at the address listed above. Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.

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



# 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 Architect Examiners**  
**Chapter 806**

**Rule Caption:** Use of the AIA Designation.

**Stat. Auth.:** ORS 671.125

**Stats. Implemented:** ORS 671.020 & 671.030

**Proposed Amendments:** 806-010-0140

**Last Date for Comment:** 8-27-09, 9 a.m.

**Summary:** This rule is amended for better clarity, and continues to allow use of the AIA designation by registered architects who are members of AIA.

**Rules Coordinator:** Carol Moeller

**Address:** Oregon Board of Architect Examiners, 205 Liberty St. NE, Suite A, Salem, OR 97301

**Telephone:** (503) 763-0662

.....  
**Rule Caption:** Representatives for Firm Renewals.

**Stat. Auth.:** ORS 671.125

**Stats. Implemented:** ORS 671.041

**Proposed Amendments:** 806-010-0080

**Last Date for Comment:** 8-27-09, 9 a.m.

**Summary:** This rule is amended to assure that the person completing the architectural firm renewal application on behalf of the firm in an officer or voting member of the firm or has ownership interest in the firm.

**Rules Coordinator:** Carol Moeller

**Address:** Oregon Board of Architect Examiners, 205 Liberty St. NE, Suite A, Salem, OR 97301

**Telephone:** (503) 763-0662

.....  
**Board of Nursing**  
**Chapter 851**

**Rule Caption:** Licensing Fees Increased for Registered Nurses, Licensed Practical Nurses and Certified Nursing Assistants.

**Date:**  
9-17-09

**Time:**  
9 a.m.

**Location:**  
17938 SW Upper Boones  
Ferry Rd.  
Portland, OR 97224

**Hearing Officer:** James McDonald, Board President

**Stat. Auth.:** ORS 678.050, 678.101, 678.150, 678.410 & 678.442

**Stats. Implemented:** ORS 678.410

**Proposed Amendments:** 851-002-0010, 851-002-0040

**Last Date for Comment:** 9-15-09, 5 p.m.

**Summary:** These rules pertain to the licensing fees for Registered Nurses, Licensed Practical Nurses and Certified Nursing Assistants.

**Rules Coordinator:** KC Cotton

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

**Telephone:** (971) 673-0638

.....  
**Construction Contractors Board**  
**Chapter 812**

**Rule Caption:** Rules amended regarding: refunds, corporation documentation, enforcement actions, waiver for armed forces, and continuing education.

**Date:**  
8-25-09

**Time:**  
11 a.m.

**Location:**  
West Salem Roth's IGA  
Santiam Rm.  
1130 Wallace Rd.  
Salem, OR

**Hearing Officer:** Tom Skaar

**Stat. Auth.:** ORS 183.310-183.500, 293.445, 670.310, 701.124, 701.235, 701.238, 701.350, 701.355 & 701.992

**Stats. Implemented:** ORS 87.093, 279C.590, 293.445, 701.005, 701.026, 701.042, 701.046, 701.056, 701.063, 701.073, 701.091, 701.098, 701.102, 701.106, 701.109, 701.114, 701.124, 701.227, 701.238, 701.305, 701.330, 701.345, 701.350, 701.355 & 701.992

**Proposed Adoptions:** 812-003-0325

**Proposed Amendments:** 812-003-0140, 812-003-0330, 812-005-0280, 812-005-0800, 812-008-0070, 812-008-0110, 812-020-0062

**Last Date for Comment:** 8-25-09, 11 a.m.

**Summary:** • 812-003-0140 is amended to allow a refund, less a \$40 processing fee, in instances where the agency must refuse to renew the license because the licensee formed a new business entity and language is added to comply with the requirements of ORS 408.450 that excuses licensees on active duty service from paying license renewal fees.

• 812-003-0325 adopt rule language that requires additional or removal of corporate officer, manager of manager-managed limited liability company (LLC), member of member-managed LLC or trustee to be accompanied by documentation to prove the change.

• 812-003-0330 is amended to added language to comply with 10 USC § 801 article 2(a)(1) that permits members of the United States armed forces to work as contractors for the military without CCB licensure. This would also permit inactive licensees to perform work as a contractor for the military without violating the requirements of an inactive license.

• 812-005-0280 is amended to allow the CCB to suspend a license if more than one unpaid final order exceeds the required bond amount.

• 812-005-0800 is amended to match the statute (ORS 701.098(1)(g)) to include corporations in the number of licensed contractors working together on the same task on the same job site, which was inadvertently omitted when the rule was adopted.

• 812-008-0070 is amended to waive the continuing education requirements, if within the two-year period preceding renewal a home inspector serves on active duty in the United States armed forces, including mobilization or deployment.

• 812-008-0110 is amended to add language to comply with the requirements of ORS 408.450 that excuses certified home inspectors on active duty service from paying license renewal fees.

• 812-020-0062 is amended, see ORS 701.124(7)(b), which authorizes CCB to exempt commercial contractors by rule Exempts

# NOTICES OF PROPOSED RULEMAKING

continuing education requirement if, within the two-year period preceding renewal, a commercially endorsed contractor serves on active duty in the United States armed forces, including mobilization or deployment.

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

.....  
**Department of Agriculture,  
Oregon Hop Commission  
Chapter 643**

**Rule Caption:** Oregon Hop Commission Proposed Assessment Increase.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-25-09	6 p.m.	LaQuinta Inn Woodburn, OR

**Hearing Officer:** Nancy Frketch  
**Stat. Auth.:** ORS 183.325, 576.304(14) & 576.325  
**Stats. Implemented:** ORS 576.325  
**Proposed Amendments:** 643-010-0010

**Last Date for Comment:** 8-25-09, Close of Hearing  
**Summary:** Any person who is first purchaser as defined in ORS 576.225, shall deduct and withhold one and eight-tenths cents (001.80) per pound from the price to the producer, on and after September 1, 2009, on a dried weight basis, for all his/her purchases from the producer of hops produced in Oregon.

**Rules Coordinator:** Nancy Frketch  
**Address:** PO Box 298, Hubbard, OR 97032  
**Telephone:** (503) 982-7600

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

**Rule Caption:** Amends and repeals rules governing savings associations to comply with statutory changes.

**Stat. Auth.:** 2009 OL Ch. 541, § 49 (Enrolled HB 2199)  
**Stats. Implemented:** 2009 OL Ch. 541, § 49 (Enrolled HB 2199)  
**Proposed Amendments:** 441-005-0010, 441-500-0020, 441-505-4010

**Proposed Repeals:** 441-760-0020, 441-760-0030, 441-760-0040, 441-760-0050, 441-760-0060, 441-760-0070, 441-760-0080, 441-760-0090, 441-760-0100, 441-760-0110, 441-760-0120, 441-760-0130, 441-760-0140, 441-760-0150, 441-760-0160, 441-760-0170, 441-760-0180, 441-760-0190, 441-760-0200, 441-760-0210, 441-760-0220, 441-760-0230, 441-760-0240, 441-760-0250, 441-760-0260, 441-760-0265, 441-760-0270, 441-760-0280, 441-760-0290, 441-760-0300, 441-760-0310

**Last Date for Comment:** 8-31-09  
**Summary:** The legislature passed HB 2199 in the 2009 legislative session. The bill streamlined regulation of the financial services sector in Oregon in part by repealing the statutes governing savings associations (ORS Chapter 722), which has not been utilized by an Oregon company for some time. This rulemaking removes rules implementing the repealed statutes and also removes references to savings associations throughout OAR chapter 441.

**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

.....  
**Rule Caption:** Streamlines information collection and reporting requirements for licensed check cashers.  
**Stat. Auth.:** ORS 697.550  
**Stats. Implemented:** ORS 697.504, 697.510, 697.514 & 697.526  
**Proposed Amendments:** 441-755-0300, 441-755-0310

**Last Date for Comment:** 8-31-09  
**Summary:** This rulemaking activity streamlines the record-keeping and reporting requirements by registered check cashing businesses in Oregon to the Department of Consumer and Business Services. Under the Proposed rules, check cashers would no longer track the date on a check, or the name of the person who has issued the check. The proposed rules also remove the current requirements for a check casher to report on the number of cashed checks greater than \$1,000 and the number of cashed checks that a financial institution refused to accept or pay (i.e. dishonored).

**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,  
Workers' Compensation Board  
Chapter 438**

**Rule Caption:** Assessed attorney fees — implements amendments to ORS 656.262, 656.382, and 656.386 made by HB 3345.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-28-09	9:30 a.m.	2601 25th St. SE, Suite 150 Salem, OR 97302-1280

**Hearing Officer:** Debra L. Young  
**Stat. Auth.:** ORS 656.238, 656.307, 656.386(1) & (2), 656.388, 656.593 & 656.726(5)

**Stats. Implemented:** HB 3345, ORS 656.308(2), 656.262(6), (11)(a), (14) & (15), 656.382(2), 656.386(1), (2) & (3) & 656.388  
**Proposed Amendments:** 438-005-0055, 438-006-0055, 438-015-0038, 438-015-0055, 438-015-0065, 438-015-0070, 438-015-0110  
**Last Date for Comment:** 8-28-09

**Summary:** The Board proposes to amend 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.

Pending the hearing, written comments regarding these rules may be submitted for admission in to the record by directing such comments by mail, FAX, or by means of hand-delivery to any permanently staffed Board office. The comments may be addressed to the attention of Debra L. Young, Rulemaking Hearing Officer, Workers' Compensation Board, 2601 25th St. SE, Suite 150, Salem, OR 97302-1280.

**Rules Coordinator:** Vicky Scott  
**Address:** Department of Consumer and Business Services, Workers' Compensation Board, 2601 25th St. SE, Suite 150, Salem, OR 97302-1280  
**Telephone:** (503) 378-3308

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

**Rule Caption:** Reporting medical billing data to the State of Oregon.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-24-09	11 a.m.*	Labor & Industries Bldg. Room F (basement) 350 Winter St. Salem, OR

\*NOTE: The hearing will begin at 11:00 a.m. and end when all present who wish to testify have done so. Written testimony will be accepted through August 27, 2009.

**Hearing Officer:** Fred Bruyns  
**Stat. Auth.:** ORS 656.726(4)  
**Stats. Implemented:** ORS 84 & 656, primarily 656.264 & 656.726  
**Proposed Amendments:** Rules in 436-160  
**Last Date for Comment:** 8-27-09

# NOTICES OF PROPOSED RULEMAKING

**Summary:** The agency proposes to amend OAR chapter 436, division 160, "Electronic Data Interchange," to adopt the new implementation guide for medical bill payment records, and to clarify medical bill reporting requirements, including procedures for functional and detailed reporting acknowledgments. The agency proposes to require reporting of denied payments if the workers' compensation claim has been accepted. In addition, the agency proposes requiring some new 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.

Address questions or written testimony to: Fred Bruyns, rules coordinator; phone 503-947-7717; fax 503-947-7514; e-mail fred.h.bruyns@state.or.us. Proposed rules are available on the Workers' Compensation Division's Web site: <http://wcd.oregon.gov/policy/rules/rules.html#proprules> or at no charge from WCD Publications, 503-947-7627.

**Rules Coordinator:** Fred Bruyns

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

**Telephone:** (503) 947-7717

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## Department of Corrections Chapter 291

**Rule Caption:** Inmate Visitation: Eligibility of Inmates Convicted of Sexual Crime Involving a Minor Child.

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

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

**Proposed Amendments:** 291-127-0210, 291-127-0220

**Last Date for Comment:** 9-17-09

**Summary:** These rule modifications are necessary to clarify eligibility of inmates with a conviction of a sexual crime involving a minor child for visiting within DOC institutions. OAR 291-127-0110 has been modified to expand the definition of immediate family to include niece and nephew. OAR 291-127-0120 has been modified to clarify that an inmate who has a documented history of sex abuse with a member of his/her immediate family is ineligible to visit with any minor child, including their own biological child.

**Rules Coordinator:** Janet R. Worley

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

**Telephone:** (503) 945-0933

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## Department of Environmental Quality Chapter 340

**Rule Caption:** Adoption of Federal Air Quality Regulations.

Date:	Time:	Location:
8-17-09	6 p.m.	DEQ — Bend Regional Office Conference Rm. 475 NE Bellvue Dr., Suite 110 Bend, OR 97702
8-18-09	6 p.m.	DEQ — Medford Regional Office Conference Rm. 221 Stewart Ave., Suite 201 Medford, OR 97501
8-20-09	6 p.m.	DEQ Headquarters 811 SW 6th Ave., Rm. EQC-A Portland, OR 97204

**Hearing Officer:** Mark Fisher, Steve Croucher, William Knight

**Stat. Auth.:** ORS 468.020, 468A.035, 468A.040, 468A.050 & 468A.310

**Stats. Implemented:** ORS 468A.025

**Proposed Adoptions:** 340-216-0062, 340-228-0639

**Proposed Amendments:** 340-200-0040, 340-209-0030, 340-210-0100, 340-210-0110, 340-210-0120, 340-216-0020, 340-216-0060, 340-216-0064, 340-228-0606, 340-228-0621, 340-228-0623, 340-228-0625, 340-228-0627, 340-238-0040, 340-244-0030, 340-244-0220, 340-244-0238, 340-244-0240, 340-244-0242, 340-244-0246

**Last Date for Comment:** 8-26-09, 5 p.m.

**Summary:** The Oregon Department of Environmental Quality (DEQ) is proposing that the Environmental Quality Commission (EQC) adopt standards that implement new and amended federal air quality regulations. The objective of this rulemaking is to protect public health, ensure that Oregon implements the federal programs that regulate hazardous air pollutants and new sources, and to improve Oregon's implementation of these programs.

If adopted, this proposal would adopt by reference several new federal area source NESHAPs; add the new area source NESHAPs to the list of business categories eligible to obtain a Simple or General ACDP; add a new General ACDP annual fee class; assign each new General ACDP to an annual fee class; adopt a requirement that any dry cleaner using perchloroethylene obtain an ACDP unless the dry cleaner registers with DEQ; change the requirement that the Environmental Quality Commission (EQC) issue General ACDPs by rule to instead allow the Department to issue General ACDPs by order; allow businesses eligible for multiple General ACDPs to be assigned to one General ACDP and one or more General ACDP Attachments; adopt an annual fee for General ACDP Attachments; allow registration as an alternative to permitting for auto body shops and dry cleaners that voluntarily participate in an environmental certification program; adopt annual fees for registration; update previously adopted NESHAP and NSPS rules to keep them consistent with federal amendments; correct referencing errors and add clarity to the "topping off" ban; and modify Oregon's Utility Mercury Rule (UMR) by adding material sampling provisions vacated by a federal court ruling.

To submit comments or request additional information, please contact Jerry Ebersole at the Department of Environmental Quality (DEQ), 811 SW Sixth Ave, Portland, OR 97204, toll free in Oregon at 800-452-4011 or 503-229-6974, or at [federalrule@deq.state.or.us](mailto:federalrule@deq.state.or.us), or by fax 503-229-5675, or visit DEQ's website <http://www.deq.state.or.us/news/publicnotices/PN.asp>

**Rules Coordinator:** Larry McAllister

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

**Telephone:** (503) 229-6412

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**Rule Caption:** Amend the Clean Water State Revolving Fund — Permanent Rules.

Date:	Time:	Location:
8-17-09	6 p.m.	Jackson Co. Courthouse Auditorium 10 South Oakdale Medford, OR
8-18-09	6 p.m.	DEQ Office, Suite 110 475 Bellevue Bend, OR
8-19-09	6 p.m.	DEQ Headquarters 10th Fl., EQC -A 811 SW 6th Ave. Portland, OR

**Hearing Officer:** Larry McAllister

**Stat. Auth.:** ORS 468.020 & 468.423-468.440

**Other Auth.:** American Recovery and Reinvestment Act of 2009 (Public Law 111-5)

**Stats. Implemented:** ORS 468.423-468.440

**Proposed Adoptions:** 340-054-0098, 340-054-0100, 340-054-0102, 340-054-0104, 340-054-0106, 340-054-0108

**Proposed Amendments:** 340-054-0024, 340-054-0025, 340-054-0035

**Last Date for Comment:** 8-24-09, 5 p.m.

**Summary:** The American Recovery and Reinvestment Act of 2009 (the Act) allows the U.S. Environmental Protection Agency to allocate \$44.3 million to Oregon DEQ's Clean Water State Revolving Fund (DWSRF) to create jobs and promote economic recovery. To meet the requirements of the Act, the Environmental Quality Commission (EQC) adopted temporary amendments to DEQ's CWSRF



# NOTICES OF PROPOSED RULEMAKING

loan program administrative rules in April 2009. By law, these temporary rules will expire in October 2009. The adoption of this permanent rulemaking will replace the temporary rules to ensure DEQ's program will meet the requirements of the Act.

To request additional information; please contact:

(1) Larry McAllister at the Department of Environmental Quality, 811 SW 6th Ave., Portland, Oregon 97204, call toll free in Oregon 800-452-4011 x6412 or (503) 229-6412, fax 229-6037, mcalister.larry@deq.state.or.us

(2) or visit DEQ's public notices webpage: <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:** Amend Rules Relating to Protected Fish and Wildlife Taxonomy and to the Sensitive Species List.

Date:	Time:	Location:
9-4-09	8 a.m.	Josephine County Fairgrounds 1451 Fairgrounds Rd. Grants Pass, OR 97527

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 496.004, 496.171, 496.172, 496.182, 496.192 & 498.026

**Stats. Implemented:** ORS 496.004, 496.171, 496.172, 496.182, 496.192 & 498.026

**Proposed Amendments:** Rules in 635-044, 635-045, 635-100

**Last Date for Comment:** 9-4-09

**Summary:** Review, update and amend rules relating to protected fish and wildlife and relating to the department's Sensitive Species List. Make amendments to rule that will support a coordinated scientific approach between the Sensitive Species list, the Oregon Conservation Strategy and the Oregon Nearshore Strategy. Specific rule changes include: updating taxonomic standards, updating scientific and common names, clarifying the intent and purpose of the Sensitive Species List, establishing criteria for Sensitive Species, and updating rule requirements.

**Rules Coordinator:** Therese Kucera

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

**Telephone:** (503) 947-6033

\*\*\*\*\*

**Rule Caption:** Diamond Lake Management Plan.

Date:	Time:	Location:
9-4-09	8 a.m.	Josephine County Fairgrounds 1451 Fairgrounds Rd. Grants Pass, OR 97527

**Hearing Officer:** Fish & Wildlife Commission

**Stat. Auth.:** ORS 496.012, 496.138, 496.146 & 506.119

**Stats. Implemented:** ORS 496.171, 496.172, 496.176, 496.182, 496.430, 496.435, 496.445, 496.450, 496.455, 506.109 & 506.129

**Proposed Adoptions:** Rules in 635-500

**Proposed Amendments:** Rules in 635-500

**Proposed Repeals:** Rules in 635-500

**Proposed Renumberings:** Rules in 635-500

**Last Date for Comment:** 9-4-09

**Summary:** Adopt, amend, or repeal rules as determined necessary to establish a Diamond Lake Management Plan which includes the following elements: Stocking of fingerling and legal sized, trophy, r predacious trout; Maintaining or enhancing the productive capacity of the lake; Evaluation of stocking rates, survival, and harvest to prevent nutrient loading; Monitoring of benthic organisms, dissolved oxygen, pH, and water clarity to maintain the lake's ecosystem; and Conduction of invasive species education, monitoring, and enforcement activities.

Housekeeping and technical corrections 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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## Department of Human Services, Addictions and Mental Health Division: Mental Health Services Chapter 309

**Rule Caption:** Rules prescribing standards for "Recovery Housing" serving people recovering from alcohol/drug abuse or dependency.

Date:	Time:	Location:
8-17-09	8:30-9:30 a.m.	DHS Bldg., Rm. 137A 500 Summer St. NE Salem, OR

**Hearing Officer:** Richard Luthe

**Stat. Auth.:** ORS 409.050 & 409.410

**Other Auth.:** 42 U.S.C. 300x-25 & 45 CFR 96.129

**Stats. Implemented:** ORS 90.100-90.459, 105.105-105.168, 430.265-430.920 & 279B

**Proposed Adoptions:** Rules in 415-052

**Last Date for Comment:** 8-21-09, 5 p.m.

**Summary:** The Addictions and Mental Health Division is proposing new rules to prescribe standards for providing financial assistance in the form of loans under 42 U.S.C. 300x-25, to support the establishment of recovery homes for people in recovery from alcohol and drug abuse or dependency.

**Rules Coordinator:** Richard Luthe

**Address:** 500 Summer Street NE E86, Salem, OR 97301

**Telephone:** (503) 947-1186

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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:
8-21-09	10 a.m.	500 Summer St. NE, Rm. 255 Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 409.040, 409.050, 410.070, 411.060, 411.070, 411.105, 411.111, 411.660, 411.700, 411.710, 411.816, 412.006, 412.009, 412.014, 412.016, 412.024, 412.049, 412.064, 412.079, 412.124 & 414.042

**Other Auth.:** 7 USC 2014; 42 USC 602(a); American Recovery and Reinvestment Act of 2009 (Public Law No. 111-5); CHIP Reauthorization Act (CHIPRA, Public Law No. 111-3); Section 602 of Public Law 111 08; 42 CFR 435.610; 7 CFR 273.7(d); 7 CFR 273.9(b)(2)(ii); 7 CFR 273.9(c)(8); 7 CFR 273.9(d)(6)(iii)

**Stats. Implemented:** ORS 409.050, 410.070, 411.060, 411.070, 411.105, 411.111, 411.117, 411.660, 411.700, 411.710, 411.816, 411.825, 412.001, 412.006, 412.009, 412.014, 412.016, 412.017, 412.024, 412.049, 412.079, 412.084, 412.124, 414.025, 414.042, 414.047, 418.005, HB 2126 (2009), SB 5529 (2009) & SB 5552 (2009)

**Proposed Adoptions:** 461-145-0143

**Proposed Amendments:** 461-110-0330, 461-110-0370, 461-110-0530, 461-115-0705, 461-120-0125, 461-120-0310, 461-120-0315, 461-120-0340, 461-130-0310, 461-135-0010, 461-135-0070, 461-135-0075, 461-135-0082, 461-135-0400, 461-135-0405, 461-135-0900, 461-135-1175, 461-135-1195, 461-145-0080, 461-145-0550, 461-155-0030, 461-155-0150, 461-155-0190, 461-155-0700, 461-160-0040, 461-160-0420, 461-160-0430, 461-170-0010, 461-170-0150, 461-170-0160, 461-175-0010, 461-175-0200, 461-175-0222,



## NOTICES OF PROPOSED RULEMAKING

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

**Proposed Repeals:** 461-110-0330(T), 461-110-0530(T), 461-120-0125(T), 461-120-0310(T), 461-120-0340(T), 461-135-0070(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)

**Last Date for Comment:** 8-24-09, 12 p.m.

**Summary:** 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 Families (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 461-115-0705 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.

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 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 461-120-0315 about the rights to reimbursements for medical care costs in all of the Department's medical programs is being amended to state that failure to assign the rights 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 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 461-130-0310 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 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 461-135-0010 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

## NOTICES OF PROPOSED RULEMAKING

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 461-135-0070 about the specific eligibility requirements in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF) and Temporary Assistance for Needy Families (TANF) programs is being amended to state the definition for the term "most recent employment". This rule also is being amended to state that a need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) is not eligible for TANF program benefits if a caretaker relative in the need group was separated from his or her most recent employment because he or she was discharged for misconduct, a felony, or theft; due to a labor dispute; or voluntarily quit in anticipation of discharge or quitting or without good cause, unless the caretaker relative was a Parents as Scholars (PAS) program participant who temporarily became ineligible for TANF program benefits for four months or less due to income from a paid work experience. In addition, this rule is being amended to state that when the need group is not eligible for TANF program benefits solely under the job separation provisions noted above, the need group is still be eligible for Medical Assistance Assumed MAA or MAF program benefits as long as the need group meets all other eligibility requirements. This rule is also being amended to make permanent changes made by temporary rule effective May 1, 2009.

OAR 461-135-0400 about the specific eligibility requirements of the Employment Related Day Care (ERDC) program is being amended to state that income from self-employment income does not meet the ERDC specific requirement for employment income; 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. This rule is also being amended to make permanent the temporary changes to this rule that were effective March 11, 2009 and April 1, 2009.

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 461-145-0143 about treatment of the \$250 economic recovery payments in Chapter 461 program eligibility determinations is being adopted to state that the payments are treated as excluded income in the month of receipt and an excluded resource in the month of receipt and for the following nine months. This amendment makes permanent a temporary rule adopted on March 3, 2009.

OAR 461-145-0550 about the treatment of unemployment compensation benefits in Chapter 461 program eligibility determinations is being amended to state that the additional \$25 benefit authorized

in the American Recovery and Reinvestment Act of 2009 is excluded from countable income in all programs except for the Employment Related Day Care and Food Stamp programs. This amendment makes permanent a temporary rule change adopted March 3, 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 461-155-0150 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 self-employed individuals, 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 March 11, 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 461-160-0040 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.

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 amend-

# NOTICES OF PROPOSED RULEMAKING

ments 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 461-175-0222 about the type of notice the Department must provide clients in the Employment Related Day Care (ERDC) and Food Stamp (FS) programs when their benefits certification period (the period for which a client is certified eligible for a program) is ending is being amended to state when notice is required in the ERDC program and what the notice must contain.

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 add the Food Stamp program benefit amounts paid between October 1, 2009 and September 30, 2010 that are used in adjusting the calculation of an overpayment in limited circumstances.

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

**Rules Coordinator:** Annette Tesch

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

**Telephone:** (503) 945-6067

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

**Rule Caption:** Date Error Correction for Hospital Tax Rate.

**Stat. Auth.:** ORS 409.050, 410.070 & 411.060

**Stats. Implemented:** ORS 409.750, OL 2003, Ch. 736 § 2 & 3

**Proposed Amendments:** 410-050-0861

**Last Date for Comment:** 8-21-09, 5 p.m.

**Summary:** The hospital tax rate rule, OAR 410-050-0861, is being amended to correct a clerical error made during the July 1, 2009 permanent rulemaking filing. A clerical error was made during that

filing which created ambiguity for which tax rate applies for the period of July 1, 2009 to July 30, 2009. This rule is being filed, retroactive to July 1, 2009, to correct the clerical error and remove the ambiguity by clarifying that the .63 percent tax rate applied during the January 1, 2008 to June 30, 2009 time frame. A temporary rule was filed effective July 15, 2009, to correct this error and clear the ambiguity until this rulemaking action is made permanent.

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

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

**Rules Coordinator:** Jennifer Bittel

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

**Telephone:** (503) 947-5250

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## Department of Human Services, Public Health Division Chapter 333

**Rule Caption:** Tuberculosis risk assessment and screening requirements for employees, inmates and residents of residential settings.  
**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

**Proposed Amendments:** 333-019-0041

**Proposed Repeals:** 333-026-0005, 333-026-0010, 333-026-0015, 333-026-0020, 333-026-0025

**Last Date for Comment:** 8-24-09, 5 p.m.

**Summary:** The Department of Human Services, Public Health Division is proposing to permanently amend 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 proposing to permanently repeal OARs in chapter 333, division 26 related to tuberculosis examination for care facilities' personnel and admittees because the rules re 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

**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 Justice Chapter 137

**Rule Caption:** Clarifies processes for good cause, continuation of services, arrears disbursement and adjusting case balances.

**Stat. Auth.:** ORS 25.020, 25.080 & 180.345

**Stats. Implemented:** ORS 25.020, 25.080, 412.024 & 418.032

**Proposed Amendments:** 137-055-1090, 137-055-1100, 137-055-6010, 137-055-6200

**Last Date for Comment:** 9-18-09, 5 p.m.

**Summary:** OAR 137-055-1090 is being 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 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 being 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.



## NOTICES OF PROPOSED RULEMAKING

OAR 137-055-6010 is being 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 being 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

**Address:** 494 State Street Salem, Oregon 97301

**Telephone:** (503) 986-6086

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**Rule Caption:** Updating fees for public records to reflect legislatively-approved billing rates for 2009–2011.

**Stat. Auth.:** ORS 192.430(2) & 192.440(4)

**Stats. Implemented:** ORS 192.440(4)

**Proposed Amendments:** 137-008-0010, 137-008-0020

**Last Date for Comment:** 9-1-09

**Summary:** The Department of Justice's 2009–2011 legislatively-approved budget increased the allowable hourly rates for services, except the rate for law clerk services, which was decreased. These amendments reflect those changes.

**Rules Coordinator:** Carol Riches

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

**Telephone:** (503) 947-4700

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

**Rule Caption:** Adoption of the 2009 International Fire Code with Oregon Amendments.

Date:	Time:	Location:
9-16-09	9:30 a.m.	4760 Portland, Rd. NE Salem, OR

**Hearing Officer:** John Caul

**Stat. Auth.:** ORS 476.030

**Other Auth.:** ORS 476.030

**Stats. Implemented:** ORS 476.030

**Proposed Amendments:** 837-040-0010, 837-040-0020, 837-040-0140

**Last Date for Comment:** 9-16-09, 5 p.m.

**Summary:** (1) OAR 837-040-0010(2) adopts the 2009 International Fire Code with Oregon amendments to be known as the Oregon Fire Code, 2010 Edition with an effective date of April 1, 2010.

(2) Amendment to OAR 837-040-0020(3) removes mid-cycle Oregon amendments to the 2007 Oregon Fire Code as they will be incorporated into the 2010 Oregon Fire Code.

(3) OAR 837-040-0140 changes edition dates of the Oregon Structural Specialty Code and the Oregon Mechanical Specialty Code from 2007 to 2010.

The proposed adopting of the 2009 International Fire Code with Oregon amendment should have no adverse impact on the government, local government, business or the public. Any cost increases or savings cannot be qualified at this time. The Oregon Fire Code Committee made the finding that the added cost, if any, is necessary to the health and safety of the public.

**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

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

**Rule Caption:** Establishes qualification and fees to access certain public DMV records.

**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 192.440, 802.179, 802.183, 802.220 & 802.230

**Stats. Implemented:** ORS 192.440, 746.265, 802.179, 802.183, 803.220 & 802.230

**Proposed Amendments:** 735-010-0030

**Last Date for Comment:** 8-21-09

**Summary:** As one of its services, DMV provides Real-time Access to Oregon Driving Records (RADR) to qualified customers. The service provides electronic access to 3-year employment driving records, 3-year non-employment driving records and certified court prints. The proposed amendment establishes customer qualifications and the record fee to access and obtain copies of driving records using the RADR service. The proposed amendment also establishes the fee for obtaining an Identification Card Information report. Other non-substantive changes are made to update references to DMV systems for accessing records and to simplify and clarify rule language.

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

**Rules Coordinator:** Lauri Kunze

**Address:** Department of Transportation, 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, Highway Division Chapter 734

**Rule Caption:** Chains or Traction Tires.

**Stat. Auth.:** ORS 184.616, 184.619 & 815.045

**Stats. Implemented:** ORS 815.045 & 815.140

**Proposed Amendments:** 734-017-0015, 734-017-0025

**Last Date for Comment:** 8-21-09

**Summary:** These rules are being 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 would also accommodate a fourth condition requested by the Oregon Trucking Association that would require chains for single drive axle vehicles with a rates gross vehicle weight over 10,000 pounds as well as passenger vehicles that are towing.

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

**Rules Coordinator:** Lauri Kunze

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

**Telephone:** (503) 986-3171

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### Department of Transportation, Motor Carrier Transportation Division Chapter 740

**Rule Caption:** Adoption, amendment and repeal of rules governing motor carrier transportation of household goods.

**Stat. Auth.:** ORS 823.011, 825.110, 825.115, 825.125, 825.200, 825.232, 825.240, 825.950 & 2009 OL Ch. 433

**Stats. Implemented:** ORS 825.100, 825.102, 825.104, 825.106, 825.108, 825.110, 825.115, 825.230, 825.234, 825.240, 825.950 & 2009 OL Ch. 433

**Proposed Adoptions:** 740-035-0145, 740-035-0165, 740-060-0045

**Proposed Amendments:** 740-035-0020, 740-035-0110, 740-035-0150, 740-035-0160, 740-060-0100, 740-300-0035

**Proposed Repeals:** 740-060-0050

**Last Date for Comment:** 8-21-09

**Summary:** These rules describe permits and certificates of authority issued to motor carriers, applications for authority and operations of such motor carriers. The 2009 Oregon Legislature, by passage of HB 2817 (Chapter 433, Or. Laws 2009), revised entry standards required to obtain a certificate of authority to provide for-hire



# NOTICES OF PROPOSED RULEMAKING

intrastate transportation of household goods. Prior to passage of HB 2817, 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 ability of 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, Chapter 433, OL 2009 repeals regulation of persons providing a pack or load service, increases 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. Proposed rules and proposed rule amendments are necessary to implement Chapter 433, Or. Laws 2009. Other proposed rule amendments update existing application requirements and update a list of cities in which household goods transportation is exempt for the economic regulation. A rule regarding pack or load registration is repealed, because Chapter 433, Or. Laws 2009 remove the registration requirement.

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

**Rules Coordinator:** Lauri Kunze

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

**Telephone:** (503) 986-3171

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## **Economic and Community Development Department Chapter 123**

**Rule Caption:** Clarifies Safe Drinking Water Revolving Loan Fund Program.

**Stat. Auth.:** ORS 285A.075 & 285A.213

**Stats. Implemented:** ORS 285A.213

**Proposed Repeals:** 123-049-0005, 123-049-0030, 123-049-0050

**Last Date for Comment:** 8-22-09

**Summary:** The American Recover and Reinvestment Act (ARRA) of 2009 allocates \$28,515,000 in economic recovery funds through the Safe Drinking Water revolving Loan Fund Program (Program) to the State of Oregon. The Act stipulates specific timelines for and use of the funds requiring amendment of the Program's Program Guidelines and Applicant's handbook.

**Rules Coordinator:** Janelle Lacefield

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

**Telephone:** (503) 986-0036

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**Rule Caption:** This rule covers Tourism Grant awards.

**Stat. Auth.:** ORS 285A.075

**Stats. Implemented:**

**Proposed Repeals:** 123-062-0000, 123-062-0010, 123-062-0020, 123-062-0030, 123-062-0040, 123-062-0050, 123-062-0060, 123-062-0070, 123-062-0080

**Last Date for Comment:** 8-22-09

**Summary:** This rule set no longer is administered through this agency.

**Rules Coordinator:** Janelle Lacefield

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

**Telephone:** (503) 986-0036

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**Rule Caption:** This rule covers Community Facilities and is to be repealed due to it being unnecessary.

**Stat. Auth.:** ORS 285A.075

**Stats. Implemented:**

**Proposed Repeals:** 123-075-0000

**Last Date for Comment:** 8-22-09

**Summary:** This rule is an unnecessary rule set. It is not needed, because it has no real authority and is not being used.

**Rules Coordinator:** Janelle Lacefield

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

**Telephone:** (503) 986-0036

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## **Employment Department Chapter 471**

**Rule Caption:** Amends language regarding compelling family reasons for work separations.

**Stat. Auth.:** ORS 657.610

**Stats. Implemented:**

**Proposed Amendments:** 471-030-0038

**Last Date for Comment:** 11-1-09

**Summary:** Amends language to include "compelling family reasons" as good cause for a work separation.

**Rules Coordinator:** Janet Orton

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

**Telephone:** (503) 947-1724

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**Rule Caption:** Amends language regarding domestic violence and members of an individual's immediate family.

**Stat. Auth.:** ORS 657.610

**Stats. Implemented:**

**Proposed Amendments:** 471-030-0150

**Last Date for Comment:** 11-1-09

**Summary:** Amends language regarding domestic violence and members of an individual's immediate family.

**Rules Coordinator:** Janet Orton

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

**Telephone:** (503) 947-1724

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**Rule Caption:** Defines "Standard Base Year" as used in ORS 657.010(1)(b).

**Stat. Auth.:** ORS 657.610

**Stats. Implemented:** ORS 657.610

**Proposed Adoptions:** 471-030-0012

**Last Date for Comment:** 11-1-09

**Summary:** This rule defines "Standard Base Year" as used in ORS 657.010(1)(b) to clarify the agency's definition of a "Standard Base Year."

**Rules Coordinator:** Janet Orton

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

**Telephone:** (503) 947-1724

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## **Oregon Health Licensing Agency, Board of Cosmetology Chapter 817**

**Rule Caption:** Increase Board of Cosmetology fees.

**Date:**

**Time:**

**Location:**

8-31-09

9 a.m.

Rhoades Conference Rm.

700 Summer St. NE, Suite 320

Salem, OR

**Hearing Officer:** Bert Krages

**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:** 8-31-09

**Summary:** The Oregon Health Licensing Agency completed a comprehensive cost allocation in 2008 which, evaluated expenditures, revenues, number of payers, direct and indirect costs, level of complexity in delivering services and growth/attrition ratios for each

# NOTICES OF PROPOSED RULEMAKING

program. Overall agency operational costs, state agency assessments and inflation factors were also reviewed and factored into the new structure.

A new fee structure was implemented and all fees were adjusted agency wide based on the results of the analysis on October 1, 2008 with the exception of specific cosmetology fees, because during the implementation process agency stakeholders requested the postponement of the fee increase due to economic difficulties to students and graduates from private cosmetology career schools. The agency agreed to defer the increase until July 1, 2009.

The Board of Cosmetology's more than 70,000 authorization holders support approximately 79.39% of the overall agency budget. Over the last two biennia the board has not been paying the cost of its direct/indirect assessments, but has been subsidizing increased costs and inflation factors through spend down of the carry over balance from previous biennia. Cost adjustments are necessary to recoup actual and necessary expenses and align this board with its overall consumption of agency resources.

**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

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**Oregon Liquor Control Commission**  
**Chapter 845**

**Rule Caption:** Amend Special Event Winery/Grower rule to reflect maximum of five license days on application.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-25-09	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Jennifer Huntsman  
**Stat. Auth.:** ORS 471, including 471.030, 471.040 & 471.730 (1)&(5)  
**Stats. Implemented:** ORS 471.223 & 471.227  
**Proposed Amendments:** 845-005-0415  
**Last Date for Comment:** 9-8-09

**Summary:** This rule describes Special Events licenses that are available to current Winery or Grower Sales Privilege licensees and also describes the application process. Legislative Counsel reviewed the Commission's April 1, 2009 rule amendments related to catering, temporary sales, and special events, and on May 19, 2009 issued us a staff report. This report includes a negative determination in that they find OAR 845-005-0415(4) exceeds the scope of the enabling statutes. Because our intent was to have consistency amongst the three special event rules in the April 1, 2009 rule amendment package, our rule states that no more than seven license days will be approved on an application. However, the enabling statutes (ORS 471.223 and ORS 471.227) limit special events for Winery and Grower Sales Privilege licensees to only five days. Because this rule is outside the scope of its enabling statutes, we need to amend this rule in order to comply with the statutory language now in effect.

**Rules Coordinator:** Jennifer Huntsman  
**Address:** Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222  
**Telephone:** (503) 872-5004

.....  
**Oregon Medical Board**  
**Chapter 847**

**Rule Caption:** Increases the length of a Limited License, Postgraduate from 12 months to 13 months.  
**Stat. Auth.:** ORS 677.265  
**Stats. Implemented:** ORS 677.132  
**Proposed Amendments:** 847-010-0051  
**Last Date for Comment:** 8-28-09

**Summary:** The proposed rule increases the postgraduate training to thirteen months to allow training programs that train for 54+ weeks to have their postgraduates pay for one Limited License, Postgraduate instead of need to apply for two. This also allows flexibility in

starting and ending training dates for postgraduates coming in from out-of-state or out-of-country.

**Rules Coordinator:** Malar Ratnathicam  
**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201  
**Telephone:** (971) 673-2713

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**Rule Caption:** Removes outdated language to terms of office for initial members of the EMT Advisory Committee.

**Stat. Auth.:** ORS 682.245  
**Stats. Implemented:** ORS 682.245  
**Proposed Amendments:** 847-035-0011  
**Last Date for Comment:** 8-28-09

**Summary:** The proposed rules change deletes outdated terms of office for the initial members of the EMT Advisory Committee when the rules on the membership of the Committee were first adopted in October 2001.

**Rules Coordinator:** Malar Ratnathicam  
**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201  
**Telephone:** (971) 673-2713

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**Rule Caption:** Adds language on electrocardiographic monitoring and interpretation to EMT-I and EMT-P scope of practice.

**Stat. Auth.:** ORS 682.245  
**Stats. Implemented:** ORS 682.245  
**Proposed Amendments:** 847-035-0030  
**Last Date for Comment:** 8-28-09

**Summary:** Proposed rules change to the EMT-I and EMT-P scope of practice and the monitoring and interpretation of electrocardiographic rhythms, and the addition of Ondansetron, an anti-emetic drug, to the EMT-I scope of practice.

**Rules Coordinator:** Malar Ratnathicam  
**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201  
**Telephone:** (971) 673-2713

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**Rule Caption:** Supervising physician provides eight hours on-site supervision every month or as approved by the Board.

**Stat. Auth.:** ORS 682.265  
**Stats. Implemented:** ORS 677.515  
**Proposed Amendments:** 847-050-0037  
**Last Date for Comment:** 8-28-09

**Summary:** The proposed rule change on-site supervision of the physician assistant by the supervising physician from meeting every two weeks to on-site supervision once a month, or as approved by the Board.

**Rules Coordinator:** Malar Ratnathicam  
**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201  
**Telephone:** (971) 673-2713

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**Rule Caption:** Allows licensee to remain in inpatient treatment facility beyond 25 consecutive days without suspension.

**Stat. Auth.:** ORS 677.265  
**Stats. Implemented:** ORS 677.225 & 677.645  
**Proposed Adoptions:** 847-065-0005  
**Last Date for Comment:** 8-28-09

**Summary:** The proposed rule allows licensees to remain in an inpatient treatment facility beyond 25 consecutive days without an automatic suspension of their license if the licensee is in compliance with the Health Professional Program (HPP) and is not in practice. If HPP determines a licensee has a mental illness that affects their ability to practice medicine safely they will request the licensee withdraw from practice; if licensee refuses, the licensee shall be reported to the Oregon Medical Board with a copy of the mental health evaluation.

**Rules Coordinator:** Malar Ratnathicam

# NOTICES OF PROPOSED RULEMAKING

**Address:** Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201

**Telephone:** (971) 673-2713

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**Oregon State Lottery**  
**Chapter 177**

**Rule Caption:** Amends rule to set compensation rates for Video Lottery<sup>SM</sup> retailers; repeals obsolete rules.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-18-09	9 a.m.–1 p.m.	Salem Armory 2320 17th St. NE Salem, OR

**Hearing Officer:** Larry Trott

**Stat. Auth.:** ORS 461

**Other Auth.:** Oregon Constitution, art. XV, § 4(4)

**Stats. Implemented:** ORS 461.310 & 461.445

**Proposed Amendments:** 177-040-0026

**Proposed Repeals:** 177-040-0027, 177-040-0028, 177-040-0029

**Last Date for Comment:** 10-16-09, 5 p.m.

**Summary:** The Oregon State Lottery is commencing permanent rulemaking and will hold a public hearing to obtain input regarding the compensation rates for Video Lottery<sup>SM</sup> retailers under the new Retailer Contract that will go into effect on June 27, 2010. This is necessary because the current Retailer Contract expires June 26, 2010.

Lottery proposes to amend OAR 177-040-0026 to place the retailer compensation rates for the sale of shares from Video Lottery<sup>SM</sup> games into one rule. Under the new contract, Lottery intends to require Video Lottery<sup>SM</sup> retailers to sell all types of Video Lottery<sup>SM</sup> games as determined by the Lottery and proposes to repeal OAR 177-040-0027, 177-040-0028, 177-040-0029 (the “Look Back” rule) as obsolete.

The Lottery encourages interested parties to submit testimony to the Lottery regarding the compensation to be paid to Video Lottery<sup>SM</sup> retailers under the new contract to assist Lottery in undertaking to develop a compensation system that maximizes net revenue to that while providing a reasonable rate of return to Video Lottery<sup>SM</sup> retailers.

**Rules Coordinator:** Mark W. Hohlt

**Address:** Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301

**Telephone:** (503) 540-1417

.....  
**Oregon University System**  
**Chapter 580**

**Rule Caption:** To ensure fairness and simplify the administration of the voluntary FTE reduction program.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-14-09	10 a.m.	1431 Johnson Ln., Rm. 246 University of Oregon Eugene, OR

**Hearing Officer:** Marcia Stuart

**Stat. Auth.:** ORS 351.070

**Stats. Implemented:** ORS 351.070

**Proposed Adoptions:** 580-021-0027

**Last Date for Comment:** 8-19-09

**Summary:** 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

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

**Telephone:** (541) 346-5749

**Oregon Youth Authority**  
**Chapter 416**

**Rule Caption:** Controlling, accessing and using criminal offender information from criminal records checks on identified subject individuals.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-17-09	1:30–2:30 p.m.	Oregon Youth Authority Owyhee Conference Rm. 530 Center St. NE, Suite 200 Salem, OR 97301

**Hearing Officer:** Winifred Skinner, OYA

**Stat. Auth.:** ORS 181.534 & 420A.021

**Stats. Implemented:** ORS 181.534, 420A.010, 420A.020 & 420A.021

**Proposed Adoptions:** 416-800-0031, 416-800-0041, 416-800-0045, 416-800-0055, 416-800-0065, 416-800-0080, 416-800-0090, 416-800-0095

**Proposed Amendments:** 416-800-0000, 416-800-0010, 416-800-0020, 416-800-0050, 416-800-0070

**Proposed Repeals:** 416-800-0060

**Last Date for Comment:** 8-31-09, 5 p.m.

**Summary:** These rules will control how the OYA accesses criminal offender information about a subject individual through criminal records checks and its use of that information to determine whether the subject individual is fit to provide services to the OYA as an employee, volunteer, foster parent, contractor, vendor, or to house an OYA offender.

**Rules Coordinator:** Winifred Skinner

**Address:** 530 Center Street NE, Suite 200; Salem, OR 97301-3765

**Telephone:** (503) 373-7570

.....  
**Public Utility Commission**  
**Chapter 860**

**Rule Caption:** In the Matter of Permanently Amending OAR 860-022-0041 to be Consistent with ORS 757.268

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-27-09	9:30 a.m.	550 Capitol St. NE Main Hearing Rm. Salem, OR 97301

**Hearing Officer:** Sarah K. Wallace

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

**Stats. Implemented:** ORS 756.040, 756.060, 757.267 & 757.268

**Proposed Amendments:** 860-022-0041

**Proposed Repeals:** 860-022-0041(T)

**Last Date for Comment:** 8-27-09, Close of Hearing

**Summary:** This proposed rule adopts a permanent solution to the discrepancy that existed between OAR 860-022-0041(10) and ORS 757.268 prior to the adoption of a temporary amendment in April 2009, in docket AR 536. On September 2, 2005, the Governor signed into law SB 408, primarily codified at ORS 757.268, requiring certain public utilities to file annual tax reports and other tax information with the Public Utility Commission (Commission). The tax reports and information concern the amount of taxes paid by the utility and the amount of taxes collected in rates during specified time periods. The law requires that the Commission determine if the amount of taxes assumed in rates differed by at least \$100,000 from the amount of taxes paid by the public utility to units of government. Further, the law directs that if the Commission finds a difference of \$100,000 or more, the Commission must require the public utility to implement a rate schedule with an automatic adjustment clause accounting for the difference. The Commission adopted OAR 860-022-0041 to implement SB 408. Prior to the temporary amendment, the time period used for the Commission’s earnings review of a utility was the “applicable tax year.” To be consistent with the law, the rule section was temporarily amended to reflect that the time period used for the Commission’s earnings review of a utility is the period during which the utility’s automatic adjustment clause was in effect. The temporary amendment also clarified that a claim under



## NOTICES OF PROPOSED RULEMAKING

the section (10) of the rule should be made after the tariffs establishing the automatic adjustment clause are filed. The permanent amendment proposes the same clarifications. The temporary amendments will be repealed upon filing of the adopted permanent rule amendments.

The Commission encourages participants to file written comments as early as practicable in the proceeding so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 537 on comments and file them by email to the Commission's Filing Center at PUC.Filing.Center@state.or.us and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon 97301. For more information about the Commission's Filing Center, please see <http://apps.puc.state.or.us/edockets/center.htm>.

Participants wishing to monitor the hearing by telephone (listen only) must contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372 by close of business August 25, 2009, to request a dial-in number. To present oral comment at the hearing, participants must attend in person.

**Rules Coordinator:** Diane Davis

**Address:** Public Utility Commission of Oregon, PO Box 2148, Salem, OR 97308-2148

**Telephone:** (503) 378-4372

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### Public Utility Commission, Board of Maritime Pilots Chapter 856

**Rule Caption:** Allows provisional renewal of a state license while waiting for federal license renewal to process.

**Stat. Auth.:** ORS 776

**Stats. Implemented:** ORS 776.115 & 776.345

**Proposed Amendments:** 856-010-0015

**Last Date for Comment:** 8-21-09

**Summary:** If a pilot has submitted an application for renewal of a federal license at least 60 days prior to its expiration, but the U.S. Coast Guard has not completed its renewal process by the expiration date, and the pilot has, for that reason, no currently applicable federal license at the time of renewing a state license, the board may issue a provisionally renewed state license.

**Rules Coordinator:** Susan Johnson

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

**Telephone:** (971) 673-1530

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**Rule Caption:** Applies statutory CPI fee increase for pilot license fees.

**Stat. Auth.:** ORS 776.115

**Stats. Implemented:** ORS 776.357(2)

**Proposed Amendments:** 856-010-0016

**Last Date for Comment:** 8-21-09

**Summary:** Adopts by rule a statutory biennial fee increase for license fees, by a proportional amount equal to the percentage change in the 24-month period prior to the beginning of the biennium in the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor.

**Rules Coordinator:** Susan Johnson

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

**Telephone:** (971) 673-1530

### Racing Commission Chapter 462

**Rule Caption:** Amendments for horse racing requirements and procedures, and simulcast intrastate off-track wagering facilities.

**Date:**

**Time:**

**Location:**

8-20-09

10 a.m.

800 NE Oregon St., Rm. 1A  
Portland, OR

**Hearing Officer:** Charles Williamson, Commissioner

**Stat. Auth.:** ORS 462.270(3)

**Stats. Implemented:** ORS 462.020, 462.270, 462.405, 462.415 & 462.450

**Proposed Amendments:** 462-110-0010, 462-120-0030, 462-120-0040, 462-120-0050, 462-120-0100, 462-120-0110, 462-130-0010, 462-130-0040, 462-130-0070, 462-140-0040, 462-140-0060, 462-140-0070, 462-140-0130, 462-140-0150, 462-140-0250, 462-140-0340, 462-140-0350, 462-150-0010, 462-150-0020, 462-150-0030, 462-150-0040, 462-150-0060, 462-150-0070, 462-150-0080, 462-160-0110, 462-160-0120, 462-160-0130, 462-160-0140, 462-200-0340, 462-200-0370

**Proposed Repeals:** 462-200-0380

**Last Date for Comment:** 8-20-09, Close of Hearing

**Summary:** The cited rules are proposed amendments to horse racing rules which include licensing procedures, prohibited conduct and hearing procedures, duties, racing requirements and procedures, medication and miscellaneous provisions, and simulcast intrastate off-track wagering facilities.

**Rules Coordinator:** Carol N. Morgan

**Address:** Oregon Racing Commission, 800 NE Oregon St., Suite 310, Portland, OR 97232

**Telephone:** (971) 673-0208

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### Secretary of State, Archives Division Chapter 166

**Rule Caption:** Updating OAR 166-200 to correct alphabetizing/numbering and minor content errors.

**Stat. Auth.:** ORS 192 & 357

**Stats. Implemented:** ORS 192.005-192.170 & 357.805-537.895

**Proposed Amendments:** Rules in 166-200

**Last Date for Comment:** 8-21-09

**Summary:** This rule is being proposed to correct alphabetizing/numbering and minor content errors.

**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, Corporation Division Chapter 160

**Rule Caption:** Waiving of nonprofit reinstatement five year limit under HB 2086 (2009).

**Stat. Auth.:** ORS 65.031

**Stats. Implemented:** ORS 65.654

**Proposed Adoptions:** 160-010-0310

**Last Date for Comment:** 8-21-09

**Summary:** New rule 160-010-0310 establishes good cause standards used to determine eligibility to waive the five year limit for nonprofit corporations to reinstate.

**Rules Coordinator:** Tom Wrosch

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

**Telephone:** (503) 986-0511



# ADMINISTRATIVE RULES

## Board of Architect Examiners Chapter 806

**Rule Caption:** Title for Architectural Interns.

**Adm. Order No.:** BAE 4-2009

**Filed with Sec. of State:** 7-10-2009

**Certified to be Effective:** 7-10-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 806-010-0020, 806-010-0037

**Subject:** This rule is amended to allow for the use of the title "Architectural Intern" by those who qualify. This amendment also made grammatical corrections.

**Rules Coordinator:** Carol Moeller—(503) 763-0662

### 806-010-0020

#### Registration Examination

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

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

(b) A candidate may submit an application and examination fee to the Oregon Board only after the candidate has established an IDP record with NCARB.

(c) A candidate may begin taking the ARE only after the candidate receives written notice from the Board that the application has been approved. After the candidate receives such written notice from the Board, the candidate may only use the title "Architectural Intern". A person that uses this title without first receiving written notice from the Board that they are qualified to do so may be subject to disciplinary action.

(d) Before the Board can evaluate a candidate for initial registration, an applicant must demonstrate the following:

(A) Successful completion of the IDP program; and

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

(e) Successfully passing a jurisprudence examination (JE) and sitting for an oral interview with the Board. Approved candidates must sit for and pass the JE and oral interview after meeting the above requirements and paying the registration fees before the Board may grant registration.

(2) **IDP:** The Board requires a candidate to complete acceptable experience, as evaluated by NCARB and found within NCARB's Intern Development Program Guidelines. Candidates should direct requests for admittance to the IDP to NCARB.

(3) **ARE:** The Board requires a candidate to successfully complete all divisions of the ARE, provide the Board with a complete application for examination made on forms provided by the Board and accompanied by a fee. The Board must also receive and approve NCARB verification prior to a candidate scheduling any division of the examination. A candidate may begin testing only after the candidate receives written approval from the Board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.050, 671.060, 671.065 & 671.085

Hist.: AE 5, f. 12-22-64; AE 6, f. 6-5-69; AE 11, f. 2-15-74, ef. 3-11-74; AE 1-1978, f. & ef. 1-23-78; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 1-1980, f. & ef. 2-14-80; AE 2-1980, f. & ef. 10-3-80; AE 2-1981(Temp), f. & ef. 7-28-81; AE 2-1983, f. & ef. 1-12-83; AE 2-1984, f. & ef. 10-23-84; AE 1-1986, f. 11-12-86, ef. 11-13-86; AE 2-1992, f. & cert. ef. 3-30-92; AE 5-1992(Temp), f. & cert. ef. 10-21-92; AE 1-1993, f. & cert. ef. 7-1-93; AE 1-1996, f. 1-23-96, f. 2-1-96; AE 2-1997, f. & cert. ef. 9-24-97; BAE 2-1998, f. & cert. ef. 6-22-98; Administrative correction, 6-17-99; BAE 3-2000, f. & cert. ef. 7-24-00; BAE 5-2001, f. & cert. ef. 10-24-01; BAE 5-2002 f. 8-14-02 cert. ef. 8-15-02; BAE 4-2003, f. 8-13-03, cert. ef. 8-14-03; BAE 2-2005, f. & cert. ef. 5-12-05; BAE 1-2008, f. & cert. ef. 2-28-08; BAE 4-2009, f. & cert. ef. 7-10-09

### 806-010-0037

#### Architect Title

Only certain qualified individuals and businesses may use the title of "Architect," as follows:

(1) Those individuals who have been notified by the Board that they have qualified as an Oregon architect and hold an active Oregon registration.

(2) Those individuals who qualify under ORS 671.010 and 671.020(2) may use the title of "Consulting Architect."

(3) Those individuals who qualify under ORS 671.010 and 671.020(3) may use the title of "Foreign Architect."

(4) Those individuals who have submitted an application to the Oregon Board for consideration as Oregon architects by reciprocity under OAR 806-010-0035 (applicants) are entitled to use the title "Architect" under certain conditions. Applicants may not practice architecture until such time as an active Oregon architect registration is granted. Applicants may use the title "Architect," along with the name of the state in which the individual holds an active architect license (for example, "John Smith, CA Architect"), but only after all of the following have been completed:

(a) The Board receives a completed reciprocity application from the applicant;

(b) The Board receives all the required fees from the applicant;

(c) The Board receives a written notice from the applicant of the applicant's intent to offer architectural services in Oregon; and

# ADMINISTRATIVE RULES

(d) The applicant must advise the prospective client(s) in writing that the applicant is not registered in Oregon and that the applicant will not practice architecture on the project until the applicant receives notice from the Board that Oregon registration is granted.

(5) Individuals/firms who hold an active registration to practice architecture in another jurisdiction recognized by the Board may participate and use the architect title in a public design competition in Oregon without first being registered. Once selected for the project, the individual/firm must comply with OAR 806-010-0075 and will not perform further architectural services on the project until registered by the Oregon Board.

(6) Firms registered with the Board under OAR 806-010-0080 and 806-010-0110 as providing architectural services in Oregon must use a derivative of the architect title within the firm name to identify the firm appropriately, according to 806-010-0110.

(7) Except as provided in this rule, no title, sign, cards, or device may be used to indicate or tend to indicate that the person or firm or business using the title is practicing architecture or is an architect, or represents in any manner that the person or firm or business is an architect or architectural practice.

(8) For purposes of this rule and OAR 806-010-0035(5), the phrase "offering to render architectural services" includes to solicit for an architectural project in Oregon.

(9) Only those individuals notified by the Board that they have been granted Architect Emeritus status may use the title "Architect Emeritus" following their name on any plaques, signs, letterhead, and the like.

(10) Only those individuals who qualify under OAR 806-010-0020(1)(a), (b), and (c) may use the title "Architectural Intern." No other title using any derivative of the term architect may be used by an intern.

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.050, 671.060, 671.065, 671.080 & 671.085

Hist.: BAE 2-2004, f. & cert. ef. 3-2-04; BAE 6-2005, f. & cert. ef. 12-13-05; BAE 1-2006, f. & cert. ef. 3-10-06; BAE 4-2009, f. & cert. ef. 7-10-09

## Board of Massage Therapists Chapter 334

**Rule Caption:** Adopts Attorney General's Simplified Workplace Interpersonal Dispute Rule on Mediation Confidentiality.

**Adm. Order No.:** BMT 2-2009(Temp)

**Filed with Sec. of State:** 6-26-2009

**Certified to be Effective:** 6-26-09 thru 12-1-09

**Notice Publication Date:**

**Rules Adopted:** 334-001-0051

**Subject:** The rule permits the parties to interpersonal disputes among the agency's employees or officials, or employees and officials to agree to keep mediation communications confidential. The rule also permits the parties to interpersonal disputes to agree that mediation disclosures will be inadmissible in any subsequent administrative, judicial or arbitration proceeding or during discovery so long as certain conditions are met. The rule contains specific exceptions to confidentiality and inadmissibility.

**Rules Coordinator:** Patty Glenn—(503) 365-8657, ext. 4

### 334-001-0051

#### Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator;

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to confidentiality and inadmissibility:

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not

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disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.230(4) & 36.224

Hist.: BMT 2-2009(Temp), f. & cert. ef. 6-26-09 thru 12-1-09

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**Rule Caption:** 2009–2011 budget adoption and cleanup from the 2008/2009 comprehensive rules revisions.

**Adm. Order No.:** BMT 3-2009

**Filed with Sec. of State:** 7-2-2009

**Certified to be Effective:** 7-2-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 334-001-0012, 334-001-0060, 334-010-0005, 334-010-0010, 334-010-0017, 334-010-0033, 334-010-0046, 334-010-0050, 334-020-0050

**Subject:** 334-001-0012 adopts the 2009-2011 Biennial budget of \$1,300,000.00.

334-010-0060(8)(b) removes “or university” due to statutory conflict.

334-010-0005(3)(a) replaces “legal picture” with “government issued photo” for identification required for examination.

334-010-0005(6)(c) adds “and” between (b) and (c) for clarification.

334-010-0010(6) adds to the end “The Board may require an applicant with 3 or more examination failures to undertake and satisfactorily complete a Board approved remediation plan prior to reapplying for the examination.”

334-010-0017(4) changes 4 years to 3 years to renew from lapsed status.

334-010-0033 reorders layout of the fees section for understanding and readability.

334-010-0046(1)(c) removes “or university” in two places due to statutory conflict.

334-010-0050(1) clarifies CE Submittal requirements.

334-020-0050 brings linen requirements into alignment with current industry and technology standards.

**Rules Coordinator:** Patty Glenn—(503) 365-8657, ext. 4

## 334-001-0012

### Budget

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists’ 2009–2011 Biennium budget of \$1,300,000.

Stat. Auth.: SB 1127, ORS 183 & 687.121

Stats. Implemented: Section 6, (1) & (2)

Hist.: BMT 2-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2001, f. & cert. ef. 5-29-01; BMT 2-2003, f. & cert. ef. 6-17-03; BMT 2-2005(Temp), f. & cert. ef. 6-24-05 thru 6-30-05; BMT 3-2005, f. 6-24-05, cert. ef. 7-1-05; BMT 1-2007, f. & cert. ef. 6-29-07; BMT 2-2007, f. & cert. ef. 7-3-07; BMT 3-2009, f. & cert. ef. 7-2-09

## 334-001-0060

### Definitions

(1) “Agency” means the ability to exert personal power or produce an effect.

(2) “Barter” means partial or complete trade or exchange of massage or bodywork services for any other type of goods or service other than money.

(3) “Board” means the State Board of Massage Therapists or its authorized representatives as provided by ORS 687.115.

(4) “Bodywork” means the use on the human body, for the purpose of, but not limited to, maintaining good health and establishing and maintaining good physical condition of:

(a) Pressure, friction, stroking, tapping, kneading, vibration or stretching by manual or mechanical means or gymnastics;

(b) Appliances, tools or devices;

(c) Topical preparations; or

(d) Hot and cold applications.

(5) “Boundary” means the limits in a professional relationship which create safety based on the needs of the client.

(6) “Boundary violation” means an alteration or shift in the limits of a professional relationship so that what is allowed in the relationship becomes ambiguous and/or may not be based on the needs of the client.

(7) “Caring” means acting in a manner in which things, events, people or relationships matter.

(8) “Certified Class or program” means a class or program that is approved by the Board and is offered:

(a) By a person or institution licensed as a career school under ORS 345.010 to 345.450; or

(b) By a community college approved by the Department of Education; or

(c) In another state and licensed or approved by the appropriate agency in that state.

(9) “Client” means any individual, group of individuals, or organization to whom an L.M.T. provides massage.

(10) “Client vulnerability” means factors which diminish a client’s ability to be self-determining.

(11) “Compensation” means something given or received as payment including but not limited to bartering, tips, monies, donations, or services.

(12) “Conflict of interest” means any action or decision or recommendation by an LMT at the detriment of a client.

(13) “Contact hours” means actual hours in class under the instruction of and in the presence of an instructor.

(14) “Critical Reflection” means a process whereby knowledge and action are connected to each other through the application of careful, conscious, deliberate reflection on:

(a) Personal practice (perceptions, assumptions, motivations, values, behaviors).

(b) Assessment and understanding of a situation.

(c) Likely or actual consequences or impact of one’s actions.

(15) “Dual Relationship” means any relationship of a personal or business nature with a client that is in addition to or concurrent with a professional relationship in which the L.M.T. is providing or has provided massage or bodywork services to that same client.

(16) “Ethics” means a system of valued societal beliefs and behaviors that may be used to guide and evaluate conduct to ensure the protection of an individual’s person and rights.

(17) “Indorsement” means:

(a) The process of evaluating and recognizing the credentials of a person licensed in Oregon in another health care specialty that includes in its scope of practice, acts defined as massage: or

(b) The process of evaluating and recognizing the credentials of a massage or bodywork practitioner authorized to practice massage or bodywork in another jurisdiction.

(18) “Informed consent” means a process wherein clients have knowledge of what will occur, that participation is voluntary, and that the client is competent to give consent.

(19) “Licensee” means any person holding a license, permit, or certificate issued by this Board; an L.M.T.

(20) “L.M.T.” means a Licensed Massage Therapist.

(21) “Massage” or “massage therapy” is defined in ORS 687.011.

(22) “Personal power” means recognizing and taking personal responsibility for the inherent power differential between the L.M.T. and the client and recognizing and taking personal responsibility for the impact of professional decisions, actions and behavior on the client.

(23) “Power differential” means the basic inequality inherent in the professional relationship between an L.M.T. and a client in terms of who has the advantage in the relationship. The L.M.T. is presumed to have the advantage by virtue of the authority which emerges from the role of professional and the vulnerability which is automatically part of the role of client.

(24) “Practice of massage” is defined in ORS 687.011.

(25) “Professional authority” means the power inherent in the professional role and which is derived from a combination of an L.M.T.’s specialized or expert knowledge, societal expectations, stated and unstated client expectations, and an L.M.T.’s personal power.

(26) “Professional relationship” means the relationship established when an L.M.T. contracts with a client, verbally or in writing, to provide any service associated with the practice of massage or bodywork.

(27) “Professional role” means assuming the demands and responsibilities of professional authority by taking charge of the conditions which create and maintain client safety and trust in the professional-client relationship.

Stat. Auth.: ORS 687.011 & 687.121

Stats. Implemented: ORS 687.011



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Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09

## 334-010-0005

### Applications

(1) All applications for examinations, licensure, inactive status, renewal, or temporary permit shall be made on forms provided by the Board. Only applications that are completed and on Board approved forms, without alterations, will be accepted for filing and review by the Board.

(2) All applications made to the Board shall be accompanied by the required fee.

(3) Applicants for examination shall submit the following with their application:

(a) A copy of a valid government issued photo identification. This identification could be a valid driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;

(b) An official certificate or transcript from the administering institutions, instructors, or programs showing successful completion of study and practice in the required subject matter and hours required by the Board.

(A) Official copies of transcripts or certificates presented to the Board in an envelope sealed by the program or institution and verified as sealed may be accepted directly from the applicant.

(B) If a program or institution granting credit is no longer in business, the Board will accept for review a copy of a certificate of completion, transcript or diploma in the required subject matter and hours. The Board may require additional information to verify the authenticity of such documents.

(c) Proof of current certification in cardiopulmonary resuscitation (CPR);

(d) A current photograph of the applicant;

(4) Transcripts must include a minimum of 500 hours of certified classes. The 500 hours must include the knowledge and skills identified in OAR 334-010-0047 "competencies" and shall be comprised of:

(a) A minimum of 200 hours of Anatomy & Physiology, Pathology, and Kinesiology; and

(b) A minimum of 300 hours of Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, Sanitation, and Hydrotherapy.

(5) If for any reason an applicant does not appear to be qualified for admission to take the examination, the applicant shall be so notified and invited to submit additional evidence that he/she is entitled to have his/her case considered or to be admitted to examination.

(6) All application documents for examination and licensure submitted in a language other than English shall be accompanied by:

(a) An accurate translation of those documents into English;

(b) A notarized affidavit certifying that the translator is competent in both the language of the document and the English language; and

(c) A notarized affidavit certifying that the translation is a true and complete translation of the foreign language original.

(d) Any costs of translation of all documents required by the Board shall be at the expense of the applicant.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0002; MTB 1-1979, f. & ef. 5-22-79; MTB 2-1985, f. & ef. 1-23-85; MB 3-1985(Temp), f. & ef. 9-20-85; MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92, Section (7)(d) Renumbered from 334-010-0036; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09

## 334-010-0010

### Examination

(1) The L.M.T. examination shall be held at least twice annually.

(2) The applicant shall be notified by mail, postmarked at least two weeks before the scheduled exam, unless otherwise waived by the applicant, of the time and place.

(3) Applicants who have a documented and verifiable emergency may request to have their exam fee apply to a subsequent examination so long as the applicant sits for the examination within a one year of the original date of examination. Only one extension shall be permitted.

(4) Refund of the examination fee may be granted upon written request should the applicant not qualify for the examination. Refunds may also be made for individuals who have a documented and verifiable emergency and are unable to sit for the exam provided the written request and associated documentation are received by the board at least 7 days prior to the exam.

(5) Applicants are required to take and pass a Board approved written exam and the Oregon practical examination, which includes a written test on Oregon statutes and administrative rules.

(6) Failure to Pass: An applicant must pass the practical examination within 24 months of the initial date of application. The Board may require an applicant with 3 or more examination failures to undertake and satisfactorily complete a Board approved remediation plan prior to reapplying for the examination.

torily complete a Board approved remediation plan prior to reapplying for the examination.

(7) Examinee Conduct: An examinee, whose conduct interferes with the testing process or whose behavior violates ethical practices or jeopardizes the safety of another may be dismissed and disqualified from examination. Such conduct includes but is not limited to the following behaviors:

(a) Giving or receiving examination data, either directly or indirectly;

(b) Failure to follow written or oral instructions relative to conducting the examination, including termination times and procedures;

(c) Endangering the life or health of others present;

(d) Introducing unauthorized materials during any portion of the examination;

(e) Attempting to remove examination materials or notations from the testing site; or

(f) Violating the credentialing process such as falsifying or misrepresenting educational credentials or other information required for admission to the examination, impersonating an examinee, or having an impersonator take the licensing examination on one's behalf.

(8) Test questions, scoring keys, and other examination data used to administer the qualifying examination are exempt from disclosure under ORS 192.410 to 192.505 as amended.

(9) The Board may release statistical information regarding examination pass/fail rates by group, type of examination, school, year, and subject area to any interested party.

(10) All examinations are given in the English language.

(11) Applicants with Special Needs: An applicant is presumed to possess sufficient sensory, visual, hearing and psychomotor capabilities to independently perform massage and bodywork skills. An applicant with special needs may apply to the Board for the provision of special conditions to complete the examination:

(a) The Board may require proof, provided by a qualified professional on letterhead, of the nature of the special need and type of special conditions recommended to complete the exam.

(b) A request for special conditions must be made to the Board in writing at the time of application.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0004; MTB 1-1979, f. & ef. 5-22-79; MTB 2-1982, f. & ef. 7-21-82; MTB 2-1985, f. & ef. 1-23-85; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98, Renumbered from 334-010-0021 [Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92, Sections (6) - (20)(h) Renumbered from 334-030-0020]; BMT 1-1999(Temp), f. 6-14-99, cert. ef. 7-4-99 thru 12-31-99; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2002(Temp), f. & cert. ef. 1-9-02 thru 7-5-02; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 4-2005(Temp), f. & cert. ef. 9-19-05 thru 3-12-06; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 2-2007, f. & cert. ef. 6-29-07; BMT 1-2007, f. & cert. ef. 6-29-07; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09

## 334-010-0017

### Lapsed License

(1) The massage therapist license shall be considered lapsed if an individual fails to complete the renewal process prior to the expiration of license.

(2) During the lapsed status, no such person shall practice massage in the State of Oregon.

(3) An applicant whose license is lapsed may return to active status by including the following with the completed application.

(a) Payment of the current fee for activation of the license;

(b) Payment of the licensing fee applicable for the period of the lapsed license;

(c) Late fee payment;

(d) Proof of 25 hours of continuing education for each biennium the license was lapsed and for the current licensing period;

(e) Proof of current certification in cardiopulmonary resuscitation (CPR); and

(f) A statement indicating whether the applicant has engaged in the practice of massage and bodywork in another jurisdiction during the period of lapsed status.

(4) All information required for restoring a lapsed license must be received within 3 years of the date of lapsing. Thereafter, one must apply as a new applicant.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09

## 334-010-0033

### Fees

(1) The fees are:

(a) \$100 per biennial renewal for initial or active license;

(b) \$50 per biennial renewal for inactive license;

(c) \$25 per week, up to a maximum of \$250, for any late renewal;

# ADMINISTRATIVE RULES

- (d) \$50 for exam/endorsement application processing;
  - (e) \$150 for each practical examination;
  - (f) \$100 for mailing list;
  - (g) \$5 for license reprint;
  - (h) \$5 for license verification; and
  - (i) Other administrative fees as allowed by law.
- (2) Application and licensure fees are not refundable
- (3) Examination fees will be refunded only when requested in writing and either:

- (a) The applicant is unqualified by Oregon statutes, or
- (b) Applicant requests refund postmarked at least 7 days prior to the exam.

Stat. Auth.: ORS 183.687.121 & 182.456 - 182.472  
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1989(Temp), f. & cert. ef. 7-27-89; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 4-2004, f. 10-22-04, cert. ef. 1-1-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09

## 334-010-0046

### Class Certification

(1) A class or program certified under ORS 687.051 must be offered by:

(a) A person or institution licensed as a private vocational school under ORS 345.010 to 345.074 or the equivalent licensing authority of another jurisdiction; or

(b) By a community college and approved by the Division of Vocational Education or the Department of Education, or the appropriate agency of another jurisdiction; or

(c) By a college accredited either by the Northwest Association of Secondary and Higher Schools or a like regional association or by a college in Oregon approved by the Oregon Office of Educational Policy and Planning for the purpose of granting degrees; and

(d) Approved by the Board.

(2) In order for a class or program to be approved, the person or institution offering the class or program shall apply to the Board. The application packet shall contain, but not be limited to:

- (a) A completed Board application;
- (b) Verification of content meeting the Model Curriculum;
- (c) Course descriptions and syllabi;
- (d) The institution's Code of Ethics and fraternization policy;
- (e) The method of evaluation to determine the student's successful completion of a class;

(f) The attendance requirements for students to successfully complete each class;

(g) Minimum qualifications for selecting instructors.

(3) The authorized representative of the certified class or program must notify the Board at least 60 days prior to any significant changes to information provided in the application process.

(4) A certified class or program shall renew their certification on a regular basis as determined by the Board.

(5) Certification of the class or program may be revoked by the Board if it is determined that the requirements have not been or are no longer being met.

(6) Denial or revocation of a class or program certification by the Board, if otherwise not resolved, shall be heard by the Board pursuant to ORS 183.411 to 183.497.

Stat. Auth.: ORS 687.121  
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09

## 334-010-0050

### Continuing Education

The intent of Continuing Education is to protect the public by maintaining and enhancing competencies as defined in OAR 334-010-0047.

(1) Each licensee shall complete 25 hours of continuing education in the competencies each renewal period. At renewal time, each licensee shall sign and submit a Board supplied CE form indicating they have completed 25 hours of continuing education. The Board may require proof of CE hours.

(a) At least 12 hours must be contact hours defined as instruction involving other massage and bodywork practitioners.

(b) The remaining 13 hours may be contact hours or in areas as defined on the Board supplied CE form.

(2) The continuing education requirement shall not apply to a licensee's first license renewal.

(3) Continuing education must be completed within the renewal period. Contact hours taken in excess of the total number required may only be carried over to the next subsequent renewal period.

(4) Continuing education records shall be maintained by each licensee for a minimum of five years.

(5) If the Board finds indications of fraud or falsification of records, investigative action shall be instituted. Findings may result in disciplinary action up to and including revocation of the licensee's license.

(6) Failure to complete continuing education hours by the time of renewal may result in revocation, suspension and/or denial of a license. Licensee has 30 days from date of notification of non-compliance to come into compliance. Failure to be in compliance may result in discipline of the license to practice massage.

(7) Continuing education must be in areas related to the practice of massage or bodywork including theory, research, technique or business development.

Stat. Auth.: ORS 687.081, 687.121 & 687.122  
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: BMT 1-1998(Temp), f. & cert. ef. 2-3-98 thru 7-31-98; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 2-2004(Temp), f. & cert. ef. 3-16-04 thru 9-7-04; Administrative correction, 9-28-04; BMT 3-2004(Temp), f. & cert. ef. 10-22-04 thru 4-19-05; BMT 1-2005, f. & cert. ef. 2-23-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09

## 334-020-0050

### Linens

(1) When linens are used they must be routinely cleaned and stored in a manner which reasonably assures the sanitary use for each client.

(2) The use of soiled linens is prohibited.

(3) All soiled linens must be:

(a) Immediately placed in a receptacle that closes and prevents cross-contamination;

(b) Handled as little as possible;

(c) Laundered in a manner that eliminates the risk of spreading parasites, communicable diseases and infections; and

(d) Laundered in a manner that removes all residue of topical preparations.

Stat. Auth.: ORS 687.121  
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121  
Hist.: HB 88, f. 3-16-56; Transferred from 333-035-0030; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0075; MTB 1-1990, f. & cert. ef. 4-20-90; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09

## Board of Naturopathic Examiners Chapter 850

**Rule Caption:** Updates the formulary compendium.

**Adm. Order No.:** BNE 2-2009

**Filed with Sec. of State:** 6-17-2009

**Certified to be Effective:** 6-17-09

**Notice Publication Date:** 5-1-2009

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

**Subject:** Updates the formulary compendium for Naturopathic physicians and Pharmacists.

Add to 850-060-0225 the following that may be prescribed: Diclofenac; Etodolac; Indomethacin; Ketorolac; Meloxicam; Peroxicam; Sulindac; Tolmetin.

Add to 850-060-0226 Classifications: Acetic Acid Derivatives\*\*;  
Oxicams\*\* classifications under NSAIDS.

**Rules Coordinator:** Anne Walsh—(971) 673-0193

## 850-060-0225

### Naturopathic Formulary Compendium

The following substances have been recommended for addition to the Formulary Compendium after review by the Board of Naturopathic Examiners Formulary Council established by the 65th Oregon Legislature. Substances listed on the formulary compendium can be prescribed in any dosage or any dosage form. Products marked with an asterisk (\*) may be used by Naturopathic Physicians, but may not be prescribed. Combination products containing only active ingredients listed in the Formulary may be prescribed. Combination products containing any active ingredient(s), not listed in the Formulary, except non-legend drugs, may not be prescribed

- (1) Abacavir;
- (2) Acarbose;
- (3) Acetic Acid;
- (4) Acetylcysteine;
- (5) Acitretin;
- (6) Acyclovir;
- (7) Adapalene;
- (8) Adenosine Monophosphate;
- (9) Albuterol Sulfate;
- (10) Alendronate;

# ADMINISTRATIVE RULES

- (11) Allopurinol;
- (12) Alprostadil;
- (13) Amantadine;
- (14) Amino Acids;
- (15) Amino Aspirins;
- (16) Aminoglycosides;
- (17) Aminolevulinic Acid;
- (18) Aminophylline;
- (19) Aminosalicic Acid;
- (20) Ammonium Chloride;
- (21) Ammonium lactate lotion 12%;
- (22) Amoxicillin;
- (23) Amoxicillin & Clavulanate;
- (24) Amphotericin B;
- (25) Ampicillin;
- (26) Ampicillin & Sulbactam;
- (27) Anastrozole;
- (28) Anthralin;
- (29) Atorvastatin;
- (30) Atropine;
- (31) Atropine Sulfate;
- (32) Auranofin;
- (33) Azelaic Acid;
- (34) Azithromycin;
- (35) Bacampicillin;
- (36) Bacitracin;
- (37) Baclofen;
- (38) Becaplermin;
- (39) Belladonna;
- (40) Benazepril;
- (41) Benzodiazepines;
- (42) Benzoic Acid;
- (43) Benzonatate;
- (44) Betaine;
- (45) Betamethasone;
- (46) Bethanechol Chloride;
- (47) Bichloroacetic Acid\*;
- (48) Bimatoprost Solution 0.03%;
- (49) Biologicals;
- (50) Bisphosphonates;
- (51) Bromocriptine;
- (52) Budesonide;
- (53) Buprenorphine;
- (54) Butorphanol;
- (55) Cabergoline;
- (56) Calcipotriene;
- (57) Calcitonin;
- (58) Calcitriol;
- (59) Carbamide Peroxide;
- (60) Carbidopa;
- (61) Carbol-Fuchsin;
- (62) Captopril;
- (63) Cefaclor;
- (64) Cefdinir;
- (65) Cefibuten;
- (66) Cefadroxil;
- (67) Cefditoren;
- (68) Cefixime;
- (69) Cefonicid Sodium;
- (70) Cefpodoxime Proxetil;
- (71) Cefprozil;
- (72) Cefibuten;
- (73) Cefuroxime;
- (74) Celecoxib;
- (75) Cellulose Sodium Phosphate;
- (76) Cenestin;
- (77) Cephalixin;
- (78) Cephadrine;
- (79) Chirocaine\*;
- (80) Chloramphenicol;
- (81) Chloroquine;
- (82) Citrate Salts;
- (83) Clarithromycin;
- (84) Clindamycin;
- (85) Clioquinol;
- (86) Clostridium botulinum toxin (ab);
- (87) Cloxacillin;
- (88) Codeine;
- (89) Colchicine;
- (90) Colistimethate;
- (91) Collagenase;
- (92) Condylox;
- (93) Cortisone;
- (94) Coumadin;
- (95) Cromolyn Sodium;
- (96) Cyanocobalamin;
- (97) Cycloserine;
- (98) Cytisine;
- (99) Danazol;
- (100) Deferoxamine/Desferroxamine (Board approved certification required before therapeutic IV chelation is allowed);
- (101) Demeclocycline Hydrochloride;
- (102) Desmopressin;
- (103) Desoxyribonuclease;
- (104) Dexamethasone;
- (105) Dextran;
- (106) Dextromethorphan;
- (107) Dextrose;
- (108) Dextrothyroxine;
- (109) Diclofenac;
- (110) Dicloxacillin;
- (111) Dihydroergotamine Migranal;
- (112) Didanosine;
- (113) Dimethyl Sulfone (DMSO);
- (114) Digitalis;
- (115) Digitoxin;
- (116) Digoxin;
- (117) Dinoprostone;
- (118) Diphenhydramine;
- (119) Diphylline;
- (120) Dirithromycin;
- (121) DMPS (Board approved certification required before therapeutic IV chelation is allowed);
- (122) DMSA;
- (123) Doxercalciferol;
- (124) Doxycycline;
- (125) Dronabinol;
- (126) Dyclonine;
- (127) EDTA (Board approved certification required before therapeutic IV chelation is allowed);
- (128) Electrolyte Solutions;
- (129) Emtricitabine;
- (130) Enalapril;
- (131) Ephedrine;
- (132) Epinephrine\*;
- (133) Epinephrine (auto-inject);
- (134) Ergoloid Mesylates;
- (135) Ergonovine Maleate;
- (136) Ergotamine;
- (137) Erythromycins;
- (138) Erythropoietin;
- (139) Estradiol;
- (140) Estriol;
- (141) Estrogen-Progestin Combinations;
- (142) Estrogens, Conjugated;
- (143) Estrogen, Esterified;
- (144) Estrone;
- (145) Estropipate;
- (146) Eszopiclone;
- (147) Ethyl Chloride;
- (148) Etidronate;
- (149) Etodolac;
- (150) Exenatide;
- (151) Ezetimibe;
- (152) Famciclovir;
- (153) Fentanyl;
- (154) Fibrinolysin;
- (155) Flavoxate;
- (156) Fluconazole;
- (157) Fludrocortisone Acetate;
- (158) Flunisolide;
- (159) Fluorides;
- (160) Fluoroquinolones;
- (161) Fluoroquinolines;
- (162) Fluorouracil;
- (163) Fluticasone propionate;
- (164) Fluvastatin;
- (165) Fosinopril;
- (166) Gaba Analogs;
- (167) Gabapentin;



## ADMINISTRATIVE RULES

- (168) Galantamine H. Br.;
- (169) Gamma-Hydroxy Butyrate;
- (170) Ganciclovir;
- (171) Gentamicin;
- (172) Gentian Violet;
- (173) Glycerin/Glycerol;
- (174) Griseofulvin;
- (175) Guaifenesin;
- (176) Heparin — subcutaneous, sublingual and heparin locks;
- (177) Hexachlorophene;
- (178) Homatropine Hydrobromide\*;
- (179) Human Growth Hormone;
- (180) Hyaluronic Acid;
- (181) Hyaluronidase;
- (182) Hydrocodone;
- (183) Hydrocortisone;
- (184) Hydrogen Peroxide;
- (185) Hydromorphone;
- (186) Hydroquinone;
- (187) Hydroxychloroquine;
- (188) Hydroxypolyethoxydodecane\*;
- (189) Hyoscyamine;
- (190) Iloprost Inhalation Solution;
- (191) Imiquimod Cream (5%);
- (192) Immune Globulins\*;
- (193) Indomethacin;
- (194) Insulin;
- (195) Interferon Alpha b w/Ribavirin;
- (196) Iodine;
- (197) Iodoquinol;
- (198) Iron Preparations;
- (199) Isosorbide Dinitrate;
- (200) Isotretinoin;
- (201) Itraconazole;
- (202) Kanamycin Sulfate;
- (203) Ketoconazole;
- (204) Ketorolac;
- (205) Lactulose;
- (206) Lamivudine;
- (207) Letrozole;
- (208) Leucovorin Calcium;
- (209) Levalbuteral;
- (210) Levocarnitine;
- (211) Levodopa;
- (212) Levonorgestrel;
- (213) Levorphanol;
- (214) Levothyroxine;
- (215) Lincomycin;
- (216) Lindane;
- (217) Liothyronine;
- (218) Liotrix;
- (219) Lisinopril;
- (220) Lisuride;
- (221) Lithium;
- (222) Lovastatin;
- (223) Mebendazole;
- (224) Meclizine;
- (225) Medroxyprogesterone;
- (226) Medrysone;
- (227) Mefloquine;
- (228) Megestrol Acetate;
- (229) Meloxicam;
- (230) Memantine;
- (231) Mercury, Ammoniated;
- (232) Mesalamine;
- (233) Metformin;
- (234) Methadone;
- (235) Methimazole;
- (236) Methoxsalen;
- (237) Methscopolamine;
- (238) Methylergonovine;
- (239) Methylprednisolone;
- (240) Methylsulfonylethane (MSM);
- (241) Methyltestosterone;
- (242) Methysergide;
- (243) Metronidazole;
- (244) Miglitol;
- (245) Minerals (Oral & Injectable);
- (246) Minocycline;
- (247) Misoprostol;
- (248) Moexipril;
- (249) Monobenzone;
- (250) Morphine;
- (251) Mupirocin;
- (252) Nafarelin acetate;
- (253) Naloxone;
- (254) Naltrexone;
- (255) Natamycin;
- (256) Nateglinide;
- (257) Nicotine;
- (258) Nitroglycerin;
- (259) Novobiocin;
- (260) Nystatin;
- (261) Olsalazine;
- (262) Omeprazole;
- (263) Opium;
- (264) Over the Counter (OTC)
- (265) Oxacillin;
- (266) Oxamniquine;
- (267) Oxaprozin;
- (268) Oxtriphylline;
- (269) Oxycodone;
- (270) Oxygen;
- (271) Oxymorphone;
- (272) Oxytetracycline;
- (273) Oxytocin\*;
- (274) Pancrelipase;
- (275) Papain;
- (276) Papavarine;
- (277) Paramethasone;
- (278) Paregoric;
- (279) Penciclovir;
- (280) Penicillamine (Board approved certification required before therapeutic IV chelation is allowed);
- (281) Penicillin;
- (282) Pentosan;
- (283) Pentoxifylline;
- (284) Pergolide;
- (285) Perindopril;
- (286) Permethrin;
- (287) Peroxicam;
- (288) Phenazopyridine;
- (289) Phenylalkylamine;
- (290) Phenylephrine\*;
- (291) Physostigmine;
- (292) Pilocarpine;
- (293) Pimecrolimus Cream 1%;
- (294) Piperazine Citrate;
- (295) Podophyllum Resin;
- (296) Polymyxin B Sulfate;
- (297) Polysaccharide-Iron Complex;
- (298) Potassium Iodide;
- (299) Potassium Supplements;
- (300) Pramoxine;
- (301) Pravastatin;
- (302) Praziquantel;
- (303) Prednisolone;
- (304) Prednisone;
- (305) Pregabalin;
- (306) Progesterone;
- (307) Progestins;
- (308) Propionic Acids;
- (309) Propylthiouracil;
- (310) Prostaglandins;
- (311) Proton Pump inhibitor;
- (312) Pseudoephedrine;
- (313) Pyrazinamide;
- (314) Pyrethrins;
- (315) Quinapril;
- (316) Quinidine;
- (317) Quinilones;
- (318) Quinine Sulfate;
- (319) Quinines;
- (320) Quinolines;
- (321) Ramopril;
- (322) Rauwolfia Alkaloids;
- (323) Rho(D) Immune globulins\*;
- (324) Rifabutin;
- (325) Rifampin;
- (326) Rimantidine;

# ADMINISTRATIVE RULES

- (327) Risedronate;
- (328) Ranolazine;
- (329) Salicylamide;
- (330) Salicylate Salts;
- (331) Salicylic Acid;
- (332) Salsalate;
- (333) Scopolamine;
- (334) Selegiline;
- (335) Selenium Sulfide;
- (336) Sildenafil Citrate;
- (337) Silver Nitrate;
- (338) Simvastatin;
- (339) Sitagliptin;
- (340) Sodium Polystyrene Sulfonate;
- (341) Sodium Tetradecyl Sulfate
- (342) Sodium Thiosulfate;
- (343) Spironolactone;
- (344) Stavudine;
- (345) Spectinomycin;
- (346) Sucralfate;
- (347) Sulfasalazine;
- (348) Sulfonamide/Trimethoprim/Sulfones;
- (349) Sulindac;
- (350) Tacrolimus;
- (351) Tazarotene topical gel;
- (352) Telithromycin;
- (353) Tenofovir;
- (354) Testosterone;
- (355) Tetracycline;
- (356) Theophylline;
- (357) Thiabendazole;
- (358) Thyroid;
- (359) Thyroxine;
- (360) Tiagabine;
- (361) Tibolone;
- (362) Tiludronate;
- (363) Tinidazole;
- (364) Tobramycin;
- (365) Tolmetin;
- (366) Topical steroids;
- (367) Tramadol;
- (368) Trandolapril;
- (369) Trazodone;
- (370) Tretinoin;
- (371) Triamcinolone;
- (372) Triamterene;
- (373) Trichloroacetic Acid\*;
- (374) Trimetazidine;
- (375) Trioxsalen;
- (376) Triptans;
- (377) Troleandomycin;
- (378) Undecylenic Acid;
- (379) Urea;
- (380) Urised;
- (381) Ursodiol;
- (382) Valacyclovir;
- (383) Valproic Acid;
- (384) Vancomycin;
- (385) Varenicline;
- (386) Verapamil;
- (387) Verdenafil HCL;
- (388) Vidarabine;
- (389) Vitamins (Oral & Injectable);
- (390) Yohimbine;
- (391) Zalcitabine;
- (392) Zidovudine;
- (393) Zolpidem;
- (394) Local Anesthetics:
  - (a) Benzocaine\*;
  - (b) Bupivacaine\*;
  - (c) Chloroprocaine\*;
  - (d) Dyclonine\*;
  - (e) Etidocaine\*;
  - (f) Lidocaine\*;
  - (g) Lidocaine (non-injectable dosage form);
  - (h) Mepivocaine\*;
  - (i) Prilocaine\*;
  - (j) Procaine\*;
  - (k) Tetracaine\*.
- (395) Vaccines:

- (a) BCG\*;
- (b) Cholera\*;
- (c) Diphtheria\*;
- (d) DPT\*;
- (e) Haemophilus b Conjugate\*;
- (f) Hepatitis A Virus\*;
- (g) Hepatitis B\*;
- (h) Influenza Virus\*;
- (i) Japanese Encephalitis Virus\*;
- (j) Measles Virus\*;
- (k) Mumps Virus\*;
- (l) Pertussis\*;
- (m) Plague\*;
- (n) Pneumococcal\*;
- (o) Poliovirus Inactivated\*;
- (p) Poliovirus-Live Oral\*;
- (q) Rabies\*;
- (r) Rubella\*;
- (s) Smallpox\*;
- (t) Tetanus IG\*;
- (u) Tetanus Toxoid\*;
- (v) Typhoid\*;
- (w) Varicella\*;
- (x) Yellow Fever\*;
- (396) SkinTests:
  - (a) Diphtheria\*;
  - (b) Mumps\*;
  - (c) Tuberculin\*.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 681.145

Hist.: NE 2-1990, f. & cert. ef. 11-8-90; NE 1-1997, f. 10-13-97, cert. ef. 10-20-97; BNE 1-1999, f. 6-24-99, cert. ef. 6-25-99; BNE 1-2000, f. & cert. ef. 1-10-00; BNE 3-2000, f. & cert. ef. 8-16-00; BNE 2-2001, f. & cert. ef. 2-7-01; BNE 4-2001, f. & cert. ef. 5-25-01; BNE 8-2001, f. & cert. ef. 12-7-01; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; BNE 3-2005, f. & cert. ef. 2-4-05; BNE 5-2005, f. & cert. ef. 6-10-05; Renumbered from 850-010-0225, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 9-2005, f. & cert. ef. 12-12-05; BNE 4-2006, f. & cert. ef. 12-11-06; BNE 3-2007, f. & cert. ef. 6-12-07; BNE 1-2008, f. & cert. ef. 2-19-08; BNE 2-2008, f. & cert. ef. 3-21-08; BNE 6-2008, f. & cert. ef. 6-11-08; BNE 7-2008, f. & cert. ef. 12-8-08; BNE 2-2009, f. & cert. ef. 6-17-09;

## 850-060-0226

### Naturopathic Formulary by Classification

The following classifications for substances listed in 850-060-0225 have been recommended by the Board of Naturopathic Examiners Formulary Council established by the 65th Oregon Legislature. Substances listed on the formulary compendium can be prescribed in any dosage or any dosage form. Products marked with an asterisk (\*) may be used by Naturopathic Physicians, but may not be prescribed. Combination products containing only active ingredients listed in the Formulary may be prescribed. Combination products containing any active ingredient(s), not listed in the Formulary, except non-legend drugs, may not be prescribed. A double asterisk (\*\*) indicates examples include but are not limited to the substances listed.

- (1) Adamantanes\*\*;
  - (a) Amantadine;
  - (b) Memantine;
  - (c) Rimantidine;
- (2) Amino Acids;
  - (a) Levocarnitine\*\*;
- (3) Antiestrogens;
  - (a) Nafarelin Acetate;
  - (b) Tibolone;
- (4) Antigout;
  - (a) Colchicine;
  - (b) allopurinol;
- (5) Antihistamine
  - (a) Diphenhydramine
  - (6) Anti-Alzheimer;
  - (a) Memantine;
- (7) Anti-infective Agents;
  - (a) Anthelmintics;
  - (A) Thiabendazole.
  - (B) Oxamniquine.
  - (C) Mebendazole.
  - (b) Antibacterials;
    - (A) Aminoglycosides\*\*;
    - (i) Gentamicin;
    - (ii) Kanamycin Sulfate;
    - (iii) Tobramycin;
  - (B) Cephalosporins\*\*;
  - (i) Cefaclor;
  - (ii) Cefadroxil;

# ADMINISTRATIVE RULES

- (iii) Cefdinir;
- (iv) Cefditoren;
- (v) Cefibuten;
- (vi) Cefixime;
- (vii) Cefonicid Sodium;
- (viii) Cefpodoxime Proxetil;
- (ix) Cefprozil;
- (x) Ceftibuten;
- (xi) Cefuroxime;
- (xii) Cephalexin;
- (xiii) Cephadrine;
- (C) Chloramphenicol;
- (D) Macrolides and Ketolides\*\*;
- (i) Azithromycin;
- (ii) Clarithromycin;
- (iii) Dirithromycin;
- (iv) Erythromycins;
- (v) Telithromycin;
- (vi) Troleandomycin;
- (E) Penicillins\*\*;
- (i) Amoxicillin and Clavulanate;
- (ii) Amoxicillin;
- (iii) Ampicillin and Sulbactam;
- (iv) Ampicillin;
- (v) Bacampicillin;
- (vi) Cloxacillin;
- (vii) Dicloxacillin;
- (viii) Oxacillin;
- (ix) Penicillin;
- (F) Quinolones\*\*;
- (i) Fluoroquinolones;
- (G) Sulfonamides;
- (i) Sulfonamide/ Trimethoprim/ Sulfones;
- (H) Tetracyclines\*\*;
- (i) Demeclocycline Hydrochloride;
- (ii) Doxycycline;
- (iii) Minocycline;
- (iv) Oxytetracycline;
- (v) Tetracycline;
- (I) Misc. antibacterials;
- (i) Bacitracin;
- (ii) Clindamycin;
- (iii) Colistimethate;
- (iv) Lincomycin;
- (v) Novobiocin;
- (vi) Polymyxin B Sulfate;
- (vii) Spectinomycin;
- (viii) Vancomycin;
- (c) Antifungals;
- (A) Azoles\*\*;
- (i) Fluconazole;
- (ii) Itraconazole;
- (iii) Ketoconazole;
- (iv) Tinidazole;
- (B) Amphotericin B;
- (C) Gentian Violet;
- (D) Griseofulvin;
- (E) Nystatin;
- (d) Antimycobacterials;
- (A) Aminosalicyclic Acid;
- (B) Cycloserine;
- (C) Pyrazinamide;
- (D) Rifabutin;
- (E) Rifampin;
- (e) Antivirals;
- (A) Amantadine;
- (B) Rimantidine;
- (C) Interferon\*\*;
- (D) Nucleoside/nucleotide analogs\*\*;
- (i) Abacavir;
- (ii) Acyclovir;
- (iii) Didanosine;
- (iv) Emtricitabine;
- (v) Fanciclovir;
- (vi) Ganciclovir;
- (vii) Lamivudine;
- (viii) Penciclovir;
- (ix) Stavudine;
- (x) Tenofovir;
- (xi) Valacyclovir;
- (xii) Vialarabine;
- (xiii) Zalcitabine;
- (xiv) Zidovudine;
- (f) Antiprotozoal;
- (A) Iodoquinol;
- (B) Metronidazole;
- (C) Quinines;
- (i) Chloroquine;
- (ii) Hydroxychloroquine;
- (iii) Mefloquine;
- (iv) Quinine Sulfate;
- (g) Misc;
- (A) Immune Globulins\* \*\*;
- (B) Lindane;
- (C) Permethrin;
- (D) Pyrethrins;
- (8) Antineoplastic Agents;
- (a) Anastrozole;
- (b) Letrozole;
- (9) Anti-thyroid;
- (a) Thionamides;
- (A) Methimazole;
- (B) Propylthiouracil;
- (10) Autonomic Drugs;
- (a) Parasympathomimetic;
- (A) Bethanechol;
- (B) Galantamine H. Br;
- (b) Anticholinergic;
- (A) Atropine Sulfate;
- (B) Atropine;
- (C) Belladonna;
- (D) Flavoxate;
- (E) Homatropine Hydrobromide\*;
- (F) Hyoscyamine;
- (G) Meclizine;
- (H) Methscopolamine;
- (I) Physostigmine;
- (J) Pilocarpine;
- (K) Scopolamine;
- (c) Sympathomimetic;
- (A) Ephedrine;
- (B) Epinephrine\*;
- (C) Epinephrine (auto-inject);
- (D) Pseudoephedrine;
- (d) Sympatholytic;
- (A) Yohimbine;
- (e) Skeletal Muscle Relaxants;
- (A) Clostridium botulinum toxin (ab);
- (B) Baclofen;
- (f) Misc;
- (A) Nicotine;
- (11) Beta Adrenergic Blocking Agents\*\*;
- (12) Biologicals;
- (a) Cytokine;
- (A) Monoclonal antibodies;
- (b) Enzymes\*\*;
- (A) Collagenase;
- (B) Desoxyribonuclease;
- (C) Fibrinolysin;
- (D) Hyaluronidase;
- (E) Pancrelipase;
- (F) Papain;
- (c) Hormones — see hormone;
- (d) Immune globulins — see anti-infective, misc;
- (e) Interferons — see antivirals;
- (f) Prostaglandins\*\*;
- (A) Alprostadil;
- (B) Bimatoprost;
- (C) Iloprost;
- (D) Dinoprostone;
- (E) Misoprostal;
- (g) Blood derivatives;
- (13) Blood Formation and Coagulation;
- (a) Coumadin;
- (b) Erythropoietin;
- (c) Heparin; subcutaneous, sublingual and heparin locks;
- (14) Cardiovascular Drugs;
- (a) Cardiac;
- (A) Adenosine Monophosphate;
- (B) Digitalis;



## ADMINISTRATIVE RULES

- (C) Digitoxin;
- (D) Digoxin;
- (E) Quinidine;
- (b) Antilipemic;
- (A) HMG CoA Reductase Inhibitors\*\*;
- (i) Atorvastatin;
- (ii) Fluvastatin;
- (iii) Lovastatin;
- (iv) Pravastatin;
- (v) Simvastatin;
- (B) Ezetimibe;
- (c) Diuretics;
- (A) Spironolactone;
- (B) Triamterene;
- (d) Hypotensive;
- (A) Lisuride;
- (B) Rauwolfia Alkaloids;
- (e) Vasodilating;
- (A) Nitrates\*\*;
- (i) Isosorbide Dinitrate;
- (ii) Mononitrate;
- (iii) Nitroglycerin;
- (B) Papavarine;
- (f) Calcium Channel blockers;
- (A) Phenylalkylamine\*\*;
- (i) Verapamil;
- (g) ACE inhibitors\*\*;
- (A) Benazepril;
- (B) Captopril;
- (C) Enalapril;
- (D) Fosinopril;
- (E) Lisinopril;
- (F) Moexipril;
- (G) Perindopril;
- (H) Quinapril;
- (I) Ramopril;
- (J) Trandolapril;
- (15) Central Nervous System Agents;
- (a) Analgesics and Antipyretics;
- (A) NSAIDS;
- (i) Acetic Acid Derivatives\*\*;
- (aa) Diclofenac;
- (bb) Etodolac;
- (cc) Indomethacin;
- (dd) Ketorolac;
- (ee) Sulindac;
- (ff) Tolmetin;
- (ii) Amino Aspirins;
- (iii) Celecoxib;
- (iv) Mesalamine;
- (v) Olsalazine;
- (vi) Oxaprozin;
- (vii) Oxicams\*\*;
- (aa) Meloxicam;
- (bb) Peroxicam;
- (ix) Propionic Acid Derivatives\*\*;
- (aa) Fenoprofen;
- (bb) Flurbiprofen;
- (cc) Ibuprofen;
- (dd) Ketoprofen;
- (ee) Oxaprozin;
- (ff) Naproxen;
- (x) Salicylic Acid;
- (xi) Salicylamide;
- (xii) Salicylate Salts;
- (xiii) Salsalate;
- (xiv) Sulfasalazine;
- (B) Opioids\*\*;
- (i) Buprenorphine;
- (ii) Butorphanol;
- (iii) Codeine;
- (iv) Dextromethorphan;
- (v) Fentanyl;
- (vi) Hydrocodone;
- (vii) Hydromorphone;
- (viii) Levorphanol;
- (ix) Methadone;
- (x) Morphine;
- (xi) Opium;
- (xii) Oxycodone;
- (xiii) Oxymorphone;
- (xiv) Paregoric;
- (xv) Tramadol;
- (b) Opioid Antagonists;
- (A) Naloxone;
- (B) Naltrexone;
- (c) Anticonvulsants;
- (A) Gaba Analogues\*\*;
- (i) Gabapentin;
- (ii) Pregabalin;
- (iii) Tigabine;
- (B) Valproic Acid;
- (d) Anti-Parkinson's;
- (A) Bromocriptine;
- (B) Carbidopa;
- (C) Cabergoline;
- (D) Levodopa;
- (E) Pergolide;
- (F) Selegiline;
- (e) Psychotherapeutic;
- (A) Anxiolytics, sedatives and hypnotics;
- (i) Benzodiazepines\*\*;
- (ii) Piperazine;
- (aa) Eszopiclone;
- (bb) Ranolazine;
- (cc) Sildenafil Citrate;
- (dd) Trimetazidine;
- (ee) Verdenafil HCL;
- (iii) Zolpidem;
- (B) Anti-Manic;
- (i) Lithium;
- (f) Misc;
- (A) Gamma-Hydroxy Butyrate;
- (B) Triptans\*\*;
- (16) Diabetic;
- (a) Acarbose;
- (b) Insulin;
- (c) Metformin;
- (d) Miglitol;
- (e) Nateglinide;
- (17) Electrolytic;
- (a) Ammonium Chloride;
- (b) Bisphosphonates\*\*;
- (A) Alendronate;
- (B) Etidronate;
- (C) Risendronate;
- (D) Tiludronate;
- (c) Cellulose Sodium Phosphate (calcium removing);
- (d) Dextran;
- (e) Dextrose;
- (f) Electrolyte Solutions;
- (g) Fluorides;
- (h) Iodine;
- (i) Iron Preparations;
- (j) Minerals (Oral & Injectable);
- (k) Polysaccharide-Iron Complex;
- (l) Potassium Iodide;
- (m) Potassium Supplements;
- (n) Sodium Polystyrene Sulfonate;
- (18) Ergot Derivatives\*\*;
- (a) Dihydroergotamine;
- (b) Ergoloid Mesylates;
- (c) Ergonovine Maleate;
- (d) Ergotamine;
- (19) EENT preparations;
- (a) Acetic Acid;
- (b) Ophthalmic Solution (0.03%);
- (c) Carbamide Peroxide;
- (d) Natamycin;
- (e) Phenylephrine;
- (f) Prostaglandins — see Biologicals;
- (20) GI drugs;
- (a) Antidiarrhea -see opioids;
- (b) Cathartics and laxatives;
- (A) Lactulose;
- (c) Antiemetics;
- (A) Dronabinol;
- (d) Antiulcer and acid suppressants;
- (A) Misoprostol;
- (B) Proton Pump Inhibitors\*\*;

# ADMINISTRATIVE RULES

- (i) Omeprazole;
- (C) Sucralfate;
- (e) Misc;
- (A) Citrate Salts;
- (B) Ursodiol;
- (21) Gold Compounds;
- (a) Auranofin;
- (22) Heavy Metal antagonists (see 850-060-225 for specific education requirements);
- (a) Deferoxamine/Desferroxamine;
- (b) DMPS;
- (c) DMSA;
- (d) EDTA;
- (e) Penicillamine;
- (f) Sodium Thiosulfate;
- (23) Histamine-1 Antagonists, excluding all 3rd generation antagonists;
- (24) Histamine-2 Antagonists\*\*;
- (25) Hormones and synthetic substitutes\*\*;
- (a) Adrenals;
- (A) Betamethasone;
- (B) Budesonide;
- (C) Cortisone;
- (D) Dexamethasone;
- (E) Fludrocortisone Acetate;
- (F) Flunisolide;
- (G) Fluticasone Propionate;
- (H) Hydrocortisone;
- (I) Paramethasone;
- (J) Prednisolone;
- (K) Prednisone;
- (L) Tibolone;
- (M) Triamcinolone;
- (b) Androgens;
- (A) Danazol;
- (B) Methyltestosterone;
- (C) Testosterone;
- (c) Contraceptives;
- (A) Estrogen-Progestin Combinations;
- (B) Progestins;
- (d) Estrogens and antiestrogens;
- (A) Cenestin;
- (B) Estradiol;
- (C) Estriol;
- (D) Estrogen, Esterified;
- (E) Estrogens, Conjugated;
- (F) Estrone;
- (G) Estropipate;
- (e) Pituitary;
- (A) Desmopressin;
- (B) Human Growth Hormone;
- (C) Oxytocin;
- (f) Progestins;
- (A) Medroxyprogesterone;
- (B) Medrysone;
- (C) Megestrol Acetate;
- (D) Methylprednisolone;
- (E) Progesterone;
- (F) Progestins;
- (g) Thyroid;
- (A) Dextrothyroxine;
- (B) Levonorgestrel;
- (C) Levothyroxine;
- (D) Liothyronine;
- (E) Liotrix;
- (F) Thyroxine;
- (26) Immunological;
- (a) Tacrolimus;
- (b) Rho(D) Immune globulins\*;
- (27) Incretin Analogues\*\*;
- (a) Exenatide;
- (28) Local anesthetics\*\*;
- (a) Benzocaine\*;
- (b) Betaine;
- (c) Bupivacaine\*;
- (d) Chirocaine\*;
- (e) Chlorprocaine\*;
- (f) Dyclonine\*;
- (g) Ethyl Chloride;
- (h) Etidocaine\*;
- (i) Hydroxypolyethoxydodecane\*;
- (j) Lidocaine (non-injectable dosage form);
- (k) Lidocaine\*;
- (l) Mepivocaine\*;
- (m) Pramoxine;
- (n) Prilocaine\*;
- (o) Procaine\*;
- (p) Tetracaine\*;
- (29) Prostaglandins — see Biologicals;
- (30) Quinoline;
- (a) Praziquantel;
- (31) Sclerosing Agents;
- (a) Sodium Tetradecyl Sulfate;
- (32) Skin and mucous membrane agents;
- (a) Anti-infectives;
- (A) Benzoic Acid;
- (B) Carbol-Fuchsin;
- (C) Cloquinox;
- (D) Hexachlorophene;
- (E) Iodoquinol;
- (F) Mercury, Ammoniated;
- (G) Mupirocin;
- (H) Selenium Sulfide;
- (I) Silver Nitrate;
- (J) Undecylenic Acid;
- (b) Anti-inflammatory;
- (A) Topical steroids;
- (c) Antipruritics and local anesthetics;
- (A) Pentosan;
- (B) Phenazopyridine;
- (d) Cell stimulants and proliferants;
- (A) Anthralin;
- (B) Tretinoin;
- (e) Keratolytic;
- (A) Adapalene;
- (B) Aminolevulinic Acid;
- (C) Bichloroacetic Acid;
- (D) Imiquimod Cream (5%);
- (E) Isotretinoin;
- (F) Podophyllum Resin;
- (G) Trichloroacetic Acid\*;
- (H) Urea;
- (f) Misc;
- (A) Acitretin;
- (B) Ammonium lactate lotion 12%;
- (C) Azelaic Acid;
- (D) Becaplermin;
- (E) Calcipotriene;
- (F) Condylox;
- (G) Fluorouracil;
- (H) Hydroquinone;
- (I) Methoxsalen;
- (J) Monobenzone;
- (K) Pimecrolimus Cream 1%;
- (L) Tazarotene topical gel;
- (M) Trioxsalen;
- (33) Skin Tests\*\*;
- (a) Diphtheria\*;
- (b) Mumps\*;
- (c) Tuberculin\*;
- (34) Smoking Cessation;
- (a) Cytisine
- (b) Varenicline
- (35) Upper Respiratory;
- (a) Acetylcysteine;
- (b) Albuterol Sulfate;
- (c) Benzonatate;
- (d) Cromolyn Sodium;
- (e) Guaifenesin;
- (f) Levalbuteral;
- (g) Nedocromil;
- (h) Xanthines\*\*;
- (A) Aminophylline;
- (B) Diphylline;
- (C) Oxtriphylline;
- (D) Pentoxifylline;
- (E) Theophylline;
- (36) Vaccines\*\*;
- (a) BCG\*;
- (b) Cholera\*;

# ADMINISTRATIVE RULES

- (c) Diphtheria\*;
- (d) DPT\*;
- (e) Haemophilus b Conjugate\*;
- (f) Hepatitis A Virus\*;
- (g) Hepatitis B\*;
- (h) Influenza Virus\*;
- (i) Japanese Encephalitis Virus\*;
- (j) Measles Virus\*;
- (k) Mumps Virus\*;
- (l) Pertussis\*;
- (m) Plague\*;
- (n) Pneumococcal\*;
- (o) Poliovirus — Inactivated\*;
- (p) Poliovirus — Live Oral\*;
- (q) Rabies\*;
- (r) Rubella\*;
- (s) Smallpox\*;
- (t) Tetanus IG\*;
- (u) Tetanus Toxoid\*;
- (v) Typhoid\*;
- (w) Varicella\*;
- (x) Yellow Fever\*;
- (37) Vitamins\*\*;
- (a) Calcitonin;
- (b) Calcitriol;
- (c) Cyanocobalamin;
- (d) Doxercalciferol;
- (e) Leucovorin Calcium;
- (f) Vitamins (Oral & Injectable);
- (38) Misc;
- (a) Colchicine (gout);
- (b) Dimethyl Sulfone (DMSO);
- (c) Glycerin/Glycerol;
- (d) Hyaluronic Acid;
- (e) Hydrogen Peroxide;
- (f) MSM;
- (g) OTC Substances;
- (h) Oxygen;
- (i) Sitagliptin;
- (j) Trazodone;
- (k) Urised;

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Hist.: BNE 1-2002, f. & cert. ef. 2-19-02; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0226, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 9-2005, f. & cert. ef. 12-12-05; BNE 4-2006, f. & cert. ef. 12-11-06; BNE 3-2007, f. & cert. ef. 6-12-07; BNE 1-2008, f. & cert. ef. 2-19-08; BNE 2-2008, f. & cert. ef. 3-21-08; BNE 6-2008, f. & cert. ef. 6-11-08; BNE 7-2008, f. & cert. ef. 12-8-08; BNE 2-2009, f. & cert. ef. 6-17-09

\*\*\*\*\*

## Board of Nursing Chapter 851

**Rule Caption:** Rules Established that Mandate Employer Reporting Requirement for all Oregon Licensed RNs and LPNs.

**Adm. Order No.:** BN 3-2009

**Filed with Sec. of State:** 6-26-2009

**Certified to be Effective:** 6-26-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 851-031-0090

**Subject:** These rules cover standards for licensure of registered nurses and licensed practical nurses. This rule amendment would mandate that licensees shall keep their current employer on file with the Oregon State Board of Nursing at all times.

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

**851-031-0090**

**Name, Address and Employer of Record**

(1) Name of Record:

(a) A licensee of the Board shall establish and keep his/her current legal name on file with the Board at all times.

(b) The name currently on file with the Board shall be considered the name of record.

(c) At the time of a name change, the licensee shall send a signed, written notification of change of name to the Board, accompanied by legal proof of that name change. Legal proof shall be in the form of official records such as a birth certificate, marriage certificate or a court order/decree.

(d) Upon receipt of written notification and legal proof of name change, the Board will change its records to reflect the licensee's name change.

(e) The name of record shall be the same name used for nursing practice.

(2) Address of Record:

(a) Licensee shall keep his/her current home address on file with the Board at all times.

(b) The home address currently on file with the Board shall be considered the address of record.

(c) Upon receipt of notification from the licensee of a change of home address, the Board will change its records to reflect the licensee's current address.

(d) The Board will send all correspondence, the Board Newsletter and all official documents, including license renewal notices and Notices of Proposed Disciplinary Action to the licensee's address of record with the Board.

(e) A Notice of Proposed Disciplinary Action sent to the licensee at the licensee's address of record by certified mail or registered mail, is sufficient notice even if the licensee fails to or refuses to respond to the postal service "return receipt" and never receives the Notice. Such mailing permits the Board to proceed with disciplinary action in the absence of a request for a hearing.

(3) Employer of Record: Any licensed nurse actively practicing nursing shall report his/her current nursing employer(s) and employer's mailing address(es) to the Board. All employers, where the licensed nurse is working within his/her given scope of practice, must be reported. Each change in employer and employer's mailing address must be submitted to the Board no later than 30 days after the change.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150

Hist.: NER 25, f. 9-22-75, ef. 10-10-75; NER 5-1981, f. & ef. 11-24-81; NER 6, 1983, f. & ef. 12-9-83; NB 5-1987, f. & ef. 7-1-87; NB 1-1994, f. & cert. ef. 4-1-94; Renumbered from 851-020-0191; BN 10-1998, f. & cert. ef. 8-7-98; BN 1-2003, f. & cert. ef. 3-6-03; BN 3-2009, f. & cert. ef. 6-26-09

\*\*\*\*\*

**Rule Caption:** Rules Established that Mandate Employer Reporting for all Oregon Certified Nursing Assistants and Medication Aides.

**Adm. Order No.:** BN 4-2009

**Filed with Sec. of State:** 6-26-2009

**Certified to be Effective:** 6-26-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 851-062-0120

**Subject:** These rules establish the standards for certification of nursing assistants and medication aides. This rule amendment will mandate employer reporting for all Oregon certified nursing assistants and medication aides.

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

**851-062-0120**

**Name, Address and Employer of Record**

(1) Name of Record:

(a) A certificate holder of the Board shall establish and keep his/her current legal name on file with the Board at all times.

(b) The name currently on file with the Board shall be considered the name of record.

(c) At the time of a name of record change, the CNA/CMA shall send a signed, written notification of change of name to the Board, accompanied by legal proof of that name change. Legal proof shall be in the form of official records such as a birth certificate, marriage certificate or a court order/decree.

(d) Upon receipt of written notification and legal proof of name change, the Board will change its records to reflect the CNA/CMA's name change.

(e) The name of record shall be the same name used for the performance of authorized duties.

(2) Address of Record:

(a) A certificate holder shall keep his/her current home address on file with the Board at all times.

(b) The home address currently on file with the Board shall be considered the address of record.

(c) Upon receipt of notification from the CNA/CMA of a change of home address, the Board will change its records to reflect the CNA/CMA's current address.

(d) The Board will send all correspondence, the Board Newsletter and all official documents, including certificate renewal notices and Notices of Proposed Disciplinary Action to the CNA/CMA's address of record with the Board.



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(e) A Notice of Proposed Disciplinary Action sent to the CNA/CMA at the certificate holder's address of record by certified mail or registered mail, is sufficient notice even if the certificate holder fails to or refuses to respond to the postal service "return receipt" and never receives the Notice. Such mailing permits the Board to proceed with disciplinary action in the absence of a request for a hearing.

(3) Employer of Record: Any certificate holder actively performing CNA or CMA authorized duties shall report his/her current employer(s) and employer's mailing address(es) to the Board. All employers, where the CNA or CMA is working within his/her authorized duties, must be reported. Each change in employer and employer's mailing address must be submitted to the Board no later than 30 days after the change.

Stat. Auth.: ORS 678.442  
Stats. Implemented: ORS 678.442  
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04; BN 4-2009, f. & cert. ef. 6-26-09

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**Board of Parole and Post-Prison Supervision**  
**Chapter 255**

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

**Adm. Order No.:** PAR 2-2009(Temp)

**Filed with Sec. of State:** 6-26-2009

**Certified to be Effective:** 6-26-09 thru 12-23-09

**Notice Publication Date:**

**Rules Adopted:** 255-032-0007

**Subject:** OAR 255-032-0007 adopts hearing procedures and a matrix for specified juvenile offenders where the Board is required 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 forth in Exhibits P-I through P-III instead of the guidelines and matrix set out in Exhibits A through C.

**Rules Coordinator:** Michelle Mooney—(503) 945-0914

**255-032-0007**

**Prison Term Hearing for Juvenile Aggravated Murderers**

Inmates who were under 17 years of age 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, will receive 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 the guidelines and matrix set out in Exhibits A through C.

Stat. Auth.: ORS 144.050, 144.110, 144.120 & 144.140  
Stats. Implemented: ORS 144.120  
Hist.: PAR 2-2009(Temp), f. & cert. ef. 6-26-09 thru 12-23-09

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**Board of Pharmacy**  
**Chapter 855**

**Rule Caption:** Provide regulatory structure for health officials, pharmacists and drug outlets in a Public Health Emergency.

**Adm. Order No.:** BP 1-2009

**Filed with Sec. of State:** 6-22-2009

**Certified to be Effective:** 6-22-09

**Notice Publication Date:** 4-1-2009

**Rules Adopted:** 855-007-0010, 855-007-0020, 855-007-0030, 855-007-0040, 855-007-0050, 855-007-0060, 855-007-0080, 855-007-0090, 855-007-0100, 855-007-0110, 855-007-0120

**Rules Repealed:** 855-007-0010(T), 855-007-0020(T), 855-007-0030(T), 855-007-0040(T), 855-007-0050(T), 855-007-0060(T), 855-007-0080(T), 855-007-0090(T), 855-007-0100(T), 855-007-0110(T), 855-007-0120(T)

**Subject:** This new chapter of rules provides a legal structure for licenses and registrants of the Board, and public health officials when there is a public health emergency that requires extraordinary meas-

ures to protect public health. The rules provide for a storage and distribution system for medications received in Oregon from the Strategic National Stockpile as well as for emergency immunization procedures. The rules also provide for emergency dispensing when patients do not have access to their prescribing physician. The rules give a framework for licensees from other states to work in Oregon under their existing licenses as authorized in the Emergency Management Assistance Compact and the Pacific Northwest Emergency Management Arrangement ratified in Chapter 25 Oregon Laws 2008.  
**Rules Coordinator:** Karen MacLean—(971) 673-0001

**855-007-0010**

**Declaration of Emergency**

(1) With the exception of sub-section (2)(a) of OAR 855-007-0060, section (2) of 855-007-0080, and sub-sections (7)(a) and (7)(b) of OAR 855-007-0080 that are always in effect, the rules in this division are only effective when:

(a) A State of Emergency or a Public Health Emergency has been declared by the Governor of Oregon under ORS 401.055 or 433.441 through 433.452; and

(b) The provisions of any relevant rules in Chapter 855 Oregon Administrative Rules have been suspended by the Governor under the authority of ORS 401.065(2); or

(c) A signatory to the Pacific Northwest Emergency Management Arrangement (the states of Alaska, Idaho, Oregon, Washington, the Province of British Columbia, and Yukon) has requested assistance during a civil emergency as authorized in Chapter 25 Oregon Laws 2008.

(d) A signatory to the Emergency Management Assistance Compact has requested assistance during a civil emergency as authorized in ORS 401.043.

(2) When a state of emergency or a public health emergency has been declared such that these rules are in effect, if there is any contradiction between these rules and rules in other divisions of Chapter 855, these rules shall govern, otherwise rules in those other divisions shall continue to apply.

Stat. Auth.: ORS 401.043, 401.065, 433.441 & 689.205  
Stats. Implemented: 2008 OL Ch. 25, ORS 401.055 & 689.155  
Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09

**855-007-0020**

**Applicability**

(1) These rules apply to all persons licensed or registered with the Board under OAR chapter 855 and to any persons acting under the authority of Oregon State Public Health Division or any other state agency, or any local or county health department or emergency manager, during a Declared Emergency or a Public Health Emergency, or to any such person acting in preparation for a Public Health Emergency.

(2) These rules may apply to the whole state of Oregon or only to a county or area included in the declared emergency. They also apply to the activities of any licensee or registrant who is working during a declared emergency in the state or territory of any of the signatories of Pacific Northwest Emergency Management Arrangement or the Emergency Management Assistance Compact.

(3) These rules apply to the dispensing and administration of drugs and vaccines to any person within an area subject to an emergency declaration or to any person who has been displaced from their place of residence even if the place to which they have been displaced has not been included in the emergency declaration.

(4) Insofar as neither the Governor of Oregon nor the Board has the authority to waive any provisions of Federal Law, nothing in these rules that conflicts with the Federal Controlled Substances Act (CSA) or the implementing regulations in 21 CFR, shall apply to controlled substances as listed in division 80 of this chapter of rules, unless an agency of the US Government has waived the appropriate section of the CSA or the implementing regulations in 21 CFR.

Stat. Auth.: ORS 401.065, 433.441 & 689.205  
Stats. Implemented: 2008 OL Ch. 25 & ORS 689.155  
Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09

**855-007-0030**

**Definitions**

(1) Emergency Management Assistance Compact (EMAC) means the compact for mutual assistance that was ratified by Congress and signed by all states, and is codified in ORS 401.043.

(2) "Emergency Prescription" means a record that is created in a pharmacy that records the dispensing of a refill of a medication, or a new or modified medication therapy to a patient in the absence of a valid prescription.

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(3) "Emergency Prescription Drug Order" means an order issued by the State Public Health Officer during a Public Health Emergency for pharmacists to dispense designated prescription drugs to treat or provide prophylaxis to large numbers of patients designated by OSPHD protocols.

(4) "Medications": In this division of rules, the term "medications" means drugs or vaccines or medical devices, or any combination of these terms.

(5) "Mobile Pharmacy" means a pharmacy that is self propelled or movable by another vehicle that is self propelled.

(6) "Oregon State Public Health Division" (OSPHD) means that division of the Oregon Department of Human Services (DHS) that is responsible for planning for and responding to a public health emergency.

(7) "Pacific Northwest Emergency Management Arrangement" (PNEMA) means the compact, ratified in Chapter 25 Oregon Laws 2008, between the states of Alaska, Idaho, Oregon and Washington, and the Province of British Columbia, and Yukon, to provide mutual assistance in an emergency or public health emergency.

(8) "Public Health Emergency" means an imminent threat or occurrence of an illness or health condition caused by terrorism, bioterrorism, epidemic or pandemic disease, novel and highly fatal infectious agent or biological toxin, or natural or man-made disaster, that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability that is beyond the capacity of local government or non-governmental organizations to resolve.

(9) "State of Emergency" means a governmental declaration, usually issued because of a Public Health Emergency or a natural or human-caused disaster that may authorize the suspension of certain administrative rules, alert citizens to alter their normal behaviors, and direct government agencies to implement emergency preparedness plans.

(10) "Strategic National Stockpile" (SNS) means the US Government stockpile of antiviral medications and other medications and medical supplies that can be made available to a state in an emergency.

(11) "Temporary Pharmacy" means a facility established during a Public Health Emergency or State of Emergency to temporarily provide pharmacy services within or adjacent to an area covered by a State of Emergency.

Stat. Auth.: ORS 401.065, 433.441 & 689.205

Stats. Implemented: 2008 OL Ch. 25 & ORS 689.155

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09

## 855-007-0040

### Delegation of Authority

In this division of rules, any authority vested in the Board may be exercised by the Executive Director, any person acting as Executive Director in his absence or incapacity, or any person he designates to make such decisions on his behalf.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.165

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09

## 855-007-0050

### Emergency Licensure

(1) Article V of ORS 401.043 (EMAC) and Article V of Annex B of PNEMA provide that whenever a person holds a license, certificate or other permit issued by a signatory to the compact evidencing the meeting of qualifications for professional, mechanical or other skills, and when such assistance is requested by the receiving signatory, the person is deemed to be licensed, certified or permitted by the signatory requesting assistance to render aid involving the skill to meet an emergency or disaster, to the extent allowed by law and subject to limitations and conditions as the requesting signatory prescribes by executive order or otherwise.

(2) When an emergency has been declared, a drug outlet may employ a pharmacist, intern or pharmacy technician who does not hold a license issued by the Board, provided that the individual provides evidence that they hold a comparable license issued by any other state or signatory to PNEMA or EMAC.

(3) In an emergency, the Board may grant an emergency temporary license to a licensee of the board of pharmacy of any state, province, foreign state or political sub-division that is not a signatory to PNEMA or EMAC as follows:

(a) A pharmacist, intern, pharmacy technician or certified pharmacy technician who holds an active license in another state, province, foreign state or political sub-division that is not suspended or restricted for any reason and who is sponsored by a pharmacy that has an active registration from the Board may be granted an emergency temporary license subject to approval by the Board of an application that contains:

(A) The name, permanent address and phone number of the applicant;

(B) The license number and state, province or political sub-division of permanent licensure;

(C) The name and license number of the sponsoring Oregon pharmacy; and

(D) Any other information requested by the Board.

(b) The emergency temporary license issued under these rules shall be valid for a period determined by the Board, but not exceeding six months. If the emergency still exists after six months, the Board may renew any emergency temporary license for an additional six months.

(c) The Board shall notify the sponsoring pharmacy of the approval of each emergency temporary license.

(d) A licensee granted an emergency temporary license under this rule may only practice in the sponsoring pharmacy or a pharmacy under common ownership with the sponsoring pharmacy, except that the licensee may transfer to another pharmacy that is not under common ownership with the sponsoring pharmacy, provided that they notify the Board within three days.

(4) Inactive License Reactivation: In an emergency, the Board may allow a pharmacist whose license has been inactive for no more than two years to reactivate their license without completing any required continuing education. The license will revert to an inactive status at the end of six months unless all required continuing education has been completed.

Stat. Auth.: ORS 401.065, 433.441 & 689.205

Stats. Implemented: 2008 OL Ch. 25, ORS 689.151 & 689.155

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09

## 855-007-0060

### Emergency Medication Distribution and Storage

(1) General: When an emergency is declared that requires medications from the Strategic National Stockpile (SNS), these will be delivered to a state Receipt, Staging and Storage center (RSS) for further distribution to Points of Dispensing (PODs) selected by OSPHD.

(2) Storage of medications from SNS:

(a) The RSS is authorized to store any medications from the SNS prior to and during an emergency without any registration from the Board. This authority to possess medications shall extend beyond the declared emergency until procedures issued by OSPHD for the return or destruction of unused medications have been completed.

(b) PODs are authorized to store any medications from the SNS during an emergency without any registration from the Board. This authority to possess medications shall extend beyond the declared emergency until procedures issued by OSPHD for the return or destruction of unused medications have been completed.

(3) Repackaging: If it is necessary to repackage medications into unit-of-use regimen packages, this will be done at RSS under Centers for Disease Control (CDC) protocols as follows:

(a) Repackaging equipment will be provided by SNS;

(b) Staff from the CDC Technical Advisory Response Unit (TARU) will train the repackaging team members on the use of the equipment and will provide team leadership.

(c) OSPHD will establish procedures and provide team members.

(d) Unit-of-use regimens shall be labeled in accordance with SNS protocols as follows:

(A) Official health agency name, city and state;

(B) Prescriber's name — when using State protocols prescriber's name will be "State Protocol";

(C) Date repackaged;

(D) Quantity of medications in the regimen;

(E) Prescription number and lot number of the drug;

(F) Number for 24-hour telephone line;

(G) Patients name left blank — to be filled in by dispenser.

(4) Distribution: SNS medications shall be distributed from PODs in accordance with the dispensing procedures issued by OSPHD in the Standardized Point of Distribution Field Operation Guide.

(5) Administration: The POD supervisor or approved health care provider shall follow protocols approved by OSPHD or Centers for Disease Control (CDC) for distribution or administration of medications from SNS.

(6) An Intake Form that shall serve as a valid prescription is to be filled out for each person receiving medication at a POD. The intake form is to be retained as specified in OAR 855-007-0110(1).

(7) Returns: At the conclusion of the emergency, all such medications are to be returned to the RSS or other designated location under protocols issued by OSPHD.

Stat. Auth.: ORS 401.065, 433.441 & 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09

## 855-007-0080

### Emergency Immunization and Anti-viral Distribution

When these rules are in effect because of a Public Health Emergency that requires the distribution and administration of vaccines or antiviral medications, the following principles and procedures shall apply:

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(1) The distribution of antiviral medications is to be in accordance with the Antiviral Distribution Plan promulgated by OSPHD as part of the Public Health Pandemic Influenza Plan.

(2) Local and county health departments (LHD) are authorized to store medications received from RSS, and to distribute these to designated Treatment Centers (TC) that may include but are not limited to:

- (a) LHD;
- (b) Clinicians;
- (c) Community health clinics;
- (d) Independent and chain pharmacies;
- (e) Hospitals and other health care facilities;
- (f) Temporary pharmacies;
- (g) Mobile pharmacies;
- (h) Tribal health care facilities;

(4) A facility designated as a Treatment Center may possess, dispense and administer vaccines and antiviral medications during the declared emergency. All such medications shall be stored in accordance with manufacturers' guidelines.

(5) The designated health-care provider at a Treatment Center shall be responsible for administration, distribution and tracking of vaccines and antiviral medications in accordance with procedures established by OSPHD. Only a health-care provider who has been appropriately trained may administer a medication. Duties, other than administering medications, may be performed by a pharmacy technician when under the supervision of a pharmacist or other appropriately trained health-care provider.

(6) An Individual Data Collection Form (IDCF) shall be filled out for each person receiving an immunization or antiviral medication at a Treatment Center, and this IDCF shall be treated as a valid prescription and retained as follows:

(a) An IDCF initiated at a pharmacy or other licensed or registered health-care facility shall be filed and retained for three years;

(b) An IDCF initiated at a facility that is not a licensed or registered health-care facility or at a temporary or mobile pharmacy shall be sent to OSPHD at the end of the state of emergency except that where the temporary or mobile facility has been established under the authority of OAR 855-007-0100(5) all records shall be filed in accordance with 855-007-0110(4).

(7) Community Partner: In this rule, a Community Partner means any entity that is authorized by OSPHD or OBOP to:

(a) Purchase and store antiviral medications prior to a pandemic event;

(b) Store antiviral medications in a Board registered facility or at a tribal site in accordance with manufacture's guidelines;

(c) Take possession of the antiviral stock and distribute to critical infrastructure and key resources when so directed by OSPHD in accordance with OSPHD protocols and procedures, subject to:

(A) All medications must be distributed within 72 hours of removal from the storage site;

(B) Medications must be stored in accordance with manufacture's guidelines;

(C) All distributions must be recorded on a Distribution Log that shall include:

- (i) The name and age of the person receiving the medication;
- (ii) The name, strength and quantity of the medication;
- (iii) The date and the time of the distribution.

(D) The Distribution Log shall be treated as a valid prescription and returned to OSPHD after the emergency is ended;

(3) This authority for LHDs, TCs and Community Partners to possess medications shall extend beyond the declared emergency until procedures issued by OSPHD for the return or destruction of unused medications have been completed.

Stat. Auth.: ORS 401.065, 433.441 & 689.205  
Stats. Implemented: 689.155  
Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09

## 855-007-0090

### Emergency Pharmacy Rules

#### Refills:

(1) A pharmacist in the area covered by a declared emergency or in an area engaged in disaster assistance may dispense a refill of a prescription medication without a valid prescription provided that:

(a) In the pharmacist's professional judgment, the medication is essential to the maintenance of the patient's health or the continuation of therapy; and

(b) The pharmacist provides no more than a 30-day supply; and

(c) The pharmacist records all relevant information and indicates that it is an Emergency Prescription; and

(d) The pharmacist informs the patient or the patient's agent that the medication is being provided without a prescriber's authorization and that a prescriber authorization is required for any additional refill.

(e) If the refill is for a controlled substance, permission has been granted by the DEA for this type of refill, either by waiver of appropriate controlled substance regulations or by notification to the Board.

#### New and modified medication therapy:

(2) A pharmacist in the area covered by a declared emergency or in an area engaged in disaster assistance may, after consultation with any authorized prescriber, initiate or modify any medication therapy, and dispense an amount of the medication to meet the patient's health needs until that patient can be seen by a health-care practitioner, provided that:

(a) The pharmacist acts in accordance with currently accepted standards of care; and

(b) In the pharmacist's professional judgment, the medication is essential to the maintenance of the patient's health or to the continuation of therapy; and

(c) The pharmacist records all relevant information to a form and indicates that a medication therapy has been initiated or modified and that this is an Emergency Prescription; and

(d) The pharmacist informs the patient or the patient's agent at the time of dispensing that the medication is being provided in the absence of a valid patient — prescriber relationship but that a prescriber was consulted regarding the appropriateness of the medication therapy; and

(e) The pharmacist informs the patient or the patient's agent that a prescriber authorization is required for any refill.

Stat. Auth.: ORS 401.065, 433.441 & 689.205  
Stats. Implemented: ORS 689.155  
Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09

## 855-007-0100

### Temporary Pharmacies

(1) When these rules are in effect, the Board may issue a Temporary Pharmacy Registration to any facility or mobile facility.

(2) A facility, including a mobile pharmacy, holding a Temporary Pharmacy Registration may store and dispense drugs in accordance with the requirements of OAR 855-041 and these rules. The supervising pharmacist of a mobile pharmacy shall notify the Board of the pharmacy location within three working days of commencing business, and within three working days of any change in location.

(3) A Temporary Pharmacy Registration automatically expires when the state of emergency ends unless specifically extended by the Board.

(4) Within 30 days of the end of the declared emergency, the holder of a Temporary Pharmacy Registration shall notify the Board as to the disposition of its drug inventory and records.

(5) A temporary or mobile pharmacy that is established for the sole purpose of expediting distribution of emergency immunizations, antibiotics or antiviral medications under OAR 855-007-0080, is located adjacent to an existing pharmacy registered with the Board and is under the supervision of the PIC of the existing pharmacy, does not need to be registered as a temporary pharmacy.

Stat. Auth.: ORS 401.065, 433.441 & 689.205  
Stats. Implemented: ORS 689.155  
Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09

## 855-007-0110

### Emergency Recordkeeping

All records initiated during a state of emergency shall be disposed of as follows:

(1) Individual Data Collection Forms shall be transferred to OSPHD at the end of the emergency and stored for three years;

(2) Community Partner's Logs shall be transferred to OSPHD at the end of the emergency and stored for three years;

(3) Emergency Prescriptions and Individual Data Collection Forms for medications dispensed from a pharmacy that is not a Temporary or Mobile Pharmacy shall be stored at the pharmacy for three years.

(4) Emergency Prescriptions and Individual Data Collection Forms for medications dispensed from a Temporary or Mobile Pharmacy shall be stored at whichever of the following locations is most appropriate:

(a) At the parent pharmacy that provided the majority of the drugs to the Temporary or Mobile Pharmacy; or

(b) At the pharmacy that employs the supervising pharmacist of the Temporary or Mobile Pharmacy; or

(c) At the pharmacy that receives the unused drugs from the Temporary or Mobile Pharmacy at the end of the emergency.

Stat. Auth.: ORS 401.065, 433.441 & 689.205  
Stats. Implemented: ORS 689.155  
Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09

## 855-007-0120

### Damage to a Pharmacy and Medication Integrity

(1) If a pharmacy prescription department sustains damage, whether by flood or otherwise, the entire medication inventory, including any



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prescriptions that are awaiting pickup, is unfit for dispensing, shall be classified as adulterated and must be destroyed unless, in the pharmacist's professional judgment, any items are deemed safe for dispensing. Any incident of this nature must be reported to the Board within three working days.

(2) If a pharmacy loses power that affects temperature or humidity controls such that USP standards for proper storage of medications have been violated, such medications shall be classified as adulterated and may not be dispensed.

**NOTE:** for those medications labeled for storage at "controlled room temperature," the acceptable range of temperature is 68° to 77°F with allowances for brief deviations between 59° to 86°F.

(3) Controlled substances damaged, lost or stolen shall be documented and reported to the DEA and the Board on DEA Form 41 or DEA Form 106 as appropriate.

(4) A pharmacy that is required to temporarily close or relocate due to an emergency must report this event to the Board within three working days.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 689.155  
Hist.: BP 4-2008(Temp), f. 12-31-08, cert. ef. 1-5-09 thru 7-3-09; BP 1-2009, f. & cert. ef. 6-22-09

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**Rule Caption:** Change and clarify registration rules for drug manufacturers and wholesalers.

**Adm. Order No.:** BP 2-2009(Temp)

**Filed with Sec. of State:** 6-22-2009

**Certified to be Effective:** 6-26-09 thru 12-23-09

**Notice Publication Date:**

**Rules Adopted:** 855-060-0003, 855-062-0003, 855-062-0005, 855-062-0020, 855-062-0030, 855-062-0040, 855-062-0050, 855-110-0003

**Rules Amended:** 855-065-0001, 855-065-0005, 855-065-0006, 855-110-0007, 855-110-0010

**Subject:** 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 distributing industry but that do not ever 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 requirement 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.

**Rules Coordinator:** Karen MacLean—(971) 673-0001

## 855-060-0003

### Registration

(1) Any person that manufactures a drug or prescription device that is intended for sale, distribution, dispensing or administration in Oregon must register with the Board.

(2) A person that holds one or more of the following registrations with the Federal Food and Drug Administration (FDA) must register as a Manufacturer.

- A New Drug Application number (NDA);
- An Abbreviated New Drug Application number (ANDA);
- A Labeler Code number (LC) or National Drug Code Number (NDC);
- An FDA Central File Number (CFN);
- An FDA Establishment Identifier number (FEI).

(3) An NDA or ANDA holder that contracts with a third-party for the manufacture of its product and does not take physical possession of the product must register as a Manufacturer if it is responsible or otherwise accountable to the FDA for the manufacture of the drug, otherwise it must register as a Drug Distribution Agent under OAR 855-062-0005;

(4) A private label manufacturer or distributor selling under its own labeler code that does not take physical possession of the product must register as a Manufacturer if it is responsible or otherwise accountable to the FDA for the manufacture of the drug, otherwise it must register as a Drug Distribution Agent under OAR 855-062-0005.

(5) A person that is registered with the FDA as Repackager must register as a Manufacturer.

(6) A person whose sole purpose is the marketing, brokering or arranging the initial distribution of drugs manufactured by a registered

manufacturer, but does not take physical possession of a product must register as a Drug Distribution Agent under OAR 855-062-0005.

(7) A person who is registered as the Agent for a foreign manufacturer under 21 USC 360(2)(i)(1) must register as a Drug Distribution Agent under OAR 855-062-0005.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 689.155  
Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09

## 855-062-0003

### Application

(1) Any person who is involved in the manufacture or wholesale distribution of a drug that is intended for distribution, dispensing or administration in Oregon, but who does not at any time have possession of any of the Active Product Ingredients (API) or the final product, and does not participate in the actual manufacturing process, shall register under these rules as a Drug Distribution Agent, except that any such person, registered with the FDA as a manufacturer, who is accountable to the FDA for the purity and integrity of a drug shall register as a manufacturer under OAR 855-060-0001.

(2) The following persons shall register as a Drug Distribution Agent under this division of rules:

- A broker;
- An import broker;
- An agent for a foreign manufacturer who is registered with the FDA as required by 21 USC 360(2)(i)(1);
- Sales and marketing office for a drug;
- A Drug Order Contractor
- A person registered with the FDA as the holder of a New Drug Application (NDA) or an Abbreviated New Drug Application (ANDA) that contracts with a third-party for the manufacture of a drug but does not take physical possession of the drug, does not have its name on the label and is not accountable to the FDA for the purity and integrity of the drug.

(3) Any person who would otherwise be required to register as a wholesaler under OAR 855-065-0001 but who does not at any time have possession of a drug intended for distribution shall register as a Drug Distribution Agent under this division of rules.

(4) A person whose sole purpose is the marketing, brokering or arranging the initial distribution of drugs manufactured by a registered manufacturer, but does not take physical possession of a product shall register as a Drug Distribution Agent.

Stat. Auth.: ORS 689.205  
Stats. Implemented: ORS 689.155  
Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09

## 855-062-0005

### Definitions

(1) "Broker" means a person engaged in the marketing, offering, or contracting for wholesale distribution and sale of a drug into, within, or out of Oregon and who does not take physical possession of the drug.

(2) "Closed Door Pharmacy" means a pharmacy that provides pharmaceutical services to a defined and exclusive group of patients and is not open for dispensing to the general patient population and cannot be registered as a wholesale distributor.

(3) "Co-Manufacturing Partner" means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a prescription drug.

(4) "Drug": In this division of rules, the term "drug" shall mean any drug and any prescription device as these terms are defined in ORS 689.005.

(5) "Manufacturer" means any person, including a manufacturer's co-manufacturing partner, that is engaged in the manufacture of a drug, is responsible or otherwise accountable to the FDA for the manufacture of the drug, or is the private label manufacturer or distributor of product bearing its NDC number that is intended for sale, distribution, dispensing or administration in Oregon, and who holds one or more of the following registrations or licenses with the FDA:

- A New Drug Application number (NDA);
- An Abbreviated New Drug application number (ANDA);
- A Labeler Code number (LC) or National Drug Code Number (NDC);
- An FDA Central File Number (CFN);
- An FDA Establishment Identifier number (FEI).

(6) "Manufacture" means the preparation, propagation, compounding, or processing of a drug or device intended for human or animal use. Manufacture includes repackaging or otherwise changing the container, wrapper, or labeling of any drug package in furtherance of the distribution of the drug from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user, except when the

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process is part of a shared pharmacy service agreement as defined in OAR 855-06-0005;

(7) "Person" means individual, corporation, partnership, association, joint-stock company, business trust or unincorporated organization.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09

## 855-062-0020

### Registration

(1) Any person engaged in any part of the process of manufacture or wholesale distribution of a drug into, out of, or within Oregon must be registered with the Board. A person shall register as either:

(a) A manufacturer under OAR 855-060-0001 through 855-060-0035;

or

(b) A wholesaler under OAR 855-065-0001 through 855-065-0013; or

(c) A Drug Distribution Agent under this Division of Rules.

(2) A person that is required to register as a Drug Distribution Agent must be registered before commencing business in Oregon and before any drug for which they provide a manufacturing, marketing or distribution service, may be sold, distributed, dispensed or administered in Oregon.

(3) A person that is required to register as a Drug Distribution Agent must apply for registration on a form provided by the Board and must provide information required by the Board that shall include but is not limited to:

(a) The name, business address, social security number or federal tax identification number of each owner, officer, and stockholder owning more than 10 per cent of the stock of the company, unless the stock of the company is publicly traded;

(b) Every trade or business name used by the applicant;

(c) Any disciplinary action taken by any state or federal authority against the applicant or any other distributor under common ownership or control, or any owner, principal or designated representative of the applicant, in connection with the drug laws or regulations of any state or the federal government.

(4) An applicant for renewal must complete the form provided by the Board and submit it to the Board with the appropriate fee by August 31 annually.

(5) An applicant that provides a manufacturing or distribution service in respect of a controlled substance as defined in Division 80 of this chapter of rules must also complete and submit the Controlled Substance registration form provided by the Board, with the appropriate fee.

(6) The Board may require a criminal history and financial background check of each principal, owner or officer of the applicant prior to initial registration and prior to any renewal unless the applicant is publicly traded. Any such checks shall be at the applicant's expense.

(7) The Board may require a physical inspection of each facility prior to initial registration and prior to any renewal.

(8) Each separate business entity and each location that does business in Oregon must be separately registered by the Board.

(9) The registrant must notify the Board, within 15 days, of any substantial change to the information provided on the registration application. Substantial change shall include but is not limited to:

(a) Change of ownership;

(b) Change of business address;

(c) Any disciplinary action taken or pending by any state or federal authority against the registrant, or any of its principals, owners, directors, officers.

(10) The registration certificate is issued to a specific person and is non-transferable. Any addition or deletion of an owner or partner constitutes a change of ownership.

(11) The Board may waive any requirement of this rule if, in the Board's judgment, a waiver will further public health or safety. A waiver granted under this section shall only be effective when issued in writing.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09

## 855-062-0030

### Minimum Qualifications

The Board may deny an application for registration or renewal of registration as a Drug Distribution Agent on any of the following grounds:

(1) The applicant has been found by the Board or by a court to have violated the pharmacy or drug laws or rules of this state or of any other state, or of the federal government;

(2) The applicant has a history of non-compliance with state or federal rules or laws regulating the manufacture, distribution, or dispensing of drugs;

(3) The applicant has made a material misrepresentation to the Board in the course of applying for an initial or renewal of registration;

(4) Disciplinary action has been taken by the federal government or by any state, or local government regarding any license or registration currently or previously held by the applicant for the manufacture, distribution or dispensing of any drugs;

(5) The applicant has engaged in any conduct involving moral turpitude;

(6) The Board determines that granting the registration is not consistent with the public health or safety or is otherwise not in the public interest.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09

## 855-062-0040

### Record Keeping

(1) A Drug Distribution Agent must establish and maintain records of all transactions regarding the distribution or other disposition of a drug. These records must comply with all federal drug laws and regulations and must include the following information:

(a) The source of the drug, including the name and physical address of the seller or transferor and any broker or other person involved in the transaction, the address of the location from which the drug was shipped and the address of the location to which the drug was shipped;

(b) The name, dose and quantity of the drug distributed;

(c) The date of distribution or other disposition of the drug;

(2) Records required by this rule must be made available for inspection and copying by any authorized official of the Drug Enforcement Agency, the Food and Drug Administration, the Department of Agriculture, authorized law enforcement agencies, and this Board.

(3) Records required under these rules must be maintained for three years.

(4) Records required under these rules that are less than 13 months old must be kept at the address of record or be immediately retrievable by computer or other electronic means, and must be immediately available for inspection. All other records required by these rules must be made available for inspection within three business days of a request.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09

## 855-062-0050

### Prohibited Practices

(1) The following practices are expressly prohibited:

(a) A Drug Distribution Agent may not participate in the purchase of a drug from a closed-door pharmacy.

(b) A Drug Distribution Agent may not participate in any way in the sale, distribution or transfer of a drug to a person who is required by the laws and rules of Oregon to be registered with the Board and who is not appropriately registered. Before authorizing or facilitating the distribution of a drug, a Drug Distribution Agent must verify that the person supplying or receiving the drug is appropriately registered with the Board.

(2) A Drug Distribution Agent may not perform, cause the performance of, or aid the performance of any of the following:

(a) The manufacture, repackaging, sale, delivery, holding, or offering for sale of a drug that is adulterated, misbranded, counterfeit, suspected counterfeit, or is otherwise unfit for distribution.

(b) The adulteration, misbranding, or counterfeiting of a drug.

(c) The receipt of a drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected counterfeit, and the delivery or proffered delivery of the drug for pay or otherwise.

(d) The alteration, mutilation, destruction, obliteration, or removal of the whole or a part of the labeling of a drug or the commission of another act with respect to a drug that results in the drug being misbranded.

(e) The forging, counterfeiting, simulating, or falsely representing a drug using a mark, stamp, tag, label, or other identification device.

(f) The purchase or receipt of a drug from a person that is not registered to distribute drugs to the purchaser or recipient.

(g) The sale or transfer of a drug to a person that is not authorized under the law of the jurisdiction in which the person receives the drug, to purchase or receive drugs from the person selling or transferring the drug.

(h) The failure to maintain or provide records as required under these rules.

(i) Providing the Board, a representative of the Board, or a state or federal official with false or fraudulent records or making false or fraudulent statements regarding a matter related to these rules.

(j) Participating in the wholesale distribution of a drug that was:

(A) Purchased by a public or private hospital or other health care entity under the terms of an "own-use" contract; or

(B) Donated or supplied at a reduced price to a charitable organization; or

(C) Stolen or obtained by fraud or deceit; or

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(D) Illegally imported into the USA.

(k) Facilitating the distribution or attempting to facilitate the distribution of a drug by fraud, deceit, or misrepresentation.

(l) Facilitating the distribution of a drug that was previously dispensed by a retail pharmacy or a practitioner.

(o) Failing to report an act prohibited by any of the rules in OAR Chapter 855 to the appropriate state or federal authorities.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09

## 855-065-0001

### Application

(1) These rules (OAR 855-065-0001 to 855-065-0013) apply to any person, including any business entity, located in or outside Oregon that engages in the wholesale distribution of prescription or non-prescription drugs in Oregon except that a manufacturer that is registered under OAR 855-060-0001 does not also need to register as a wholesale distributor under these rules if they only distribute their own products or those manufactured by a Co-Manufacturing Partner as defined in OAR 855-065-0005(6).

(2) Any person that participates in the wholesale distribution of a drug but that does not at any time take physical possession or ownership of any drug shall register as Drug Distribution Agent in accordance with Division 62 of this chapter of rules.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 3-1992, f. & cert. ef. 3-26-92 (and corrected 4-8-92); PB 1-1994, f. & cert. ef. 2-2-94; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 12-2006, f. & cert. ef. 12-19-06; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09

## 855-065-0005

### Definitions

(1) "Authenticate" means to verify that each transaction listed on the pedigree and other accompanying documentation has occurred and is accurately recorded.

(2) "Authorized Distributor of Record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in Section 1504 of the Internal Revenue Code, complies with either or both of the following:

(a) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; or

(b) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer no less than monthly.

(3) "Broker" means a person engaged in the marketing, offering, or contracting for wholesale distribution and sale of a drug into, within, or out of Oregon and who does not take physical possession of the brokered substance.

(4) "Chain Pharmacy Warehouse" means a physical location for drugs that acts as a central warehouse and performs intra company sales or transfers of drugs to a group of chain pharmacies that have the same common ownership and control.

(5) "Closed Door Pharmacy" means a pharmacy that provides pharmaceutical services to a defined and exclusive group of patients and is not open for dispensing to the general patient population and cannot be registered as a wholesale distributor.

(6) "Co-Manufacturing Partner" means a pharmaceutical manufacturer that has entered into an agreement with another pharmaceutical manufacturer to engage in a business activity or occupation related to the manufacture or distribution of a prescription drug.

(7) "Common Carrier" means an organization that is available to the public to transport a product or service using its facilities, or those of other carriers.

(8) "Contraband Drug" means a drug that is counterfeit, stolen, misbranded, obtained by fraud, or purchased by an entity for its own use and placed in commerce in violation of an own-use agreement for that drug.

(9) "Cooperative Pharmacy Warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization or pharmacy buying cooperative and distributes drugs exclusively to its members. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Cooperative Pharmacy Warehouse must also be listed as an Authorized Distributor of Record for that manufacturer.

(10) "Designated Representative" means an individual designated by each wholesale distributor registered by the Board who will serve as the primary contact person for the wholesale distributor with the Board and who

is responsible for managing the company's operations at that registered location.

(11) "Drop Shipment" means a drug transaction whereby the manufacturer, that manufacturer's co-manufacturing partner, that manufacturer's third-party logistics provider, or that manufacturer's exclusive distributor delivers a drug directly to a chain pharmacy warehouse, a cooperative pharmacy warehouse, a pharmacy, or other person authorized to administer or dispense prescription drugs to a patient, but transfers title to the drug to a wholesale distributor. A drop shipment shall be considered as part of a normal chain of distribution as defined in section (16) of this rule.

(12) "Drug Sample" means a unit of a drug that is intended to promote the sale of the drug, but which is not itself for sale.

(13) "Intra Company Transfer" means the transfer of any drug between a division, subsidiary, parent, and an affiliated or related company under the common ownership and control of a corporate entity.

(14) "Manufacturer" means anyone, including a manufacturer's co-manufacturing partner, who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a drug, except when the process is part of a shared pharmacy service agreement as defined in OAR 855-006-0005(20).

(15) "Manufacturer's Exclusive Distributor" means an entity, including a manufacturer's wholly owned distributor, that contracts with a manufacturer who is registered under OAR 855-060-0001, to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and takes title to that manufacturer's drug, but does not have general responsibility to direct the drug's sale or disposition. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Manufacturer's Exclusive Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(16) "Normal Chain of Distribution" means a chain of distribution, including a drop-shipment, for a prescription drug that goes from: a manufacturer; a manufacturer's co-manufacturing partner; a manufacturer's exclusive distributor; or a manufacturer's third-party logistics provider to:

(a) A pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(b) A manufacturer's authorized distributor of record, to a pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(c) A manufacturer's authorized distributor of record, to a chain pharmacy warehouse, to that chain pharmacy warehouse's intra company pharmacy, to a patient or a person authorized to administer or dispense a prescription drug to a patient; or

(d) A chain pharmacy warehouse, to that chain pharmacy warehouse's intra company pharmacy, to a patient or a person authorized to administer or dispense a prescription drug to a patient; or

(e) A manufacturer's authorized distributor of record, to a specialty wholesaler, to a pharmacy or a person authorized to administer or dispense a prescription drug to a patient; or

(f) A manufacturer's authorized distributor of record to a cooperative pharmacy warehouse, to a member of the affiliated group purchasing organization or pharmacy buying cooperative, to a patient or a person authorized to administer or dispense a prescription drug to a patient.

(17) "Pedigree" means a statement or record in a written or electronic form that accurately records each wholesale distribution of a prescription drug from the sale by a manufacturer through acquisition and sale by any wholesale distributor or repackager until final sale to a pharmacy or other person authorized to administer or dispense the drug. The pedigree must include, but not be limited to, the following information for each transaction:

(a) The source of the prescription drug, including the name and principal address of the seller;

(b) The proprietary and established name of the prescription drug, the National Drug Code number, the amount of the prescription drug, its dosage form and dosage strength, the date of the purchase, the sales invoice number or other unique shipping document number that identifies the transaction, container size, number of containers, expiration date, and lot number or control number of the prescription drug;

(c) The business name and address of each owner of the prescription drug and its shipping information, including the name and address of the facility of each person certifying delivery or receipt of the prescription drug.

(18) "Prescription Drug" means any drug required by law to be dispensed only by a prescription.

(19) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(20) "Specialty Wholesale Distributor" means an entity that exclusively distributes a limited product line of drugs to a specific group of pharmacies or registered practitioners as approved in writing by the Board. To



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be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Specialty Wholesale Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(21) "Third-Party Logistics Provider" means an entity that contracts with a manufacturer who is registered under these rules to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, but does not take title to the drug or have general responsibility to direct the sale or disposition of the drug. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Third-Party Logistics Provider must also be listed as an Authorized Distributor of Record for that manufacturer.

(22) "Wholesale Distribution" means distribution of a drug to a person other than a consumer or patient, but does not include:

(a) Delivery by a retail pharmacy of a prescription drug to a patient or patient's agent pursuant to the lawful order of a licensed practitioner.

(b) The sale of minimal quantities of a prescription drug by retail pharmacies to licensed practitioners for office use.

(c) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons, including but not limited to transfer of a drug by a pharmacy to another pharmacy to alleviate a temporary shortage.

(d) Intra company transfer of drugs as defined in these rules.

(e) The lawful distribution of a drug sample by a manufacturer's or a distributor's representative.

(f) The sale of a drug by a charitable organization described under 501(c)(3) of the Internal Revenue Code to a non-profit affiliate of the organization to the extent permitted by law.

(g) The purchase or acquisition of a drug by a hospital or other health care entity that is a member of a group purchasing organization, for the hospital's or health care entity's own use, from the group purchasing organization or from other hospitals or health care entities that are members of the organization or under common control.

(h) The transfer of a prescription drug between pharmacies pursuant to a shared pharmacy service agreement as defined in OAR 855-006-0005.

(i) The distribution by a manufacturer, as part of a prescription assistance program, of a drug intended for a specific patient, to a person authorized to prescribe, administer or dispense prescription drugs.

(j) The sale, purchase, or trade of blood and blood components intended for transfusion.

(k) Drug returns, when conducted in accordance with state and federal laws and regulations. A drug return includes the sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled drugs to the original manufacturer, wholesale distributor, or to a third-party returns processor or reverse wholesaler, and the returns of saleable drugs to the original manufacturer or wholesaler.

(L) The transporting of a drug by common carrier where the common carrier does not take title to the drug and does not have responsibility to direct the drug's sale or distribution.

(m) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy from or with another pharmacy.

(n) The distribution of drugs by a manufacturer registered under OAR 855-060-0001 of that manufacturer's own products to a person other than a patient.

(23) "Wholesale Distributor" means any entity engaged in the wholesale distribution of drugs, including any entity whose business name appears on any invoice or other type of shipping document indicating possession or title. The term "Wholesale Distributor" includes but is not limited to, own-label distributors; private-label distributors; warehouses, including manufacturers' and distributors' warehouses; drug wholesalers or distributors; independent wholesale drug traders; third-party logistics providers; cooperative pharmacy warehouses; retail pharmacies that conduct wholesale distribution; and chain pharmacy warehouses that conduct wholesale distribution. To be considered part of the Normal Chain of Distribution as defined in section (16) of this rule, a Wholesale Distributor must also be listed as an Authorized Distributor of Record for that manufacturer.

(24) "Wholesaler" means any wholesale distributor:

(a) "Class I Wholesaler" means any person operating or maintaining a wholesale distribution center, wholesale business or any other business in which prescription drugs, medicinal chemicals, or poisons are sold, dispensed, stocked, exposed or offered for sale at wholesale to a pharmacy or other legally licensed drug outlets or persons;

(b) "Class II Wholesaler" means any person operating or maintaining a wholesale distribution center, wholesale business or any other business in which nonprescription drugs are offered for sale at wholesale to a drug outlet legally authorized to resell.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 3-1992, f. & cert. ef. 3-26-92 (and corrected 4-8-92); BP 12-2006, f. & cert. ef. 12-19-06; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09

## 855-065-0006

### Registration Requirements

(1) Every wholesale distributor, wherever located, that engages in wholesale distribution into, out of, or within Oregon must be registered with the Board in accordance with the laws and regulations of Oregon before engaging in wholesale distribution of drugs. Every applicant for registration or renewal of registration must pay the appropriate fee in accordance with OAR 855-110-0007 and 855-110-0010. An applicant must register as a Class I Wholesaler or a Class II Wholesaler unless the applicant qualifies for registration as a Drug Distribution Agent under Division 62 of this chapter of rules.

(2) Application for registration must be on a form approved by the Board and must include, but not be limited to, the following information:

(a) The name, business address, social security number and federal tax identification number of each owner, officer, and stockholder owning more than 10 per cent of the stock of the company, unless the stock of the company is publicly traded;

(b) All trade or business names used by the applicant including any businesses outside Oregon;

(c) The names, addresses and telephone numbers of the designated representatives for all facilities used by the applicant that engage in wholesale distribution into, out of, or within Oregon;

(d) The normal business hours for the applicant; and

(e) Any disciplinary action taken by any state or federal authority against the applicant or any other wholesale distributor under common ownership or control, or any owner, principal or designated representative of the applicant, in connection with the drug laws or regulations of any state or the federal government.

(3) The Board may require a criminal history and financial background check of each principal, owner, officer and designated representative of the applicant prior to initial registration and prior to any renewal. Any such checks shall be at the applicant's expense.

(4) The Board may require a physical inspection of each facility prior to initial registration and prior to any renewal.

(5) Any wholesale distributor located outside the boundaries of Oregon, applying for registration or re-registration, as a Class I Wholesaler, after January 1, 2008 must provide evidence of one of the following:

(a) A current license or registration as a wholesale distributor in a state that has a license or registration procedure approved by the Board that included a physical inspection within the past three years; or

(b) A current accreditation by a process approved by the Board such as The National Association of Boards of Pharmacy's Verified Accredited Wholesale Distributor (VAWD) program or other nationally recognized accreditation program or contract inspection service.

(6) Any wholesale distributor located inside the boundaries of Oregon, applying for registration or re-registration, as a Class I Wholesaler, after January 1, 2008 must provide evidence of one of the following:

(a) A current accreditation by a process approved by the Board such as The National Association of Boards of Pharmacy's Verified Accredited Wholesale Distributor (VAWD) program or other nationally recognized accreditation program or contract inspection service; or

(b) That it is a small business as defined in ORS 183.310(10); and

(A) The applicant has no affiliation with any out-of-state pharmaceutical company; and

(B) All owners and principals of the applicant are Oregon residents; and

(C) No owner or principal, or close family member of an owner or principal, has a controlling or business interest in any other pharmaceutical company; and

(D) Neither the applicant, nor any of its owners or principals, has ever been found to be in violation of any drug law or regulation in this or any other state.

(7) Notwithstanding the requirements of sections (5) and (6) of this rule, upon written request, the Board may waive any of the requirements of this rule if a waiver will further public health or safety. A waiver granted under this section shall only be effective when it is issued in writing.

(8) In addition to the above registration requirements, an applicant for registration as a Class I wholesaler under this rule, that has not received VAWD accreditation, must provide evidence that it has obtained a bond or equivalent means of security of at least \$100,000 that provides direct access to the Oregon Board of Pharmacy as a beneficiary to secure payment of any administrative penalties that may be imposed by the Board and any fees and costs that may be incurred by the Board and that:

(a) Are related to a registration held by the wholesale distributor; and

(b) Are authorized under Oregon law; and

(c) The wholesale distributor fails to pay less than thirty days after the penalties, fees, or costs become final.

(9) The Board may make a claim against a bond or security posted under section (8) of this rule within one year after the wholesale distribu-

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tor's registration is no longer valid or sixty days after the conclusion of whichever occurs later:

(a) An administrative or legal proceeding before or on behalf of the Board that involves the wholesale distributor and results in penalties, fees or costs; or

(b) An appeal of such a proceeding.

(10) Where operations are conducted at more than one location by a single wholesale drug outlet, each such location that does business in Oregon must be registered by the Board.

(11) The registrant must notify the Board, within 15 days, of any substantial change to the information provided on the registration application. Substantial change shall include but not be limited to: change of ownership; change of business address; change of normal business hours; any disciplinary action taken or pending by any state or federal authority against the registrant, or any of its principals, owners, directors, officers, or designated representatives.

(12) The registration certificate is issued to a specific person and is non-transferable. Additions or deletions of an owner or partner shall be considered as a change of ownership.

(13) A new registration form is required for a change of ownership or location and must be submitted to the Board with the fees as specified in OAR 855-110-0007 within 15 days of the change.

(14) The registration fee cannot be prorated.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135

Hist.: BP 12-2006, f. & cert. ef. 12-19-06; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09

## 855-110-0003

### General

(1) All fees paid under these rules are non-refundable.

(2) Fees cannot be prorated.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135

Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09

## 855-110-0007

### Fees for Registration, Renewal, and Reinspection of Drug Outlets

(1) County Health Clinic. Expires March 31 annually. — \$75. Delinquent renewal fee (postmarked after February 28) — \$25.

(2) Drug room fee. Expires March 31 annually — \$75. Delinquent renewal fee (postmarked after February 28) — \$75.

(3) (a) Manufacturer. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(b) Drug Distribution Agent. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(4) Medical Device, Equipment & Gas (MDEG) Class C. Expires January 31 annually — \$50. Delinquent renewal fee (postmarked after December 31) — \$25.

(5) Nonprescription Class A. Expires January 31 annually — \$50. Delinquent renewal fee (postmarked after December 31) — \$25.

(6) Nonprescription Class B. Expires January 31 annually — \$25. Delinquent renewal fee (postmarked after December 31) — \$10.

(7) Nonprescription Class D. Expires January 31 annually — \$100. Delinquent renewal fee (postmarked after December 31) — \$25.

(8) Prophylactic and/or Contraceptive Wholesaler and/or Manufacturer — \$50. Expires December 31 annually.

(9) Reinspection fee — \$100. Applies to any reinspection of a drug outlet occasioned to verify corrections of violations found in an initial inspection.

(10) Retail or Institutional Drug Outlet. Expires March 31 annually — \$175. Delinquent renewal fee (postmarked after February 28) — \$75.

(11) Student Health Center. Expires March 31 annually — \$75. Delinquent renewal fee (postmarked after February 28) — \$25.

(12) Veterinary Drug Outlet, Expires September 30 annually — \$00. Delinquent renewal fee (postmarked after August 31) — \$00.

(13) Wholesaler. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(14) Remote Dispensing Machine. Expires March 31 annually — \$100. Due by February 28 annually.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135

Hist.: PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 3-1998, f. & cert. ef. 3-23-98; BP 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; BP 1-2002, f. & cert. ef. 1-8-02; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 2-2005, f. 2-14-05, cert. ef. 3-1-05; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09

## 855-110-0010

### Fees for Registration for Controlled Substances under ORS 475.095

(1) Animal euthanasia controlled substance registration; fee — \$25 annually.

(2) County Health Clinics controlled substance registration fee — \$25 annually.

(3) Drug Room controlled substance registration fee — \$25 annually.

(4) (a) Manufacturers controlled substance registration fee — \$50 annually.

(b) Drug Distribution Agent controlled substance registration fee — \$50 annually.

(5) Retail or Institutional Drug Outlet controlled substance registration fee — \$25 annually.

(6) Schedule II Precursor Registration fee — \$25 annually.

(7) Wholesalers controlled substance registration fee — \$50 annually.

(8) Remote Dispensing Machine controlled substance registration fee — \$25 annually.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 6-1982, f. & ef. 8-6-82; 1PB 2-1984, f. & ef. 3-7-84; PB 15-1989, f. & cert. ef. 12-26-89; PB 10-1990, f. & cert. ef. 12-5-90; PB 3-1991, f. & cert. ef. 9-19-91; PB 1-1996, f. & cert. ef. 4-5-96; BP 2-2005, f. 2-14-05, cert. ef. 3-1-05; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09

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## Bureau of Labor and Industries Chapter 839

**Rule Caption:** Amends the prevailing rates of wage for the period beginning January 1, 2009.

**Adm. Order No.:** BLI 11-2009

**Filed with Sec. of State:** 6-29-2009

**Certified to be Effective:** 6-30-09

**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 January 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 January 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 January 1, 2009, and the effective dates of the applicable special wage determination and rates amendments:

(a) Amendments/Corrections to January 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 December 19, 2008).

(b) Amendments/Corrections to January 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 January 2, 2009).

(c) Amendments/Corrections to January 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 February 6, 2009).

(d) Amendments/Corrections to January 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 March 13, 2009).

(e) Amendments/Corrections to January 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 March 20, 2009).

(f) Amendment to Oregon Determination 2009-01 (effective April 1, 2009).

(g) Amendments/Corrections to January 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 April 1, 2009).

(h) Amendments/Corrections to January 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 5, 2009).

(i) Amendments/Corrections to January 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

# ADMINISTRATIVE RULES

June 26, 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 January 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](http://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

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**Rule Caption:** Amends the prevailing rates of wage for the period beginning July 1, 2009.

**Adm. Order No.:** BLI 12-2009

**Filed with Sec. of State:** 6-29-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:**

**Rules Amended:** 839-025-0700

**Subject:** The amended rules 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:

(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](http://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

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**Rule Caption:** Amends the prevailing rates of wage for the period beginning July 1, 2009.

**Adm. Order No.:** BLI 13-2009

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09

**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)(a) 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:

(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 June 26, 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,



# ADMINISTRATIVE RULES

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](http://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. 7-1-06; 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

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**Rule Caption:** Amends the prevailing rates of wage for the period beginning July 1, 2009.

**Adm. Order No.:** BLI 14-2009

**Filed with Sec. of State:** 7-10-2009

**Certified to be Effective:** 7-10-09

**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).

(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](http://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. 7-1-06; 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

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## Construction Contractors Board Chapter 812

**Rule Caption:** Adoption of Continuing Education Rules for Construction Contractors with Residential Enforcements.

**Adm. Order No.:** CCB 5-2009

**Filed with Sec. of State:** 6-25-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 4-1-2009

**Rules Adopted:** 812-020-0071, 812-021-0000, 812-021-0005, 812-021-0010, 812-021-0011, 812-021-0015, 812-021-0019, 812-021-0023, 812-021-0025, 812-021-0028, 812-021-0030, 812-021-0031, 812-021-0032, 812-021-0033, 812-021-0034, 812-021-0035, 812-021-0037, 812-021-0040, 812-021-0042, 812-021-0045, 812-021-0047

**Subject:** OAR 812-020-0071 is adopted to allow continuing education hours earned as a residential contractor to apply toward commercial continuing education credits.

The following rules apply to residential contractors:

812-021-0000 is adopted to set forth the authority for continuing education program under ORS 701.126.

812-021-0005 is adopted to define terms used in rules implementing 701.126.

812-021-0010 is adopted to establish the date on which the rules will first be applied to renewing contractors.

812-021-0011 is adopted to exempt residential developers from continuing education requirements; however, licensed contractors



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that perform the construction must satisfy the continuing education requirements.

812-021-0015 is adopted to set the minimum continuing education requirements for residential contractors.

812-021-0019 is adopted to the requirements for elective hours, describes the courses and activities that qualify.

812-021-0023 is adopted to allow contractors to carry forward eight hours of continuing education earned in excess of those requirements during the two-year period.

812-021-0025 is adopted to set the continuing education provider approval, standards, fees and renewal for core continuing education for residential contractors.

812-021-0028 is adopted to outline the standards by which the agency may consider courses for approval, fees, and renewals for residential contractors.

812-021-0030 is adopted to establish that CCB and approved providers will provide the three-hour BEST training for residential contractors.

812-021-0031 is adopted to set core hours on building codes and "green" or sustainable building practices.

812-021-0032 is adopted to set core hours on agency law, rules, and business practices provided exclusively provided by the CCB.

812-021-0033 is adopted to establish that continuing education providers must notify CCB when a contractor completes a core course. Notification will be by electronic transmission to agency.

812-021-0034 is adopted to allow the agency to use "My License" system or similar portal to allow contractors to self-track their elective hours. Contractors will certify, upon renewal, that they have completed all the elective hours required.

812-021-0035 is adopted to establish that CCB will track each contractor's completion of core and elective courses and notify the contractor before renewal whether they need additional hours to renew their license.

812-021-0037 is adopted to outline the requirements for contractors to retain proof of completion of continuing education. Permits agency to review the records. Authorizes the agency to suspend or refuse to renew license for failing to provide proof of continuing education. Authorizes the agency to refuse to allow inactive residential contractor to convert to active status for failing to provide proof of continuing education.

812-021-0040 is adopted to establish requirements for inactive status during a license period.

812-021-0042 is adopted to allow contractors who renew their lapsed license to use continuing education earned during the period when the license was lapsed.

812-021-0045 is adopted to set requirements for claiming continuing education credits.

812-021-0047 is adopted to establish requirements for continuing education for personnel who work for more than one residential contractor.

**Rules Coordinator:** Catherine Dixon—(503) 378-4621, ext. 4077

## 812-020-0071

### Hours Earned as Residential Contractor — Continuing Education for Commercial Contractors

A commercial contractor also endorsed as a residential contractor may take credit for continuing education earned under ORS 701.126 and OAR division 21.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0000

### Authority, Purpose, Scope — Continuing Education for Residential Contractors

(1) Authority. These rules are promulgated in accordance with ORS 701.126, which requires CCB to establish a continuing education system for contractors, other than licensed developers.

(2) Purpose. The purpose of these rules is to create a continuing education system, including training in:

- (a) Construction means and methods;
- (b) Compliance with the state building code;

- (c) Business practices; and
  - (d) Other topics as determined by the Board.
- (3) Scope.

(a) These rules establish the content and hours required for continuing education.

(b) These rules establish procedures for recordkeeping, for verifying continuing education hours and for sanctions for failing to comply.

(c) These rules establish procedures for provider and course approval.

(d) These rules establish fees for provider and course approvals and for training offered by the agency.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0005

### Definitions — Continuing Education for Residential Contractors

The following definitions apply to OAR 812-021-0000 to 812-021-0047:

(1) "BEST" means Building Exterior Shell Training.

(2) "Building code" means a specialty code as defined in ORS 455.010(7).

(3) "Employee" means any individual employed by a contractor. "Employee" does not include a subcontractor, which is an independent contractor.

(4) "'Green' or sustainable building practices" means the practice of increasing the efficiency with which buildings use resources such as energy, water, and materials, while reducing building impacts on human health or the environment.

(5) "License period" means the two-year period from the date a contractor's license is first issued or last renewed until the date the license is next scheduled to expire.

(6) "Officer" means an individual person as defined in OAR 812-002-0533.

(7) "Owner" means an individual person as defined in OAR 812-002-0537.

(8) "Residential contractor" means a licensed contractor as defined in ORS 701.005(12).

(9) "Responsible managing individual (RMI)" means an individual person as defined in ORS 701.005(15).

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0010

### Effective Date — Continuing Education for Residential Contractors

OAR 812-021-0000 to 812-021-0047 take effect upon passage, and apply to residential contractors that renew their licenses on or after October 1, 2011.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0011

### Residential Developer Exemption — Continuing Education for Residential Contractors

Residential developers are exempt from the continuing education requirements in OAR 812-021-0000 to 812-021-0047.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0015

### Minimum Continuing Education Requirements — Continuing Education for Residential Contractors

(1) Residential contractors, other than residential limited contractors, shall have an owner, officer, RMI or employee, or a combination of those persons, who complete a minimum of 16 hours of continuing education every license period as described in sections (3) and (4).

(2) Residential limited contractors shall have an owner, officer, RMI or employee, or a combination of those persons, who complete:

(a) A minimum of eight hours of continuing education as described in subsection (3)(a), for license renewals on or after October 1, 2011, and before October 1, 2013;

(b) A minimum of eight hours of continuing education, for license renewals on or after October 1, 2013 as follows:

(A) Five core hours as described in subsection (4)(a); and

(B) Three elective hours as described in OAR 812-021-0019.

(3) For a residential contractor renewing on or after October 1, 2011 and before October 1, 2013 continuing education hours shall consist of the following:

(a) Eight core hours consisting of the following:

(A) Three hours of BEST offered by the agency or an approved provider;

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(B) Two hours of education on one or more building codes or on “green” or sustainable building practices offered by an approved provider; and

(C) Three hours of education on laws, regulations, and business practices offered by the agency.

(b) Eight elective hours which may be satisfied by completing additional core hours or by completing other construction related courses or as otherwise set forth in OAR 812-021-0019.

(c) For contractors renewing on or after October 1, 2009, and before October 1, 2011, education completed on or after July 1, 2009, shall be considered education obtained during the license period.

(4) For a residential contractor renewing on or after October 1, 2013, continuing education hours shall consist of the following:

(a) Five core hours consisting of the following:

(A) Two hours of education on one or more building codes or on “green” or sustainable building practices offered by an approved provider; and

(B) Three hours of education on laws, regulations, and business practices offered by the agency.

(b) Eleven elective hours which may be satisfied by completing additional core hours or by completing other construction related courses or as otherwise set forth in OAR 812-021-0019.

(5) Courses shall be a minimum of one clock hour to qualify for one hour of continuing education credit.

(6) Credit shall not be given for a person repeating the same continuing education course during a two-year period.

(7) If, during the two years immediately preceding the expiration date of the license, a residential contractor served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the continuing education requirement is waived for that two-year period. This exemption applies only if the residential contractor is a:

- (a) Sole proprietor without employees;
- (b) Sole owner of a corporation; or
- (c) Sole member of a limited liability company.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0019

### Elective Hours — Continuing Education for Residential Contractors

(1) Elective hours may be earned by attending construction or construction business related offerings provided by any of the following:

- (a) Post-secondary institutions such as colleges or universities;
- (b) Trade schools;
- (c) Trade associations;
- (d) Professional societies;
- (e) Private companies;
- (f) Public agencies;
- (g) Business associations;
- (h) Contractor-provided in-house training programs;
- (i) Non-profit organizations; or
- (j) Manufacturers or businesses in the construction industry.

(2) Elective hours may be earned by attending trainings or demonstrations offered by building component manufacturers on product use, capabilities, or installation.

(3) Elective hours may be earned by attending education classes required to maintain another construction industry license, such as a certified home inspector or a registered professional engineer.

(4) Elective hours may be earned by participating as an officer of a construction trade or professional association or as a member of a contractor licensing board. Credit for continuing education earned under this subsection is limited to two (2) hours per license period.

(5) Elective hours may be earned by completing core classes not otherwise completed for core credit.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0023

### Carry Forward of Excess Hours — Continuing Education for Residential Contractors

If a residential contractor exceeds the requirement for continuing education in any license period, the residential contractor may carry forward a maximum of eight education hours into the next license period. The carry-forward hours will be credited as elective hours.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0025

### Provider Approval, Standards, Fees and Renewal for Core — Continuing Education for Residential Contractors

(1) The agency will review and approve providers offering core continuing education.

(2) Providers will apply for approval on a form prescribed by the agency. Providers may, but need not, apply for approval at the same time they apply for course approval.

(3) Providers seeking approval to offer training in BEST, building codes or “green” or sustainable building practices must submit the following to the agency:

- (a) Name, address and contact information of the provider;
- (b) Business entity type of the provider and, if applicable, the Corporation Division business registry number;
- (c) Description of provider business plan;
- (d) Description of the core subject area(s) provider intends to offer;

and

(e) Such other information or documentation as the agency may request.

(4) Providers must remit to the agency together with their application:

- (a) A non-refundable fee of \$2,000 if applying to offer BEST;
- (b) A non-refundable fee of \$500 if applying to offer building codes or “green” or sustainable building practices; or

(c) A non-refundable fee of \$2,500 if applying to offer both BEST and building codes or “green” or sustainable building practices.

(5) To qualify for approval, providers must:

(a) Certify the programs offered meet the minimum standards and content objectives established by the Board;

(b) Employ or contract with educators who have at least two years work experience or two years of education, or any combination of both, in the subject that they instruct;

(c) Be capable of entering and transmitting electronic data to the agency;

(d) Describe a process for prompt resolution of complaints by registrants;

(e) Describe a process for cancellations and refunding registrant payments; and

(f) Provide a surety bond in an amount of \$20,000 obligating the surety to pay registrants to whom the provider owes money for cancellation or other refunds that the provider fails to pay.

(6) Provider approval will be valid for two (2) years from the date the provider is approved by the agency.

(7) Providers must re-submit application and fees required under sections (3) and (4) of this rule for renewal of approval. Renewal of approval will be subject to the same requirements as initial approval.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0028

### Course Approval, Standards, Fees and Renewal for Core — Continuing Education for Residential Contractors

(1) The agency will approve courses that provide training in BEST, building codes, or “green” or sustainable building practices.

(2) Approved courses may be offered as an individual course or as part of a comprehensive curriculum.

(3) A provider seeking approval of its courses must submit the following:

(a) Course name, course description, objectives of the offered course, and number of hours of continuing education credit;

(b) A written description of the course educator’s credentials;

(c) Copies of the course materials provided to registrants as described in section (4)(b);

(d) Cost of the offered course(s) to registrant;

(e) For live classes and classes held in real-time:

(A) Anticipated date, time, place of the course; and

(B) Number of registrants that each course can accommodate;

(f) For self-study courses:

(A) Anticipated date when the course will first be offered;

(B) Description of provider’s procedures to answer student questions;

and

(C) The length of time a student has to complete the course and receive credit;

(g) If applicable, proof that the course is currently approved by Oregon Department of Consumer and Business Services, Building Code Division; and

(h) A non-refundable fee of \$50 per credit hour submitted for approval.

(4) To meet minimum standards for course approval, the provider must:

# ADMINISTRATIVE RULES

(a) Submit the course syllabus describing the course objectives and content on BEST, building codes, or “green” or sustainable building practices, as appropriate;

(b) Have written materials for each registrant of sufficient explanation and quality to provide information about the subject of BEST, building codes, or “green” or sustainable building practices, as appropriate; and

(c) Have no attendance restrictions except for payment of money or membership in the provider organization.

(5) Providers seeking to offer BEST must offer training substantially equivalent to criteria established by the agency.

(6) A course covering building codes must have current approval by the Oregon Department of Business and Consumer Services, Building Code Division before the agency will approve the course.

(7) Course approval will be valid for two (2) years from the date the course is approved by the agency.

(8) Providers must re-submit application and fees under this section for renewal of approval. Renewal of approval will be subject to the same requirements as initial approval.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0030

### Core Hours: BEST — Continuing Education for Residential Contractors

(1) The agency and providers approved by the agency as BEST providers may offer BEST.

(2) The agency may charge contractors for BEST.

(3) Approved providers may charge contractors for BEST in an amount determined by the provider.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0031

### Core Hours: Building Codes and “Green” or Sustainable Building Practices — Continuing Education for Residential Contractors

(1) Any provider approved by the agency in building codes or in “green” or sustainable building practices may offer training in their approved subject area.

(2) Approved providers may charge contractors for building code or “green” or sustainable building practice training in an amount determined by the provider.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0032

### Core Hours: Agency Law, Rules, and Business Practices — Continuing Education for Residential Contractors

(1) The agency will make available to all contractors education on agency laws, regulations, and business practices.

(2) The agency may charge contractors for the law, regulation training, and business practices.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0033

### Notification of Completion of Core Hours — Continuing Education for Residential Contractors

Provider will transmit data, as directed by the agency, notifying the agency when a contractor completes an approved course.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0034

### Notification of Completion of Elective Hours — Continuing Education for Residential Contractors

(1) Contractors may provide data, as directed by the agency, notifying the agency when a contractor has taken an elective course.

(2) Contractors will certify completion of elective hours upon renewal.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0035

### Agency Tracking of Hours — Continuing Education for Residential Contractors

(1) The agency will track completion of core hours.

(2) The agency may notify contractors, in advance of their renewal dates, of the number and type of core hours left to be completed before renewal.

(3) The agency will notify contractors, in advance of their renewal dates, of the reported elective hours and the number left to be completed before renewal.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0037

### Certification, Recordkeeping, and Review — Continuing Education for Residential Contractors

(1) Contractors shall maintain records of continuing education courses completed for a period of:

(a) 24 months after the renewal date for which the education was reported; or

(b) For a lapsed license, a period of 24 months after the date the license ceased to be lapsed.

(2) The agency may request any contractor’s continuing education records for review.

(3) If a contractor cannot prove that it completed the continuing education, the agency may suspend or refuse to renew the license until the contractor proves compliance or completes the missing courses.

(4) If an inactive contractor as described in OAR 812-021-0040(1) cannot prove that it completed the continuing education, the agency may refuse to convert the license to active status until the contractor proves compliance or completes the missing courses.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0040

### Inactive Status During the License Period — Continuing Education for Residential Contractors

(1) If a contractor is inactive for less than a year and seeks to renew in an active status, the contractor must complete the total continuing education hours required in OAR 812-021-0015 in order to renew.

(2) If a contractor is inactive for one year or more during the license period and seeks to renew in an active status, the contractor is not required to complete the continuing education hours as required in OAR 812-021-0015 in order to renew.

(3) If a contractor is inactive for any period of time and seeks to renew in an inactive status, the contractor is not required to complete the continuing education hours required in OAR 812-021-0015 in order to renew.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0042

### Lapse in License — Continuing Education for Residential Contractors

If a license lapses and the contractor applies for renewal as provided in ORS 701.063(4) and OAR 812-003-0300, the contractor must satisfy the continuing education requirement in OAR 812-021-0015. The contractor may satisfy the requirement by continuing education completed during the lapse period.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0045

### Claiming Continuing Education Credits — Continuing Education for Residential Contractors

(1) A contractor may claim continuing education hours for courses completed during the time an employee is employed by the contractor.

(2) If an employee completed continuing education before being hired by a contractor, the contractor may not claim those hours to satisfy its continuing education requirement.

(3) A contractor may claim continuing education hours for courses completed at the time the owner, officer or RMI is associated with the contractor.

(4) If an owner, officer or RMI completed continuing education before associating with a contractor, the contractor may not claim those hours to satisfy the continuing education requirement.

Stat. Auth.: ORS 670.310, 701.126 & 701.235  
Stats. Implemented: ORS 701.126  
Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

## 812-021-0047

### Personnel of More than One Contractor— Continuing Education for Residential Contractors

(1) If an employee who completes a continuing education course is employed by more than one contractor at the time the employee completes



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the course, each employing contractor may claim the continuing education hours.

(2) If an owner, officer or RMI who completes a continuing education course is associated with more than one contractor at the time the owner, officer or RMI completes the course, each affiliated contractor may claim the continuing education hours.

Stat. Auth.: ORS 670.310, 701.126 & 701.235

Stats. Implemented: ORS 701.126

Hist.: CCB 5-2009, f. 6-25-09, cert. ef. 7-1-09

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## Department of Administrative Services

### Chapter 125

**Rule Caption:** Parking and commuting rules for state owned buildings in Salem, Portland, and Eugene.

**Adm. Order No.:** DAS 7-2009

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 5-1-2009

**Rules Adopted:** 125-090-0002, 125-090-0135, 125-090-0150, 125-090-0160

**Rules Amended:** 125-090-0000, 125-090-0005, 125-090-0010, 125-090-0020, 125-090-0030, 125-090-0060, 125-090-0070, 125-090-0080, 125-090-0090, 125-090-0100, 125-090-0110, 125-090-0120, 125-090-0130, 125-090-0140

**Rules Repealed:** 125-090-0040, 125-090-0050

**Subject:** The proposed rule changes incorporate plain language, and revisions for ambiguity, consistent use of terms among the rules and between the sections. The proposed rules also incorporate changes based on legislation enacted since the laws were last amended and innovations in department practices.

**Rules Coordinator:** Yvonne Hanna—(503) 378-2349, ext. 325

#### 125-090-0000

##### Definitions

As used in this chapter 125, division 90 (“these rules”), unless the context requires otherwise:

(1) “Applicant” means any person applying to DAS for authorization to use a Parking Facility for motor vehicle or bicycle parking or other transportation use identified in these rules or authorization to participate in an alternative transportation modes program.

(2) “Alternative transportation modes” has the meaning given that term in OAR 125-090-0160(2)(a)(B).

(3) “Capitol Mall Parking Area” means that area within the City of Salem bounded by Church Street on the west, D Street on the north, Mill Street on the south and 13th Street on the east.

(4) “Commercial Parking” means parking made available by a private or public concern for which a use fee is charged.

(5) “DAS” means the Department of Administrative Services, Facilities Division, Parking and Commuting Services. The DAS address and web site information is published in Exhibit 1 to these rules.

(6) “Director” means the director of the Oregon Department of Administrative Services.

(7) “Hire Date” means the date of a State Employee’s initial hire to State service as recorded in the official personnel file for that employee.

(8) “Lease” means to charge or to pay a charge for the use of portions of the facilities and grounds in a Parking Facility for the parking of motor vehicles and other transportation uses.

(9) “Manager” means the manager of the Parking and Commuting Services, Facilities Division, Department of Administrative Services, or the Manager’s designee.

(10) “Official Work Station” means the building, office, assembly point or other similar location to which a State Employee is:

(a) Permanently assigned; or

(b) Scheduled to report for work for five or more consecutive business days, if a State Employee is not permanently assigned.

(11) “Park” means to stop, or to cause or allow to remain stopped, any vehicle or combination of vehicles, or any portion thereof, on any street, off-street-parking facility, or other public right of way including sidewalks, except such stops as are made in response to legal controls or requirements, conditions created by other traffic, emergencies related to the operation of the vehicle during the actual period of such emergency, or momentary stops for the expeditious loading or unloading of passengers.

(12) “Parking Facility” means any lot, grounds, parking structure, or facility owned, managed, controlled or administered by DAS and used or available for the parking of motor vehicles and bicycles and other transportation uses, including but not limited to those grounds and parking struc-

tures and facilities described in ORS 276.594 and those parking structures and facilities at the State office buildings in Eugene and Portland. Parking Facility also includes any additional grounds and parking structures or facilities designated by State Agencies to be managed, controlled or administered by DAS.

(13) “Permit” means an authorization issued in accordance with these rules to park a motor vehicle or a bicycle in compliance with the conditions specified in the authorization and these rules. It may also mean the placard or decal issued to identify a vehicle exercising the authorization.

(14) “Schedule of Base Rates and Charges” means the schedule of base rates and charges in OAR 125-090-0140, which rates and charges are adopted by DAS pursuant to 125-090-0005 and 125-090-0020 for the use of portions of the facilities and grounds in Parking Facilities for the parking of motor vehicles and bicycles and other transportation uses.

(15) “Service Vehicle” means a motor vehicle used primarily for the transport of goods or services from a business to State Agency premises.

(16) “State” means the State of Oregon.

(17) “State Agency” means any elected or appointed officer, board, commission, department, institution, branch or other unit of the state government.

(18) “State Employee” means any employee, officer, board or commission member, contractor, or volunteer worker of the State or, for the period of the assignment, any individual assigned to a State Agency by the individual’s regular employer.

(19) “State Employee with a Disability” means a State Employee who has been issued a disabled person parking permit by the Oregon Department of Transportation (ODOT) under ORS 811.602.

(20) “Writing” means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, or made in electronic form such as e-mail and facsimile, and intended to represent or convey particular ideas or meanings.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 190.240, 276.591 - 276.601, 283.100 & 283.110  
Stats. Implemented ORS 98.805, 190.240, 276.591 & 283.110

Hist.: GS 3-1981(Temp), f. 8-28-81, ef. 10-1-81; GS 7-1981, f. 11-23-81, ef. 1-1-82; GS 1-1992, f. 1-28-92, cert. ef. 2-1-92; GS 13-1992(Temp), f. 6-22-92, cert. ef. 7-1-92; GS 17-1992, f. & cert. ef. 8-27-92; DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009; f. & cert. ef. 7-1-09

#### 125-090-0002

##### Purpose

(1) DAS establishes these rules to regulate the use of Parking Facilities for parking of motor vehicles and bicycles and to provide for other transportation uses consistent with the policies stated in ORS 276.591.

(2) DAS, through the Director and other administrative officers designated by the Director, is authorized to implement and to provide for the enforcement of these rules.

(3) The Director of DAS delegates to the Manager the authority and responsibility for the implementation, administration and enforcement of these rules.

(4) The Manager is authorized to render written and oral interpretations and to adopt procedures necessary for the proper administration and enforcement of these rules. The Manager’s authority includes but is not limited to determining:

(a) Priorities for uses of Parking Facilities and management of space assignments;

(b) Incentives and other methods to encourage use of alternative transportation modes;

(c) The number and types of parking and other permits, and permit sizes, forms and content;

(d) Conditions under which grounds and parking structures or facilities may be used; and

(e) Eligibility and application procedure for the parking and other permits, the uses granted by each type of permit, and the circumstances when a permit must be displayed.

(5) DAS may install traffic control devices and use other appropriate signs to post notice of these rules at Parking Facilities. DAS may issue parking prohibitions and use restrictions at each Parking Facility that govern the use and operation of such facility; DAS shall give notice of such prohibitions or restrictions by posting appropriate signs in plain view.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 190.240, 276.591 - 276.601, 283.100 & 283.110  
Stats. Implemented: ORS 98.805, 190.240, 276.591 & 283.110  
Hist.: DAS 7-2009, f. & cert. ef. 7-1-09

#### 125-090-0005

##### Rates for Parking Facility Uses; Time of Review; Notice

(1) This rule provides for establishing and reviewing and revising rates and charges for the use of Parking Facilities.

(2) DAS shall conduct an annual review of the rates and charges to be imposed for parking and other transportation uses in the various Parking



# ADMINISTRATIVE RULES

Facilities and may alter any rates or charges if DAS determines a current consideration of the factors listed in OAR 125-090-0020 justifies the change.

(3) In addition to establishment and review of rates and charges described in sections (1) and (2) of this rule, DAS may alter rates and charges periodically or for periods DAS determines appropriate when Parking Facility occupancy exceeds expected levels. Such rate and charge changes may be temporary or long-term and may be used to adjust revenue levels to those levels required considering those factors identified in OAR 125-090-0020.

(4) Each time DAS changes rates and charges, it shall adopt and publish a Schedule of Base Rates and Charges. The new published Schedule of Base Rates and Charges supersedes all previously published Schedules and the rates and charges originally established in OAR 125-090-0140.

(a) The Schedule of Base Rates and Charges must include:

(A) Any revised long-term rate or charge changes; and

(B) The size and the proposed duration of any temporary rate or charge change.

(b) DAS shall publish the revised rates and charges prior to the effective date of the new Schedule of Base Rates and Charges by posting the revised rates and charges on the DAS web site listed in Exhibit 1 to these rules and by distributing notice of the revised rates and charges, in writing, to:

(A) All individuals who lease parking subject to the rate or charge change at the individual's last e-mail or physical address on file with DAS;

(B) All State Agencies which lease, or have employees who lease, parking subject to the rate or charge change; and

(C) All State Agencies which occupy quarters located in the Capitol Mall Parking Area, or elsewhere in the City of Salem, the Portland State Office Building and the Eugene State Office Building.

(5) A permit holder is solely responsible for immediately notifying DAS of any change in address, e-mail, place of employment, and vehicle license number.

Stat. Auth.: ORS 98.805 - 98.818, 184.340 & 276.591 - 276.601

Stats. Implemented ORS 98.805, 276.591 & 276.601

Hist.: GS 2-1983(Temp), f. & ef. 1-7-83; GS 4-1983, f. & ef. 3-1-83; GS 4-1988, f. & cert. ef. 6-23-88; DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2009, f. & cert. ef. 7-1-09

## 125-090-0010

### Parking Facilities Subject to DAS Management and Control

A current list of Parking Facilities subject to these rules is published in Exhibit 2 to these rules.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2009, f. & cert. ef. 7-1-09

## 125-090-0020

### Base Rates for Parking; Adjustments; Special Rates for Other Uses

(1) Under ORS 276.594, DAS has authority to establish rates and charges for parking motor vehicles and for other transportation uses in Parking Facilities. DAS declares that there is a market for Commercial Parking available within five blocks of the Parking Facilities in each of the cities of Salem, Portland and Eugene.

(2) DAS shall establish charges for use of Parking Facilities consistent with the policies stated in ORS 276.591, including charges for parking motor vehicles, charges for parking bicycles in secure parking areas in Parking Facilities and in bicycle lockers, and other charges identified in these rules for Parking Facilities.

(3) DAS shall calculate the charges for using Parking Facilities upon a base rate for uncovered unreserved parking for motor vehicles that considers the following factors:

(a) DAS's actual and anticipated expenses for administration of motor vehicle parking in Parking Facilities;

(b) Local market conditions and prevailing charges for Commercial Parking; and

(c) DAS's actual and anticipated expenses undertaken to operate, maintain and improve Parking Facilities, including debt service, depreciation, ad valorem property taxes as required by ORS 276.592, and reasonable capital development funds, and revenue recovery adequate to offset any amounts lost by DAS through the provision of Carpool incentive rates under 276.601 and through encouragement of the use of alternative transportation modes.

(4) Notwithstanding subsection (3), DAS may:

(a) Establish charges at less than the base rate under section (3) for the parking of motorcycles in Parking Facilities.

(b) Provide open bicycle racks at unsecured Parking Facilities at no charge for the use of the racks, and establish charges at less than the base rate for the parking of bicycles in bicycle lockers and secured areas in Parking Facilities. In setting bicycle parking rates, DAS shall consider the administrative cost of bicycle registration and the other Parking Facility expenses listed in subsection (3) above that are related to bicycle registration and parking.

(c) Encourage the use of Carpools and offer Carpool incentive reductions to the base rate based upon the number of participating riders.

(d) Furnish parking spaces free or at rates reduced from the base rate in designated areas where conditions show no or a reduced market for Commercial Parking, and for those State Employees participating in a program that encourages the use of parking spaces in noncongested areas.

(e) Establish charges less than the base rate where DAS determines that community hardship or significant reduction in demand for the parking in Parking Facilities is likely to occur;

(f) Establish charges in excess of the base rates, and for each Parking Facility, to recognize the following conditions:

(A) Reserved parking;

(B) Improved parking (including charging stations for electric cars);

(C) Covered parking (fully covered parking);

(D) Secured parking (limited public access);

(E) Local market conditions and prevailing charges for Commercial Parking;

(F) Parking that is made available to persons who are not State Employees;

(G) Administrative costs arising from use of Parking Facilities in violation of these rules.

(g) Negotiate a unique rent or charge structure based on the uses provided by a special use agreement to benefit the general public, the local community or the State. DAS shall determine all rates and charges applicable to special use agreements through an analysis of similar activities, rates and charges at comparable Parking Facilities and consideration of overall benefit to the general public and the State.

(5) In establishing the base rate for parking at each of the Parking Facilities, DAS may evaluate the demand and practicality of charging for nighttime and weekend use of such parking. Where the demand and estimated revenues are deemed sufficient to warrant the additional administrative expense, DAS may make certain of its Parking Facilities available to State Employees and others for parking and other transportation uses between the hours of 7 p.m. and 7 a.m. on weekdays, and anytime on weekends. Rates established for such nighttime and weekend parking use must reflect local market conditions for Commercial Parking. In those Parking Facilities where charges for evening or weekend parking are established by DAS, DAS shall provide night and weekend parking at no additional charge to persons who have registered for parking with DAS and have paid the appropriate daytime charge for a Parking Facility. DAS shall charge all other persons for nighttime or weekend parking at the amounts specified in the Schedule of Base Rates and Charges.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.004, 276.385, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

## 125-090-0030

### Carpool Incentives

(1) When capitalized in these rules:

(a) "Carpool" means a registered group of an eligible State Employee and one or more employed others who use a ride-sharing arrangement to commute to work in a Carpool area no fewer than two-thirds of the working days in each calendar month.

(b) "Carpool Area" means any one of these qualifying Carpool areas:

(A) "Downtown Eugene Area" means that qualifying Carpool area within the City of Eugene bounded by Third Street on the north, Fairmount Street on the east, 24th Street on the south and Washington Street on the west.

(B) "Downtown Portland Area" means that qualifying Carpool area within the City of Portland bounded by Hoyt Street on the north, the Willamette River on the east and I-405 on the south and west.

(C) "Lloyd District Area" means that qualifying Carpool area within the City of Portland bounded by Broadway on the north, N.E. 16th on the east, I-84 on the south and Martin Luther King Jr. Blvd. on the west.

(D) "Salem Area" means that qualifying Carpool area within the City of Salem bounded by Market Street on the north, 17th Street on the east, Mission Street on the south and the Willamette River on the west. The Capitol Mall Parking Area is in the Salem Area.

(c) "Participant" means a registered member of a Carpool.

(d) "Primary Participant" means the State Employee Participant with responsibility for certifying Participant membership in a Carpool and paying the charge for the monthly permit for the Carpool.

(2) To encourage participation in Carpools, DAS may offer priority parking space assignments and Carpool reductions to the base rate established in the Schedule of Base Rates and Charges. Such incentive reductions will be based upon the number of Participants in each Carpool.

(3) A State Employee must complete an application and a State payroll deduction authorization for the applicable amount stated in 125-090-0140 to obtain a monthly permit at a Carpool rate.

# ADMINISTRATIVE RULES

(a) In addition to providing any information required in the application form prescribed by DAS, an Applicant shall provide the make, year and model of all vehicles participating in the Carpool, and provide all of the following information for each Participant:

(A) Name;

(B) Work e-mail, phone number and address.

(b) All Participants must sign the application and semi-annual recertification. While in a Carpool, a Participant may not be registered concurrently in any other Carpool or Smart Commuter Program, nor may a Participant lease concurrently a parking space in any other public or private parking facility.

(c) DAS will issue only one permit number per Carpool, which number is transferable among the Participant vehicles. This permit must be conspicuously displayed in a Carpool vehicle parked at a Parking Facility. The monthly permit authorizes Carpool parking in an assigned space or an unreserved space in an assigned Parking Facility.

(d) Carpool certifications under this section expire on the last day of each semi-annual period. DAS may not renew a monthly permit with a Carpool incentive reduction until DAS receives the required recertification.

(4) In order to qualify for an incentive reduction, each Carpool must:

(a) Include at a minimum two employees, at least one of which must be a State Employee in the State payroll system, and all of which must work within the Salem Area, the Downtown Eugene Area, the Lloyd District, or the Downtown Portland Area; and

(b) Certify semi-annually in writing to DAS the composition of the Carpool, and that all Participants ride in the Carpool no fewer than two-thirds of the working days in each calendar month. DAS will notify the Primary Participant when recertification is required.

(5) DAS will register the Carpool in the name of the Primary Participant who will receive a Carpool incentive reduction on the monthly permit.

(6) The Primary Participant is responsible to report to DAS in writing immediately any changes in Participants and vehicles in the Carpool. Participants added or removed from the Carpool before the fifteenth of the month will affect the Carpool rate for that month. Participants added or removed from the Carpool after the fifteenth of the month will affect the Carpool rate for the following month.

(7) A Carpool or parking space assignment may be transferred within the Carpool from the Primary Participant to another State Employee Participant who has been a member of the Carpool for a minimum of six months, so long as the group continues to meet the conditions outlined in section (4) of this rule. The new Primary Participant must submit in writing to DAS the composition of the Carpool membership at the time the parking permit or parking space assignment is transferred. The Participants must complete the process in section (3) of this rule.

(8) A permit for a Carpool authorizes parking for only one vehicle in the Carpool Area at any time. A permit for a Carpool is valid only in the vehicle where it is displayed and only for the vehicles registered to the Carpool. Both vehicles violate this rule if more than one vehicle uses or attempts to use the same permit in the qualifying Carpool Area at the same time. DAS limits to six, in any thirty-day period, the number of times a Carpool may call in to be authorized by vehicle license to park without displaying the permit. An oral authorization by DAS to park without displaying a permit is invalid if the numbered permit for the Carpool is found displayed at the same time in another vehicle in the Carpool Area.

(9)(a) Subject to the discretion of DAS, which considers such factors as the wait list, a Parking Facility assignment or a reserved parking space assigned to a Primary Participant in a Carpool may be retained by or transferred to an individual State Employee Participant of the Carpool at the non-Carpool rate if that Participant has been a member of the Carpool for at least the two immediately preceding years, and no other transfer of the Parking Facility assignment or assigned reserved parking space is requested by any other Participant of the Carpool.

(b) DAS will give priority among two or more requesting eligible Participants in the following order to the Participant who:

(A) Was the current Primary Participant of the Carpool;

(B) Has been a continuous member of the Carpool for the longest time; or

(C) Holds the earliest Hire Date.

(10) DAS shall review the incentives available for Carpools from time to time, and DAS may adjust the incentives and provide additional incentives to encourage the use of Carpools. The Carpool incentive reductions are in the Schedule of Base Rates and Charges.

(11) DAS may deny renewal of Carpool parking authorization for violation of this rule. Under OAR 125-090-0130, DAS may cite and prosecute each Participant for any violation of these rules.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

## 125-090-0060

### Terms Under Which Parking Facilities Are Leased

(1) Parking Facilities are for the parking of motor vehicles and bicycles and other transportation uses as DAS determines are appropriate. In determining the use of Parking Facilities DAS shall first give priority to the needs of State Agencies and State Employees for the transaction of state business. DAS permits parking of State Employee, visitor, service, and State-owned vehicles at Parking Facilities for transacting business in State offices only, unless expressly otherwise authorized by DAS. DAS may authorize the general public to use those parking spaces not required by such Agency and State Employee vehicles.

(2) DAS may determine the classes and availability of parking spaces in Parking Facilities (reserved, unreserved, metered, or other), and the method for charging users for the parking uses (monthly, daily, metered or other), and where and if display of a permit is necessary in order to lawfully exercise parking authorization. Parking by all persons is subject to availability of parking spaces and these rules.

(3) The State, DAS, and its employees are not responsible for any damage to or loss of a vehicle or its contents or injury to any person arising from the use of Parking Facilities.

(4) DAS conditions all authorization to use Parking Facilities on the requirement that the user comply with these rules and all applicable State and local laws and ordinances.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

## 125-090-0070

### Payment for Monthly Use of Parking Facilities

(1) State Employees, who are in the State payroll system, shall pay for monthly use of Parking Facilities by payroll deduction. The deduction must be authorized in writing by the State Employee on the form prescribed by DAS as part of the parking application process. This authorization shall remain in force until the parking permit is terminated or the employee terminates State employment or is otherwise ineligible for the parking assignment. Monthly payroll deductions are made automatically in arrears and are made from a State Employee's final payroll check for parking charges incurred for any part of a final month. A State Employee requesting a payroll deduction for parking charges is solely responsible for the content of the payroll deduction request and for verifying the accuracy of the amount of a payroll deduction. A State Employee shall notify the manager of any disputed payroll deduction for parking charges not later than 15 days after the date of the deduction.

(2) State Agencies shall pay DAS in arrears for monthly parking charges monthly or as otherwise authorized by DAS in the parking application process.

(3) Other eligible Parking Facility users not included in subsections (1) and (2) may pay for monthly parking charges by check, money order, or debit/credit card for the exact amount due. Payment by this method is due in advance by the first calendar day of each month. If payment is not received by the fifth calendar day of the month, the parking permit is void and the parking assignment is immediately cancelled. Such payment must be made in person or by mail or, when available, on line to the Parking and Commuting Services Office at the address listed in Exhibit 1 to these rules.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

## 125-090-0080

### Payment for Daily Use of Parking Facilities

(1) Parking Facility users may obtain single daily parking permits or booklets from DAS at the address listed in Exhibit 1 to these rules. Payment may be made in advance, in person, in cash or by check, money order or debit/credit card, or on-line, when available. The permit is valid when properly displayed on the date stated on the permit or when properly completed and displayed if purchased in booklets. A valid daily permit authorizes the bearer to park as specified on the back of the permit, or as otherwise authorized by DAS at issue of the permit or on the date of completion.

(2) Users of Parking Facilities equipped with permit vending machines (pay-and-display) may obtain daily and part-day parking permits from the machines using a debit/credit card. The permit is valid when properly displayed on the date stated on the permit.

(3) Parking Facility users may pay for daily parking at metered spaces with a cash key or the proper deposit of coin. Cash keys are available at the Parking and Commuting Services office.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 6-2001, f. & cert. ef. 11-1-01; DAS 2-2002, f. & cert. ef. 7-30-02; DAS 7-2009, f. & cert. ef. 7-1-09

# ADMINISTRATIVE RULES

## 125-090-0090

### Permit Cancellation; Refunds; Replacement Permits

(1) A permit holder may cancel a monthly permit at any time for any reason, by providing notice in writing to Parking and Commuting Services and returning any permit or placard issued by DAS. The notice must specify the DAS assigned permit number to be cancelled and the effective date of the cancellation. The permit holder is obligated to pay for the permit until notice of cancellation is received by DAS.

(2) DAS will refund payment only for any unused time on monthly permits as follows:

(a) DAS shall prorate to the nearest dollar any refund due the individual surrendering a monthly permit, based upon the number of days unused on the day the permit is received in the Parking and Commuting Services office.

(b) DAS will not prorate charges or refund payment for any other permit.

(c) DAS shall refuse to consider any dispute about a parking charge presented more than 15 days after the payment.

(3) A permit holder canceling a permit to use any of the secured facilities, rooms or lockers for bicycle parking is not entitled to any refund of the current year's annual charge. Any key issued to a permit holder for bicycle parking in a Parking Facility is DAS property. The permit holder must return the key to DAS when the permit expires or is cancelled. Upon receipt of the key DAS will refund any key deposit paid.

(4) A monthly permit issued to a State Employee is cancelled effective the date the permit holder's employment or other agreement for services to the State ends.

(5) Placards and decals issued by DAS are the property of DAS and must be removed from the vehicle and returned to the Parking and Commuting Services Office with any application for a refund. Refunds are computed from the date the permit is returned or DAS deems it lost or stolen.

(6) DAS may provide replacement permits to monthly parking permit holders at the charge stated in OAR 125-090-0140. Permit holders making a request for replacement permits for:

(a) Newly acquired vehicles or to replace damaged permits are required to remove the existing permit and return it to the Parking and Commuting Services Office. DAS may not make a replacement under this subsection if holder is unable to produce evidence of the damaged permit.

(b) To replace lost or stolen permits, permit holders are required to sign a statement attesting to the circumstances of the loss or theft. Permit holders are required to contact the Parking and Commuting Services Office immediately upon discovery of the loss or theft of a permit. A replacement permit will be issued only for the vehicle from which the permit has been stolen, unless the vehicle was stolen.

(7) DAS reserves the right to terminate immediately upon notice to the permit holder, or at such later date as DAS may establish in such notice, a monthly or reserved permit when it is in the best interest of the State to do so.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601  
Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

## 125-090-0100

### Other Parking and Transportation Uses Provided; Visitor with Disabilities

Notwithstanding OAR 125-090-0010 through 125-090-0090, DAS may provide the following types of parking and other transportation uses in Parking Facilities:

(1) Reserved or unreserved free parking designated for temporary use by persons with disabilities visiting State offices. Vehicles occupying such spaces shall bear a valid and properly placed parking decal or placard issued by ODOT. Visitors with disabilities who need special access to parking to transact business at State offices and State Employees with disabilities who need special access to parking when visiting a State facility not the State Employee's Official Work Station may ask DAS in advance of the visit or in person at the time of the visit for reasonable accommodation. The DAS address and web site information is published in Exhibit I of these rules.

(2) Designated reserved or unreserved free daily or monthly parking for those statewide elected officials who park in Parking Facilities.

(3) Time-limited metered or free spaces for use by persons transacting business in state offices not the person's Official Work Station.

(4) Free parking spaces designated for the exclusive use of vehicles during the loading and unloading of passengers or cargo, and reserved for the exclusive use of Service Vehicles.

(5) Spaces designated by special use agreement for parking and other Parking Facility uses to benefit the general public, the local community or the State. DAS may make special use permits available if the issuance of the special use permit does not displace a paid permit holder. Parking avail-

ability is the decision of the Manager or designated staff. For some uses, DAS may require a written agreement with regard to permit distribution, charges, and related considerations.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601  
Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

## 125-090-0110

### Priority of Assignment; Reassignment; Waiting Lists

DAS finds that there is more demand for motor vehicle parking than space available in Parking Facilities. Subject to subsection (11) of this rule, DAS shall reasonably attempt to observe the descending order of Applicant priority in Sections (1) through (9) for assigning vacant monthly motor vehicle parking spaces in Parking Facilities. The Manager may, in the Manager's sole discretion determine whether or not a parking space is vacant or available for assignment under this rule.

(1) State Employees with a Disability (see OAR 125-090-0120);

(2) State-owned motor vehicle that receives daily or frequent use, or is regularly used by volunteers or field office personnel;

(3) State Employees whose State Agency certifies that the State Employee must have a vehicle at the work site (only at the request of the director of the State Agency and with the approval of the Manager);

(4) State Employee who:

(a) Requests to return to a parking assignment after leaving the assignment to use alternative modes of transportation for a maximum of three months test period. After three months absence, priority "4" status is removed.

(b) Is currently parking in a Parking Facility and has moved from an Official Work Station at one location to an Official Work Station at another location within the Capitol Mall Parking Area, the Eugene State Office Building or the Portland State Office Building;

(c) Is currently parking in a Parking Facility and has transferred from one State Agency to another within the Capitol Mall Parking Area, the Eugene State Office Building or the Portland State Office Building;

(d) Returns from leave from DAS authorized parking within less than one year (or within the period of active service plus 30 days if absent from state employment more than a year by reasons of service in the uniformed services as defined in the USERRA (38 U.S.C. 4301-4333)). For purposes of this rule, a State Employee on leave without pay from State employment for one or more pay periods is on leave from DAS authorized parking until returned to the State payroll system; or

(e) Is currently parking in a Parking Facility and asks for reassignment to a reserved space within the same Parking Facility.

(5) Carpool vehicles — Primary Participant with three or more other Participants;

(6) Carpool vehicles — Primary Participant with two other Participants;

(7) Carpool vehicles — Primary Participant with one other Participant;

(8) State Employee single occupant vehicle;

(9) A single occupant vehicle with no State Employee.

(10) DAS may maintain a waiting list for persons interested in parking at a Parking Facility and at a particular reserved space within a Parking Facility. DAS will consider the priority level of the Applicant and Applicant's position on the waiting list based on the date of the request when making a parking assignment. Manager may, by policy, limit the number of waiting list positions that one person may hold simultaneously.

(11) DAS has the exclusive power to assign and reassign use of space in Parking Facilities. DAS reserves the right to limit the use of a Parking Facility at or near a State Agency office to the parking needs of the nearby State Agency and the State Agency's employees. The Manager may temporarily or permanently reassign reserved spaces, at any time upon notice to permit holder, when the Manager determines reassignment is in the best interest of the State. Reassignment may include a different space and a different Parking Facility.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601  
Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 6-2001, f. & cert. ef. 11-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

## 125-090-0120

### General Rules; Parking for State Employees with Disabilities and Other Particular Rules

(1) Persons operating vehicles in Parking Facilities shall be familiar with and follow these rules. Copies of these rules are available at the address listed in Exhibit 1.

(2) Users of all Parking Facilities shall observe the following general rules:

(a) A person may not stop or park a motor vehicle in a Parking Facility at a time or in an area not specifically designated for parking motor vehicles. Unattended vehicles are permitted only in designated parking spaces.



# ADMINISTRATIVE RULES

(b) The basic speed rule (ORS 811.100) applies to use of all vehicles in all Parking Facilities.

(c) Pedestrian traffic has the right of way over vehicular traffic in any place in the Parking Facilities.

(d) The maximum speed is ten miles per hour unless otherwise posted at a lower speed.

(e) Users shall obey all directional arrows, signs, traffic control devices and other posted instructions.

(f) Motor vehicle maintenance and repair is prohibited in Parking Facilities without the prior approval of DAS.

(g) A person may not use Parking Facility property for the purpose of storing an inoperable motor vehicle or other personal property, including bicycles. Vehicles that have broken down in a Parking Facility and that cannot be removed must be reported at once to DAS. Inoperable vehicles must be removed from the Parking Facility within 24 hours, or will be subject to removal at the owner's expense. Bicycles stored in violation of this section are subject to the process in OAR 125-090-0150. Other personal property stored at a Parking Facility longer than five consecutive days will be considered unclaimed property under State law and subject to removal at the owner's expense.

(h) Persons may park in designated loading zones only while loading and unloading people and goods, not to exceed 15 minutes unless otherwise posted.

(i) Use of skateboards, roller blades, roller skates, in-line skates or similar devices is prohibited in Parking Facilities. DAS may allow an exception to this rule for State-sponsored and supervised classes, programs and events.

(j) Each Parking Facility user is individually responsible to secure that user's vehicle and its contents from theft.

(k) Except as authorized in advance by DAS, a person may not use Parking Facilities premises, including utility connections, for any purpose other than vehicle parking.

(l) Vandalism is prohibited at all times.

(m) Any person who trespasses in a Parking Facility may be subject to arrest for criminal trespass under ORS 164.243 or 164.245 or applicable local law or ordinance.

(n) A person issued a permit shall display it according to the instructions DAS provides with the permit.

(o) A person shall not display a forged or altered permit, or display a permit reported lost or stolen.

(p) Except as DAS authorizes for statewide elected officials and for persons engaged in official DAS business and as authorized under OAR 125-090-0160(2), no State Employee may park a motor vehicle for free at any unmetered Parking Facility space in the Capitol Mall Parking Area.

(q) State Employees may use metered visitor spaces at the employee's Official Work Station with proper payment.

(3) Users of the following types of Parking Facilities and permits shall observe these additional rules:

(a) Parking for State Employees with Disabilities.

(A) On request from a State Employee with a Disability otherwise eligible to park in a Parking Facility, DAS will provide a parking space in the Parking Facility as close as reasonably possible to the building entrance of the person's Official Work Station. DAS may temporarily assign a State Employee with a Disability to a visitors' disabled accessible space or metered space at the monthly charge appropriate for the space assigned.

(B) In order to receive a State Employee with a Disability parking assignment under this rule or priority assignment under OAR 125-090-0110(1), a State Employee must hold a valid disabled person parking permit issued by ODOT under ORS 811.602.

(C) A State Employee with a Disability is prohibited from using an ODOT disabled person parking placard or decal at a Parking Facility within three blocks of the State Employee's Official Work Station unless expressly otherwise authorized by DAS.

(b) Reserved Parking Space.

(A) A reserved space in a Parking Facility is reserved to the permit holder for parking only on weekdays, unless otherwise posted.

(B) A permit holder or the holder's designee named in writing at DAS may contact Parking and Commuting Services to report an unauthorized vehicle in the permit holder's reserved space. When a reserved space is occupied by an unauthorized vehicle, DAS will authorize the displaced vehicle to park at a nearby Parking Facility and will cite the unauthorized vehicle.

(c) Unreserved Unmetered Parking Facilities.

(A) All persons parking in unreserved unmetered spaces in Parking Facilities must display a valid permit for the Parking Facility where the vehicle is parked. Parking permits for unreserved spaces in Parking Facilities are valid only when displayed as instructed by DAS and clearly visible at all times.

(B) A holder of a permit to an unreserved Parking Facility that is full may park in an available space in another unreserved Parking Facility with

a call or voice mail message to DAS. The call or message must include the permit holder's name, permit number, vehicle license number, time of the call or message, which Parking Facility is full, and where the vehicle is parked.

(d) Metered Spaces.

(A) Except as otherwise authorized by DAS, a person may park at a parking meter only with proper payment.

(B) Meters are enforced at the times and days posted on the individual meters.

(C) Vehicles must be parked head-in at metered parking except at parallel parking spaces.

(e) Motorcycle permits allow motorcycles, power scooters and mopeds to be parked at any time in areas designated as "Motorcycle Parking" in any Parking Facility. Motorcycle, power scooter, and moped parking is prohibited in spaces designated for bicycle parking.

(f) Service Vehicles identified with the name of the company on the vehicle may park in designated service spaces for the posted time limits while providing services to State Agencies. Unmarked Service Vehicles must display a valid DAS permit to park at a designated service space. No Service Vehicle, marked or unmarked, is permitted to park for free at any other space or metered area.

(g) Visitors may park at any metered space with proper payment. Visitor parking spaces are provided in some Parking Facilities and in posted spaces. Visitor permit holders shall not park in reserved or otherwise use-limited spaces, loading zones, fire lanes, or no-parking zones.

(h) Bicycles.

(A) A person shall not park a bicycle in any Parking Facility except in those areas specifically designated by the presence of racks or other devices for the parking of bicycles or by the posting of signs designating the space or area as a "bicycle parking area."

(B) Bicyclists shall secure their bicycles from theft through the use of locks or chain devices.

(C) Bicycles may be parked with a paid permit in secure Parking Facilities and bicycle rooms and lockers. Bicycles may be parked without displaying a paid permit at racks located in the public parking areas in Parking Facilities.

(D) Bicycles parked in any area designated for motor vehicle parking, or chained to signposts, stairwells, trees or other structures not designated for bicycle parking are subject to being removed at the owner's expense, without notice and impounded according to OAR 125-090-0150.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2009, f. & cert. ef. 7-1-09

## 125-090-0130 Enforcement

(1) The Department shall investigate and administer the application of these rules in the designated Parking Facilities, with its own personnel or it may enter into agreements with other State Agencies, public jurisdictions or private concerns to provide such services.

(2) The Department may enter into agreements with local jurisdictions to adjudicate parking citations issued in accordance with these rules.

(a) Such an agreement exists with the City of Salem to cover the Parking Facilities in the City of Salem, in accordance with Salem Revised Code, Chapter 102. Citations shall be processed and prosecuted in the Municipal Court of the City of Salem.

(b) Such an agreement exists with Multnomah County to cover the Parking Facilities at the Portland State Office Building. Citations shall be processed and prosecuted in the District Court of the State of Oregon for Multnomah County.

(c) Such an agreement exists with the City of Eugene to cover the Parking Facilities within the City of Eugene. Citations shall be processed and prosecuted in the Municipal Court of the City of Eugene.

(3) Parking Facilities shall be subject to all local parking and traffic ordinances. Such ordinances are adopted and made a part of this rule.

(4) Bails and penalties shall be as indicated on the citation.

(5) Vehicles found to be in violation of these rules may be impounded in place or towed away. If, within three days after a vehicle has been impounded, no person has appeared to claim and establish ownership or right to possession thereof, the Department shall research the name and address of the person entitled to possession of such vehicle and send notice to such person by mail at his or her last known address. The notice will indicate the location of the impounded vehicle, the amount of the delinquent parking fees, fines, bail costs, penalties, impoundment costs and other accrued charges against the same, and shall ask if the owner wishes to regain possession of the vehicle by paying such costs. Release of the vehicle will be made only upon receipt of such payment. Unclaimed vehicles will be disposed of in accordance with law.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100

Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601

Hist.: DASII 1-1996, f. & cert. ef. 3-1-96; DAS 7-2009, f. & cert. ef. 7-1-09

# ADMINISTRATIVE RULES

## 125-090-0135

### Refusal to Issue or Renew; Appeal Process

(1) DAS may refuse to authorize parking to, and may refuse to renew the authorization of, any person who in the previous six months:

- (a) Made a material misrepresentation or false statement in the application or certification for a permit,
- (b) Failed to comply with a condition of a permit,
- (c) Displayed a forged or altered permit or a permit reported lost or stolen,
- (d) Failed to pay the appropriate charges for Parking Facilities use,
- (e) Caused damage to Parking Facilities property, or
- (f) Failed to comply with the recertification requirements of a permit.

(2) DAS may refuse to issue or to renew authorization for any of the reasons stated in this rule only after giving notice and opportunity for a hearing. DAS shall send a notice to Applicant by certified mail and by e-mail, when available, of DAS's intent to refuse to issue or renew authorization to park. DAS shall send the notice to the mail and e-mail addresses in the refused application or last address on file with DAS.

(3) The Manager shall provide an opportunity for a hearing of disputed refusals to issue or renew if requested in writing by the appealing party. The request for hearing on a refusal to issue or renew must be received by the Department within 14 days of the notice. The Manager shall conduct such hearing without formal rules of evidence and shall provide an opportunity for presentation of circumstances surrounding the disputed decision. The Manager shall issue a decision in writing after the hearing. The Manager is not required to make findings of fact and conclusions of law. The Manager's decision is final.

(4) When DAS has refused to renew a parking permit, a permit holder shall immediately return all permits and placards to DAS.

(5) A person whose authorization to use Parking Facilities is refused or not renewed under this section is not eligible to apply for use of Parking Facilities for a period to be determined by Manager based on the facts of the circumstances of the refusal or non-renewal and whether the person has previously been the subject of refusal or non-renewal by DAS.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented: ORS 98.805, 184.340 & 276.594  
Hist.: DAS 7-2009, f. & cert. ef. 7-1-09

## 125-090-0140

### Schedule of Base Rates and Charges for Parking Facilities

Exhibit 3 contains the Schedule of Base Rates and Charges for Parking Facilities adopted by DAS pursuant to OAR 125-090-0005 and 125-090-0020. Unless otherwise specified in the Schedule, the rates published in the Schedule supersede all previously published schedules for parking and other Parking Facility uses subject to these rules.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601  
Hist.: DAS II 1-1996, f. & cert. ef. 3-1-96; DAS 7-2000(Temp), f. & cert. ef. 12-11-00 thru 6-8-01; DAS 4-2001, f. 5-31-01, cert. ef. 6-1-01; DAS 6-2001, f. & cert. ef. 11-1-01; DAS 7-2009, f. & cert. ef. 7-1-09

## 125-090-0150

### Authority to Remove or Impound Bicycles

(1) DAS may impound any bicycle parked in violation of OAR 125-090-0120(3)(h)(D) or causing a safety hazard in a Parking Facility or any bicycle abandoned in a Parking Facility by locking it at the Parking Facility or removing it to an impounded storage area. A bicycle left overnight longer than seven consecutive days without authorization from DAS Parking is considered stored in violation of these rules. Bicycles stored at a Parking Facility in violation of these rules and bicycles not removed from a secure space for more than thirty days after a bicycle permit expires will be considered abandoned.

(2) DAS shall reasonably attempt to leave a notice with DAS contact information at a bicycle locked at the Parking Facility and at a site from which DAS removed a bicycle. DAS shall send notice of impoundment as soon as practical and whenever reasonably possible to the owners of all bicycles impounded under this rule.

(3) DAS shall use the State law for the disposition of unclaimed property to dispose of bicycles unclaimed after impound, and those bicycles left abandoned thirty days or more after a bicycle permit expires.

Stat. Auth.: ORS 98.805 - 98.818, 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 98.805, 276.591, 276.594 & 276.601  
Hist.: DAS 7-2009, f. & cert. ef. 7-1-09

## 125-090-0160

### Alternative Transportation Modes Incentive Programs

(1) DAS may provide incentive programs to encourage the use of alternative modes of transportation. The goals of these programs are to reduce traffic volume and parking demand, improve air quality, and reward the efforts of State Employees who leave their cars at home.

(a) DAS may provide these incentives from Parking Facility receipts. The program incentives are subject to available funding. DAS may increase or reduce incentives provided and the number of program participants.

(b) To receive the incentives an Applicant must meet the applicable program requirements, complete the application process, and pay any applicable charge.

(2) DAS administers the following incentive program for State Employees: The Smart Commuter Program is available to State Employees. Smart Commuter Program participants receive Smart Commuter Parking Passes and other incentives as DAS may provide.

(a) To be eligible to participate in the Smart Commuter Program, an Applicant must meet all of the following requirements each year:

(A) Be a State Employee whose Official Work Station is in the Capitol Mall Parking Area or the Portland State Office Building.

(B) Use an alternative mode of transportation to commute to the Official Work Station more than half of the Applicant's working days each month. Any one or combination of the following alternative transportation modes qualifies (motorcycle and Carpool transportation is not an alternative transportation mode): public transit, rail, van pool, commuter bus, bicycle, or walk from home or from a park and ride lot; and

(C) Complete the certification in the application form and annually thereafter; and

(D) Agree to abide by the Smart Commuter Program rules.

(b) State Employees who lease parking in a private or public lot or who are Participants in a Carpool or participate in a carpool with assigned parking in a City of Salem Carpool Area are not eligible for the Smart Commuter Program.

(c) All of the following apply to the incentive given to Smart Commuter Program participants:

(A) Program incentives include Smart Commuter Parking Passes for use on not more than two business days per month when validated.

(B) A participant in the Smart Commuter Program may use each Pass to park a motor vehicle for a work day in Parking Facilities designated in Exhibit 2 for unreserved parking, and at two-hour metered areas in the Capitol Mall Parking Structure, and as otherwise specified by DAS on the Pass.

(C) The Pass must be validated by marking the date it is used. There is no carryover of unused days from one month to the next.

(D) A Pass is not transferable and is not replaceable, if lost or stolen.

(E) A Smart Commuter Program participant must notify DAS in writing when the individual changes agency employment or is no longer eligible for the Smart Commuter Program. Passes expire when the State Employee ceases to be eligible to participate. Expired Passes are invalid and users may be cited.

(F) Smart Commuter Program participants must recertify eligibility each June for renewed participation for the next twelve months.

Stat. Auth.: ORS 184.340, 276.591 - 276.601 & 283.100  
Stats. Implemented ORS 276.591, 276.594 & 276.601  
Hist.: DAS 7-2009, f. & cert. ef. 7-1-09

## Department of Administrative Services, Budget and Management Division Chapter 122

**Rule Caption:** This rule establishes expenditure limits allowing state agencies without a 2009–2011 legislatively adopted budget to continue operating after June 30, 2009.

**Adm. Order No.:** BMD 2-2009(Temp)

**Filed with Sec. of State:** 6-30-2009

**Certified to be Effective:** 6-30-09 thru 8-15-09

**Notice Publication Date:**

**Rules Adopted:** 122-001-0036

**Subject:** This rule establishes expenditure limits allowing state agencies without a 2009–2011 legislatively adopted budget to continue operating after June 30, 2009.

**Rules Coordinator:** Yvonne Hanna—(503) 378-2349, ext. 325

### 122-001-0036

#### Continuing Resolution for State Agency Expenditure Limitations

(1) A state agency, as defined in Senate Bill 5553 (Oregon Laws 2009), may incur obligations and authorize expenditures to continue operations into the 2009–2011 biennium at:

(a) The agency's 2007–2009 eighth quarter allotment level; or

(b) A higher or lower level as approved by the Budget and Management Division.

(c) In establishing an alternative expenditure level, the Budget and Management Division shall consider pending legislative budget direction.

(2) Each state agency without a legislatively adopted budget as of June 30, 2009, shall send a signed letter of verification to the Budget and Management Division on or before June 30, 2009, acknowledging:

(a) The agency does not have a legislatively adopted budget as of June 30, 2009;

# ADMINISTRATIVE RULES

(b) The continuing resolution ends August 15, 2009 or when an adopted budget is signed by the Governor;

(c) Expenditures will not be authorized above the level established pursuant to section (1) of this rule;

(d) Expenditures incurred under the continuing resolution will be part of the 2009–2011 adopted budget and not permanently charged against 2007–2009 expenditure limitation or appropriation; and

(e) The agency will not begin new programs or hire new staff positions until an adopted budget is signed by the Governor.

(3) Upon receipt of the signed verification letter, the Budget and Management Division shall establish an allotment level pursuant to section (1) of this rule. The Budget and Management Division shall notify each agency of the action taken.

Stat. Auth.: ORS 184.340  
Stats. Implemented: 2009 OL (Senate Bill 5553)  
Hist.: BMD 2-2009(Temp), f. & cert. ef. 6-30-09 thru 8-15-09

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**Department of Administrative Services,  
Human Resource Services Division  
Chapter 105**

**Rule Caption:** Establishes processes for agencies to identify light duty assignments and entry-level positions for injured workers.

**Adm. Order No.:** HRSD 1-2009(Temp)

**Filed with Sec. of State:** 6-25-2009

**Certified to be Effective:** 7-1-09 thru 12-27-09

**Notice Publication Date:**

**Rules Adopted:** 105-050-0025, 105-050-0030

**Subject:** These rules establish processes for all executive branch state agencies (except for the Oregon University System) to follow in the identification of light duty assignments and entry-level positions for injured workers. DAS is required to establish these rules pursuant to ORS 659A.052 as revised by HB 2778 and effective 7/1/09. The revised statute provides that DAS shall establish by rule a process to identify light duty and entry-level assignments for injured workers.

**Rules Coordinator:** Yvonne Hanna—(503) 378-2349, ext. 325

**105-050-0025**

**Injured worker preference for light duty assignments under ORS 659A.052**

Applicability: All Executive Branch Agencies except the Oregon University System pursuant to ORS 351.087.

(1) Definitions:

(a) Agency-at-injury: The state agency that employed the injured worker when the compensable injury occurred.

(b) Attending Physician: The physician primarily responsible for the injured worker's care related to the compensable condition in the workers' compensation claim.

(c) Independent and semi-independent agencies: State executive branch agencies not subject to all of ORS 240.

(d) Light duty assignment: A transitional assignment of an injured worker while the worker is recovering from job-related injuries or illnesses to duties within the worker's capacities and restrictions specified in writing by the worker's attending physician.

(2) If feasible, agencies-at-injury will make light duty assignments for injured workers after an attending physician authorizes a worker to return to work with temporary restrictions that preclude the worker from performing some or all of the worker's regular job duties.

(3) To identify light duty assignments, agencies-at-injury:

(a) Where feasible, temporarily modify a worker's regular job duties by removing or modifying those duties that conflict with physical restrictions specified by an injured worker's attending physician.

(b) If it is not feasible to remove or modify the worker's regular job duties to be consistent with the worker's restrictions, the agency-at-injury considers other work the agency may temporarily assign to the injured worker.

(c) If no light duty assignments are available within the agency-at-injury, the agency-at-injury may contact the Human Resource Services Division or other executive branch agencies for assistance in locating light duty assignments.

(d) Agencies-at-injury monitor, adjust, or terminate temporary light duty assignments as appropriate.

(e) An injured worker temporarily assigned light duty work in another agency remains an employee of the agency-at-injury.

(f) In addition to this rule, agencies that are subject to ORS 240 follow State Human Resource Policy 50.020.05, Early Return to Work of Injured Workers.

Stat. Auth.: ORS 240.145, 240.250 & 659A.052

Stats. Implemented: ORS 240.306, 659A.043, 659A.046 & 659A.052  
Hist.: HRSD 1-2009(Temp), f. 6-25-09, cert. ef. 7-1-09 thru 12-27-09

**105-050-0030**

**Injured worker preference for entry-level positions under ORS 659A.052**

Applicability: All Executive Branch Agencies except the Oregon University System pursuant to ORS 351.087.

(1) Definitions:

(a) Agency-at-injury: The state agency that employed the injured worker when the compensable injury occurred.

(b) Attending Physician: The physician primarily responsible for the injured worker's care related to the compensable condition in the workers' compensation claim.

(c) Independent and semi-independent agencies: State executive branch agencies not subject to all of ORS 240.

(d) Entry-level position: All limited competitive and non-competitive appointment classifications listed in OAR 105-040-0060; all classifications defined as entry in their title; single-level classifications and the first level of a classification series.

(2) Injured workers who make a timely demand for reemployment to available, suitable employment in accordance with Oregon Administrative Rule 839-006-0135 may also request consideration for permanent appointment to entry-level positions.

(a) The injured worker, seeking such reemployment, submits a written request to the agency-at-injury noting the specific entry-level positions to which he or she seeks appointment along with an updated employment application form.

(b) An agency-at-injury, subject to ORS 240, after receiving an eligible injured worker's request for permanent reemployment in a suitable or entry-level position, places the injured worker on the injured worker list for suitable and entry-level positions in accordance with State Human Resource Policy 50.020.03 Reinstatement and Reemployment of Injured Workers, or an applicable collective bargaining agreement.

(c) The Human Resource Services Division provides relevant information to semi-independent and independent state agencies regarding the injured workers who are eligible for reemployment to available, suitable, and entry-level positions.

(d) Independent and semi-independent state agencies give priority consideration according to subsection (2)(f) of this rule, to injured workers from other executive branch agencies who make a timely demand for reemployment.

(e) The Human Resource Services Division places workers injured in an independent or semi-independent agency on the injured worker list for appropriate classifications following receipt of notice from an independent or semi-independent agency of the injured worker's timely demand for reemployment to suitable and entry-level positions.

(f) All executive branch agencies, when filling vacancies, subject to the restrictions of an applicable collective bargaining agreement, offer entry-level and suitable positions to injured workers who meet the minimum and special qualifications of the position and can perform the duties within permanent restrictions.

Stat. Auth.: ORS 240.145, 240.250 & 659A.052  
Stats. Implemented: ORS 240.306, 659A.043, 659A.046 & 659A.052  
Hist.: HRSD 1-2009(Temp), f. 6-25-09, cert. ef. 7-1-09 thru 12-27-09

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**Department of Agriculture  
Chapter 603**

**Rule Caption:** Implements department authority to supervise price negotiations between blackberry growers and buyers/packers.

**Adm. Order No.:** DOA 7-2009(Temp)

**Filed with Sec. of State:** 6-23-2009

**Certified to be Effective:** 6-30-09 thru 12-20-09

**Notice Publication Date:**

**Rules Adopted:** 603-076-0100, 603-076-0105

**Subject:** SB 409 provides authority for the Department to conduct active supervision of price negotiations between blackberry growers and packers/dealers with antitrust immunity. This rule sets out a basic framework to conduct negotiations for the 2009 crop. The rule also sets fees for conducting the regulatory programs as required in this legislation.

**Rules Coordinator:** Sue Gooch—(503) 986-4552

**603-076-0100**

**Definitions**

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



# ADMINISTRATIVE RULES

(1) "Blackberry dealer" and "blackberry packer" means dealer as defined in ORS 646.515(3)(a), or a licensed food processor that is a cooperative.

(2) "Grower Bargaining Association" refers to any growers association legally organized in accordance with Federal Capper-Volstead Laws (7 U.S.C. 291-292) and state law (ORS 646.515 to 646.545) for incorporation as a grower cooperative or bargaining unit for blackberries.

(3) "Mediate" or "mediation" has the same meaning as ORS 36.110(5).

(4) "Price negotiation," "negotiate," or "bargain" means to discuss the terms of a contract price and related issues, and attempt to come to agreement.

(5) "Director" means the Director of Agriculture or a designee of the Director of Agriculture.

(6) "Department" means the Oregon Department of Agriculture.

(7) "Active supervision," "active state supervision," and "actively supervise" means the Department's regulatory oversight of the price discussions among dealers, and price negotiations between dealers and grower representatives of a grower bargaining association for the purpose of arriving at a negotiated price for the sale of blackberries under production contracts or other arrangements that meet standards established by the Blackberry Bargaining Council.

(8) "Negotiated price" means the proposed price for blackberries agreed upon by representatives of a grower bargaining association and blackberry dealers.

(9) "Established price" means the price set and approved by the Director as the price at which blackberries produced by grower members of the bargaining association shall be sold to dealers.

(10) "State action immunity" means immunity liability under the federal antitrust laws and the Oregon Antitrust Act for conduct that is carried out pursuant to a regulatory program in which competition in certain areas of the blackberry industry in Oregon is displaced by regulations and active state supervision in accordance with ORS 62.845, 62.848, 646.535 and 646.740.

(11) "Parties" or "party" means blackberry producers, blackberry grower associations, blackberry processing or marketing cooperatives, or blackberry dealers who are participants in the state regulatory program for establishing prices on blackberries produced in Oregon.

(12) "Blackberry Bargaining Council" means the collective group of blackberry dealers and blackberry growers from the bargaining association, who voluntarily meet under the auspices of the department for the purposes of price negotiations.

(13) "Regulatory program" means the state regulatory program described in ORS 62.015, 62.845, 62.848, 646.535 and 646.740 that is actively supervised by the Director of Agriculture, and that authorizes parties to engage in bargaining and negotiations to establish the price and terms of blackberry products produced under contract or other terms and sold to blackberry dealers.

[Publications referenced are available from the agency.]

Stat. Auth.: SB 409 (2009); ORS 62.015, 62.848, 646.535 & 646.740

Stats. Implemented: ORS 62.015, 62.845, 62.848, 646.535, 646.740

Hist.: DOA 7-2009(Temp), f. 6-23-09, cert. ef. 6-30-09 thru 12-20-09

## 603-076-0105

### Active State Supervision of Blackberry Price Negotiations

Where more than one blackberry dealer is agreeable to meet with a grower bargaining association, it is the intent of the department that the process of state supervised price negotiations for blackberries will assist in good faith negotiations by all parties, the generation of credible data on which to make pricing decisions, and the efficiency and efficacy of price discovery.

To ensure that the Director is actively supervising the conduct of the grower representatives and the blackberry dealers under the regulatory program in accordance with the requirements of the federal antitrust laws and the Oregon Antitrust Act (ORS 646.740):

(1) The Director or the director's designee shall attend all meetings between the grower association and blackberry dealer representatives pursuant to the regulatory program and shall monitor, and if necessary, mediate the price negotiations between the representatives at these meetings.

(2) The Director or the director's designee may compel the parties to take whatever action the Director considers necessary to ensure that all parties involved in supervised negotiations:

(a) Negotiate in good faith, arm's length transactions, considering all relevant data presented;

(b) Develop, share, document, and evaluate all information requested by the department for consideration and deliberation by the Blackberry Bargaining Council, to include, but not limited to: by variety or other appropriate categories — acres under contract, inventory, yields, import/export data, and market information (the department shall aggregate all data and not reveal any proprietary data to any other party);

(c) Actively participate and contribute toward common interests and reasonable pricing agreements; and,

(d) Comply with applicable state laws pertaining to non-discrimination in pricing based on membership in a grower bargaining association (ORS 646.535), payment term requirements (ORS 585.213, unless otherwise negotiated), and other considerations of Oregon's contract laws (ORS 72.3050).

(e) Pay the fees described in these rules.

(3) The parties to the 2009 supervised blackberry pricing negotiations shall, to the extent practical, aggregate blackberry varieties into three categories: early varieties, late varieties, and Boysenberries.

(4) The Blackberry Bargaining Council may, under the direct supervision of the Department, conduct individual negotiations each year for categories of blackberries as described in Section (3), or may otherwise aggregate blackberries in such manner as recognizes pricing differentials reflective of harvest dates, yields, input costs, end uses, or packing processes.

(5) The department shall establish permanent rules for the 2010 crop by December 2009. In adopting permanent rules, the Department may consider the 2009 negotiations in addition to any input from public hearings.

(6) Minutes of all meetings between representatives of the growers association and the blackberry dealers will be created and maintained by the Department and are subject to the provisions of ORS 192.

(7) Within two (2) days after the final meeting of the Blackberry Bargaining Council, the Council shall either:

(a) Submit to the Director, for review and approval, a negotiated price effective for the upcoming crop year; or,

(b) Notify the Director that the bargaining representatives cannot arrive at a negotiated price, and suggest to the Director a specified price range for consideration, from which the Director shall approve a price that represents the interests of the state and the industry based on the information and facts available; or,

(c) Terminate the negotiations.

(8) Within two (2) days after the Blackberry Bargaining Council's submission under section (7), the Director shall approve an established price, or reject the parties' negotiated price and direct the parties to continue their negotiations. The Director may request any information deemed necessary from the parties to understand, review and approve the established price. The Director may notify the parties of the decision under this section in writing.

(9) In approving the established price, the Director shall consider the negotiated price reached by the representatives of the growers' association and the blackberry dealers. The Director shall ensure the parties have considered, to the extent practical, blackberry inventories for the respective type of berry under consideration; acres contracted; production factors; competitive factors; local, national and world market prices; the influence of imported product on prices; and any other factors the Director deems necessary to approve the established price.

(10) The Director must approve the established price and any adjustments to established prices previously approved by the Director before the established prices shall be implemented by the parties.

(11) The Director shall collect fees from the parties who are participating in the blackberry regulatory program as follows:

(a) Fees may include reimbursement of costs for Department consultation with the Attorney General as this consultation directly relates to the Department's supervision of the regulatory program. Such fees shall be divided evenly between the parties and reimbursed to the Department

(b) The Department shall assess a flat rate fee of \$1,000 for each negotiation meeting supervised by the Department. This fee shall be assessed evenly across all parties or otherwise fairly divided between the parties, such that the dealers pay half of the fee and the growers association pays half of the fee. Other equitable arrangements may be allowed as approved by the Director. The Department may assess additional fees to reimburse to the Department any cost or expense that exceeds the flat rate fee will be documented by the Department, evenly divided between the parties, and collected from the parties. Payment of all fees is to the Department.

Stat. Auth.: SB 409 (2009); ORS 62.846(2)(3)(4)

Stats. Implemented: ORS 62.015, 62.845, 646.535 & 646.740

Hist.: DOA 7-2009(Temp), f. 6-23-09, cert. ef. 6-30-09 thru 12-20-09

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**Rule Caption:** Establishes process for experimental or research pesticide use. Amends application of Demonstration and Research category.

**Adm. Order No.:** DOA 8-2009

**Filed with Sec. of State:** 7-15-2009

**Certified to be Effective:** 7-15-09

**Notice Publication Date:** 6-1-2009

**Rules Adopted:** 603-057-0160

**Rules Amended:** 603-057-0110, 603-057-0145

# ADMINISTRATIVE RULES

## Subject: OAR 603-057-0160

Addresses pesticide use for experimental or research purposes with two distinct experimental use permit processes. Clarifies licensing and recordkeeping requirements to conduct experimental use of pesticides.

### OAR 603-057-0110

Amends Pesticide operator, applicator, and trainee categories to allow the ability of adding the category of Demonstration and Research to a pesticide trainee license. Identifies when the category of Demonstration and Research is to be used.

### OAR 603-057-0145

Amends pesticide consultant standards of competence to include the ability to add the category of Demonstration and Research to a Pesticide Consultant license. Clarifies when a Pesticide Consultant with the category of Demonstration and Research may qualify for an applicator license.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-057-0110

### Pesticide Operator, Applicator, and Trainee Categories

In accordance with subsection (2) of ORS 634.306, the following categories of pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees are established with licenses (or certificates) to be issued for such categories, or any specific subcategories established by OAR 603-057-0115:

(1) Agricultural Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in the production of agricultural crops and livestock (including Christmas tree plantations and commercial nurseries), or on agricultural lands, grasslands, or non-crop agricultural lands.

(2) Aquatic Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in treating standing or running water.

(3) Demonstration and Research: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators and public trainees who use or supervise the use of pesticides, or of any substance or mixture of substances that is being evaluated for use as a pesticide, for experiments or research such as for gathering data to satisfy registration requirements of the United States Environmental Protection Agency or of the department. The exemption provided manufacturers under subsection (1) of ORS 634.106 only applies to laboratory research. The uses included in this category must be:

(a) Authorized by an experimental use permit issued by the United States Environmental Protection Agency;

(b) Authorized by an experimental use permit issued by the department as provided in OAR 603-057-0160; or

(c) By a federal or state agency that is exempt from obtaining an experimental use permit as provided in OAR 603-057-0160(2)(b).

(4) Forest Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in the production of forest crops, or on forestry lands (not including Christmas tree plantations or commercial nurseries).

(5) Industrial, Institutional, Health, and Structural Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in, on, or around food handling establishments, human dwellings, institutions (i.e., schools, hospitals, etc.), industrial establishments (including warehouses and grain elevators), and any other structures or areas utilized for the storing, processing, or manufacturing of products.

(6) Marine Fouling Organism Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of marine antifouling paint or coating on boat or ship hulls or other parts of boats or ships.

(7) Ornamental and Turf Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in the establishment and maintenance of ornamental plantings and turf (not including Christmas tree plantations, commercial nurseries or forest crops). The exemption provided persons under subsection (5) of ORS 634.106 only applies to persons principally engaged in home lawn and garden care.

(8) Public Health Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides for the control of any

pest which may be deleterious to the public health, including mosquito and other vector control.

(9) Regulatory Pest Control: This shall include public applicators and public trainees who use or supervise the use of pesticides upon regulated pests not otherwise specified in this section.

(10) Right-of-Way Pest Control: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides in right-of-way areas.

(11) Seed Treatment: This shall include pesticide operators, pesticide applicators, pesticide trainees, public applicators, and public trainees who use or supervise the use of pesticides on seed, as it is defined in subsection (1) of ORS 633.511. Treatment of a person's own seed on his own premises is exempt under subsections (9) and (13) of ORS 634.006.

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.306

Hist.: AD 1066(12-75), f. 8-11-75, ef. 10-15-75; AD 7-1977, f. & ef. 4-5-77; AD 12-1985, f. & ef. 11-27-85; AD 1-1990(Temp), f. & cert. ef. 3-1-90; AD 17-1990, f. & cert. ef. 10-2-90; DOA 8-2009, f. & cert. ef. 7-15-09

## 603-057-0145

### Pesticide Consultant Standards of Competence

(1) As provided in ORS 634.132, competence of a pesticide consultant to advise or make recommendations concerning the use, handling, or selection of restricted-use pesticides shall be determined on the basis of a written examination. As a supplement to the subject matters set forth in subsection (2) of ORS 634.132, the examination shall also include the subject matters set forth in OAR 603-057-0120(1) relating to the General Standards of Pesticide Applicator Competence.

(2) A pesticide consultant licensed pursuant to this section may not advise or make recommendations in subcategories (a) or (b) of 603-057-0115(4), Regulatory Pest Control, regarding the use, handling, or selection of the M-44 Device containing sodium cyanide or the livestock protection collar containing sodium fluoroacetate (Compound 1080).

(3) A pesticide consultant licensed pursuant to this section may add the category Demonstration and Research, as defined in OAR 603-057-0110 (3), to his/her license following successful completion of the written examination for the Demonstration and Research category.

(4) A pesticide consultant licensed pursuant to this section in the category Demonstration and Research is eligible to be licensed as a pesticide applicator in the category of Demonstration and Research without further examination. An application for such applicator's license, or for the addition of the category to an existing license, and the appropriate fee payment must be made separately from the application for, or the addition to, a pesticide consultant's license.

(5) If an applicant for a pesticide consultant's license has passed a current written examination accredited by another state with which the Department has a reciprocal agreement on certification or licensing, and submits evidence of the same to the department at the time of submitting his license application with applicable fee, the license examination may be waived.

(6) An applicant for a pesticide consultant's license renewal shall be required to take and successfully complete a reexamination each fifth year after taking the original examination, and be subject to the provisions of this section in regard thereto. However, if the Department's records indicate the applicant for license renewal has complied with the provisions of OAR 603-057-0150, the written reexamination shall be waived.

(7) In the event an applicant for a pesticide consultant's license fails the written examination or reexamination, the applicant shall be qualified to take the examination again upon submitting a new application for the same.

(8) A pesticide consultant licensed pursuant to this section shall also be eligible to be licensed as a private applicator for the purpose of purchasing, using or supervising the use of any restricted use or highly toxic pesticides for the purpose of producing agricultural commodities or forest crops on land owned or leased by the person. An application and fee payment for a private applicator's license must be made separately from the application and fee payment for the pesticide consultant license. The certification date of the Private Applicator license will be consistent with that of the consultant license.

Stat. Auth.: ORS 561& 634

Stats. Implemented: ORS 634.306(5)

Hist.: AD 7-1977, f. & ef. 4-5-77; AD 15-1978, f. & ef. 9-15-78; AD 6-1997, f. & cert. ef. 6-11-97; DOA 8-2009, f. & cert. ef. 7-15-09

## 603-057-0160

### Pesticide Use for Experimental or Research Purposes

(1) Use of any substance or combination of substances as a pesticide with the intent of gathering data needed to satisfy pesticide registration requirements of the United States Environmental Protection Agency (EPA) or of the department shall be considered pesticide use for experimental or research purposes.

(a) An experimental use permit that is issued by the department constitutes the approval required by ORS 634.022(2).

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(b) The permit requirement in this section is in addition to pesticide licensing requirements.

(2) The requirement to obtain an experimental use permit is not applicable to:

(a) Experiments or research conducted by federal or state agencies; or

(b) Experiments or research conducted entirely in one or more greenhouses; or

(c) Experiments or research that only:

(A) Use pesticides that are registered by EPA and the department; and

(B) Use pesticides in the manner consistent with the product label.

(3) To obtain an experimental use permit, a person must submit a complete application to the department and be in compliance with subsection (11) of this section. The pesticide use described in the application may not begin until the department issues the experimental use permit.

(a) The applicant must use a form approved by the department; and

(b) The application must be submitted to the department at least 30 days prior to intended use.

(4) There are two types of experimental use permits: site-specific and collective.

(5) A site-specific experimental use permit authorizes pesticide use for experimental or research purposes that are at sites specified in the permit and are not covered by a collective experimental use permit.

(a) Approvable sites include, but are not limited to, aquatic, residential, recreational and structural sites, areas with public access, commodity storage facilities, and areas exceeding a total of one acre.

(b) Each application for a site-specific experimental use permit will include the following:

(A) The name, address, and telephone numbers of the applicant and of the person responsible for carrying out the provisions of the experimental use permit;

(B) Identification of each pesticide to be used, including:

(i) The name of the pesticide active ingredient;

(ii) The name of the pesticide product, if any; and

(iii) The EPA registration number of the pesticide product, if any.

(C) The name, address, and telephone numbers of the person responsible for carrying out the provisions of the experimental use permit at each specific site, and the number of the pesticide-related license issued to the person by the department, and the means of locating the person in case of an emergency;

(D) The purpose of the experiment or research, including a list of the intended target pest(s), if any;

(E) The approximate date(s) of pesticide use;

(F) Specific description and location of each site where pesticide use may occur, including the size (for example, acres, or square feet) of each site;

(G) Disposition of any food or feed item from the crop or site on which the pesticide will be used;

(H) Application rate(s) of the pesticide, and number of applications;

(I) Method of application;

(J) Timing and duration of the proposed experiment or research;

(K) Total amount of pesticide to be used, diluent, and dilution rate;

(L) Copy of any experimental use permit issued by EPA, if applicable;

(M) A copy of the labeling that will accompany the pesticide in the field; and

(N) Any other information pertinent to the experiment or research specifically requested by the department.

(6) A site-specific experimental use permit may be issued for up to twelve months from the date of approval by the department.

(7) A collective experimental use permit authorizes pesticide use for experiments or research without identifying any specific site. Approvable sites include agricultural and forestry sites.

(a) The applicant may use one or more sites in any location in Oregon provided that the total size of all of the sites used for a particular pesticide does not exceed one acre.

(b) Each application for a collective experimental use permit will include the following:

(A) The name, address, and telephone numbers of the applicant and of the person responsible for carrying out the provisions of the experimental use permit, the number of the pesticide-related license issued to the person by the department, and the means of locating the person in case of an emergency;

(B) A signed statement that all pesticide use will comply with all of the provisions of the collective experimental use permit and of this section; and

(C) Any other information pertinent to the application specifically requested by the department.

(8) A collective experimental use permit will be issued for as long as one calendar year, ending December 31st.

(9) Any person conducting pesticide use for experimental or research purposes must be appropriately licensed by the department and include the category Demonstration and Research, as specified in OAR 603-057-0110(3), on that license. This licensing requirement applies to all persons making pesticide applications for experimental or research purposes and is not limited to persons conducting pesticide research authorized by an experimental use permit.

(10) Any crop or site on which a pesticide is used for experimental or research purposes shall be under the control of the person authorized to conduct that pesticide use. Said control may include:

(a) Ownership, rental or lease of the land on which the crop or site is located by the person;

(b) Ownership, rental or lease of the land on which the crop or site is located by the immediate employer of the person;

(c) Documented permission for the pesticide use from the owner, renter or leaseholder of the land on which the crop or site is located;

(d) Documented permission for the pesticide use from the public entity in possession or control of the land on which the crop or site is located.

(11) The experimental use permit requires that the permit holder prepare, maintain, and provide records in the same manner as in ORS 634.146.

(12) As provided by ORS 634.322(6), the department may deny an application for an experimental use permit or, amend, suspend or revoke any experimental use permit issued by the department.

(13) The department may establish conditions in an experimental use permit approval that the department determines necessary to be consistent with ORS Chapter 634 and this section.

(14) The holder of an experimental use permit shall provide the department a summary report of the experiments and research conducted under the permit no later than 30 days after the expiration date of the permit.

(a) Each summary report must include, at a minimum, the identification number of the experimental use permit, the records required by subsection (11) of this section, any adverse environmental, human, or animal health effects resulting from the pesticides used, and, if any pesticide use occurred on a food or feed item, documentation of the measures taken to prevent the food or feed item from being used.

(b) If the required summary report is not provided to the department, the department will not issue any future experimental use permit to the applicant.

(15) If information is provided in an experimental use permit application, summary report, or other form that is identified by the applicant as confidential, the department will hold the information confidential to the extent allowed under ORS Chapter 192.

(16) Any food or feed item to which a pesticide used for experimental or research purposes has been applied must be rendered unusable for food or feed unless a tolerance greater than the residues resulting from the use has been established or, if allowed by law, conditions implemented to prevent any use of the treated crop/site for food or feed for a period no less than 365 days. Such food or feed item may include, but is not limited to crop, forage (including grazing rangeland or pasture), green chop, hay, seed screenings, silage, and straw. The department requires documentation of food or feed item destruction or crop/site isolation as a condition of the experimental use permit.

(17) The department may monitor any pesticide used for experimental or research purposes. Monitoring may include, but is not limited to:

(a) Observing, inspecting, and documenting mixing, loading, transportation, and application activities;

(b) Inspecting and documenting application equipment;

(c) Collecting and analyzing samples;

(d) Interviewing any person that may have knowledge regarding the pesticide use; and

(e) Reviewing any records.

(18) The permit holder or the person that conducted the pesticide use must immediately report to the department any adverse environmental, human, or animal health effects resulting from pesticides used for experimental or research purposes.

(19) In addition to any other liability or penalty provided by law, any failure by any person to comply with the provisions of this section, as determined by the department, may be used as a basis for one or more of the following actions, if applicable:

(a) To revoke, suspend or refuse to issue an experimental use permit, in accordance with ORS 634.022 or 634.322(6);

(b) To revoke, suspend or refuse to issue any license of a permit holder or of a person that conducted a pesticide use for experimental or research purposes, in accordance with ORS 634.322(4);

(c) To impose a civil penalty, in accordance with 634.900.

Stat. Auth.: ORS 634

Stats. Implemented: ORS 634

Hist: DOA 8-2009, f. & cert. ef. 7-15-09



# ADMINISTRATIVE RULES

**Rule Caption:** Allows licensing equivalency between pesticide applicators or public pesticide applicators and private applicators.

**Adm. Order No.:** DOA 9-2009

**Filed with Sec. of State:** 7-15-2009

**Certified to be Effective:** 7-15-09

**Notice Publication Date:** 6-1-2009

**Rules Adopted:** 603-057-0180

**Subject:** The new rule establishes a process to allow a person currently licensed as a Commercial or Public Pesticide Applicator to qualify for a Private Pesticide Applicator license without taking an additional examination. Without this proposed rule, persons who are currently licensed as a Commercial or Public Pesticide Applicator must take, and pass, an additional certification examination to qualify for a Private Pesticide Applicator's license to apply restricted use pesticides on agricultural or forest crops owned by the licensee of the licensee's immediate employer. This rule also clarifies that the certification period for the Private Applicator license will be the same as that identified on the Commercial or Public Applicator license.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-057-0180

### Pesticide License Equivalency Provision

A pesticide applicator or public pesticide applicator licensed pursuant to ORS 633.122 in the subcategory Agriculture-Herbicide, or in the subcategory Agriculture-Insecticide/Fungicide, or in the category Forest Pest Control, shall be eligible to be licensed as a Private applicator to purchase, use, and/or supervise the use of any pesticide, classified by the department as a restricted-use or highly toxic pesticide, for the purpose of producing agricultural commodities or forest crops on land owned or leased by the licensee or licensee's immediate employer. An application and fee payment for such Private applicator license must be made separately from the application and fee payment for the pesticide applicator or public pesticide applicator license. The certification date of the Private Applicator license will be consistent with that of the pesticide applicator or public pesticide applicator license.

Stat. Auth.: ORS 634

Stats. Implemented: ORS 634

Hist.: DOA 9-2009, f. & cert. ef. 7-15-09

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**Rule Caption:** Changing administrative rules to reflect new ORS relating to field burning.

**Adm. Order No.:** DOA 10-2009(Temp)

**Filed with Sec. of State:** 7-15-2009

**Certified to be Effective:** 7-15-09 thru 12-1-09

**Notice Publication Date:**

**Rules Amended:** 603-077-0101, 603-077-0105, 603-077-0110, 603-077-0112, 603-077-0113, 603-077-0115, 603-077-0137, 603-077-0140

**Subject:** The temporary rules fully implement ORS 468A.560 through 468A.620 as mandated by the passage of Senate Bill 528, by the Oregon Legislature, 2009 session.

**Rules Coordinator:** Sue Gooch—(503) 986-4583

## 603-077-0101

### Introduction

(1) This Division applies to the open field burning, propane flaming, and stack and pile burning of all perennial and annual grass seed and cereal grain crops, and associated residue within the counties listed in ORS 468A.560 as amended by SB 528. It also includes rules pertaining only to fees for open field burning of perennial and annual grass seed crops in the counties outside the counties listed in ORS 468A.560 as amended by SB 528. The open burning of all other agricultural waste material (referred to as "fourth priority agricultural burning") is governed by OAR Chapter 340, Division 264, Rules for Open Burning.

(2) Organization of rules:

(a) OAR 603-077-0103 is the policy statement of the Oregon Department of Agriculture setting forth the goals of this Division;

(b) OAR 603-077-0105 contains definitions of terms which have specialized meanings within the context of this Division;

(c) OAR 603-077-0110 lists general provisions and requirements pertaining to all open field burning, propane flaming, and stack and pile burning with particular emphasis on the duties and responsibilities of the grower registrant;

(d) OAR 603-077-0112 lists procedures and requirements for registration of acreage, issuance of permits, collection of fees, and keeping of

records, with particular emphasis on the duties and responsibilities of the local permit issuing agencies;

(e) OAR 603-077-0113 establishes acreage limits and methods of determining acreage allocations;

(f) OAR 603-077-0115 establishes criteria for authorization of open field burning, propane flaming, and stack and pile burning pursuant to the administration of a daily smoke management control program;

(g) OAR 603-077-0125 contains order of priority for open field burning according to crop type;

(h) OAR 603-077-0131 establishes special provisions pertaining to field burning by public agencies for official purposes, such as "training fires";

(i) OAR 603-077-0133 establishes special provisions pertaining to "preparatory burning";

(j) OAR 603-077-0135 establishes special provisions pertaining to open field burning for experimental purposes;

(k) OAR 603-077-0137 establishes special provisions pertaining to burning fees outside the counties listed in ORS 468A.560 as amended by SB 528;

(k) OAR 603-077-0140 establishes special provisions and procedures pertaining to emergency cessation of burning;

(l) OAR 603-077-0145 establishes provisions pertaining to propane flaming;

(m) OAR 603-077-0155 establishes provisions pertaining to "stack burning."

(n) OAR 603-077-0165 thru 603-077-0195 establish provisions pertaining to enforcement procedures and civil penalties.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09

## 603-077-0105

### Definitions

As used in this Division:

(1) "Actively Extinguish" means the direct application of water or other fire retardant to an open field fire.

(2) "Approved Alternative Method(s)" means any method approved by the Department to be a satisfactory alternative field sanitation method to open field burning.

(3) "Approved Alternative Facilities" means any land, structure, building, installation, excavation, machinery, equipment, or device approved by the Department for use in conjunction with an approved alternative method.

(4) "Permit or "Burn Permit" or "Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575.

(5) "Candidate Fields" means all grass seed or cereal grain fields being considered for open field burning or propane flaming.

(6) "Commission" means the Environmental Quality Commission.

(7) "Critical Nonburn Area" means the area of a grass seed or cereal grain field within the counties listed in ORS 468A.560 as amended by SB 528 that is underneath a power transmission line of 230kV rating or greater which includes 75 feet on either side of the center line of the power transmission line.

(8) "Crop" means cultivated agricultural plants such as grain.

(9) "Cumulative Hours of Smoke Intrusion in the Eugene-Springfield Area" means the average of the totals of cumulative hours of smoke intrusion recorded for the Eugene site and the Springfield site. Provided the Department determines that field burning was a significant contributor to the smoke intrusion:

(a) The Department shall record one hour of intrusion for each hour the nephelometer hourly reading exceeds a background level by  $1.8 \times 10^{-4}$  b-scat units or more but less than the applicable value in subsection (b) or (c) of this section;

(b) Between June 16 and September 14 of each year, two hours of smoke intrusion shall be recorded for each hour the nephelometer hourly reading exceeds a background level by  $5.0 \times 10^{-4}$  b-scat units;

(c) Between September 15 and June 15 of each year, two hours of intrusion shall be recorded for each hour the nephelometer hourly reading exceeds a background level by  $4.0 \times 10^{-4}$  b-scat units;

(d) The background level shall be the average of the three hourly readings immediately prior to the intrusion.

(10) "Department" means the Oregon Department of Agriculture.

(11) "Director" means the Director of the Department or delegated employee representative.

(12) "District Allocation" means the total amount of acreage sub-allocated annually to the fire district, based on the district's pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued within the district, subject to daily authorization. District allocation is defined by the following identity:

District Allocation = (maximum annual acreage limit) x ((total acreage registered in district) / (total acreage registered in the valley)).

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(13) "Drying Day" means a 24-hour period during which the relative humidity reached a minimum less than 50 percent and no rainfall was recorded at the nearest reliable measuring site.

(14) "Effective Mixing Height" means either the actual height of plume rise as determined by ODA field staff or the calculated or estimated mixing height as determined by the Department.

(15) "Field-by-Field Burning" means burning on a limited or restricted basis in which the amount, rate, and area authorized for burning is closely controlled and monitored. Included under this definition are "training fires" and experimental open field burning.

(16) "Field Reference Code" means a unique four-part code which identifies a particular registered field for mapping purposes. The first part of the code shall indicate the grower registration (form) number, the second part the line number of the field as listed on the registration form, the third part the crop type, and the fourth part the size (acreage) of the field (e.g., a 35 acre perennial (bluegrass) field registered on Line 2 of registration form number 1953 would be 1953-2-P-BL-35).

(17) "Fire District" or "District" or "Fire Protection District" means a fire permit issuing agency.

(18) "Fire Permit" means a permit issued by a local fire permit issuing agency pursuant to ORS 477.515, 476.380, or 478.960.

(19) "Fires-Out Time" means the time announced by the Department when all flames and major smoke sources associated with open field burning should be out and prohibition conditions are scheduled to be imposed.

(20) "Fire Safety Buffer Zone" shall have the same meaning as defined in the State Fire Marshal rules.

(21) "Fluffing" means an approved mechanical method of stirring or tedding crop residues for enhanced aeration and drying of the full fuel load, thereby improving the field's combustion characteristics.

(22) "Grower" means a person that cultivates perennial or annual grass seed or cereal grain.

(23) "Grower Allocation" means the amount of acreage sub-allocated annually to the grower registrant, based on the grower registrant's pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued, subject to daily authorization. Grower allocation is defined by the following identity:

$$\text{Grower Allocation} = (\text{Maximum annual acreage limit}) \times \left( \frac{\text{Total acreage registered by the grower registrant}}{\text{Total acreage registered in the valley}} \right).$$

(24) "Grower Registrant" means any person who registers acreage with the Department for purposes of open field burning, propane flaming, or receives a permit to stack or pile burn.

(25) "Marginal Conditions" means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety.

(26) "Marginal Day" means a day on which marginal conditions exist.

(27) "Nephelometer" means an instrument for measuring ambient smoke concentrations.

(28) "Northerly Winds" means winds coming from directions between 270° to 90° in the north part of the compass, averaged through the effective mixing height.

(29) "Open Field Burning" means burning of any perennial or annual grass seed or cereal grain crop, or associated residue, in such manner that combustion air and combustion products are not effectively controlled.

(30) "Open Field Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575.

(31) "Permit Agent" means the person under contract or otherwise authorized by the department to administer registration of acreage, issue burn permits, collect fees, and keep records for open field burning, propane flaming, or stack burning within their permit jurisdictions pursuant to ORS 468A.550 et seq.

(32) "Permit Issuing Agency" means the county court or board of county commissioners, or fire chief or a rural fire protection district or other person authorized to issue fire permits pursuant to ORS 477.515, 476.380, or 478.960.

(33) "Person" means, but is not limited to, individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the Federal Government and its agencies.

(34) "Preparatory Burning" means controlled burning of portions of selected problem fields for the specific purpose of reducing the fire hazard potential or other conditions which would otherwise inhibit rapid ignition burning when the field is subsequently open burned.

(35) "Priority Acreage" means acreage located within a priority area.

(36) "Priority Areas" means the following areas of the counties listed in ORS 468A.560 as amended by SB 528:

(a) Areas in or within three miles of the city limits of incorporated cities having populations of 10,000 or greater;

(b) Areas within one mile of airports servicing regularly scheduled airline flights;

(c) Areas in Lane County south of the line formed by U.S. Highway 126 and Oregon Highway 126;

(d) Areas in or within three miles of the city limits of the City of Lebanon;

(e) Areas on the west and east side of and within 1/4 mile of these highways: 99, 99E, and 99W. Areas on the south and north side of and within 1/4 mile of U.S. Highway 20 between Albany and Lebanon, Oregon Highway 34 between Lebanon and Corvallis, Oregon Highway 228 from its junction south of Brownsville to its rail crossing at the community of Tulsa.

(37) "Problem Field" means a field that cannot be burned under the usual conditions because of a fire hazard or nearby school, hospital, airport, or other sensitive area.

(38) "Prohibition Conditions" means conditions under which open field burning is not allowed except for individual burns specifically authorized by the Department pursuant to OAR 603-077-0115(2).

(39) "Propane Flaming" means a mobile flamer device which meets the following design specifications and utilizes an auxiliary fuel such that combustion is nearly complete and emissions are significantly reduced:

(a) Flamer nozzles shall not be more than 15 inches apart;

(b) A heat deflecting hood is required and shall extend a minimum of three feet beyond the last row of nozzles.

(40) "Propane Flaming Permit" means a permit issued by the Department pursuant to ORS 468A.575 and consisting of a validation number and specifying the conditions and acreage specifically registered and allocated for propane flaming.

(41) "Quota" means an amount of acreage established by the Department for each fire district for use in authorizing daily burning limits in a manner to provide, as reasonably as practicable, an equitable opportunity for burning in each area.

(42) "Rapid Ignition Techniques" means a method of burning in which all sides of the field are ignited as rapidly as practicable to maximize plume rise. When using this method, little or no preparatory backfire burning shall be done.

(43) "Released Allocation" means that part of a grower's allocation, by registration form, that is unused and voluntarily released to the Department for first come-first serve dispersal to other grower registrants.

(44) "Residue" means straw, stubble, screenings and associated crop material generated in the production of grass seed and cereal grain crops.

(45) "Responsible Person" means each person who is in ownership, control, or custody of the real property on which open field burning occurs, including any tenant thereof, or who is in ownership, control or custody of the material which is burned, or the grower registrant. Each person who causes or allows open field burning, propane flaming, or stack or pile burning to be maintained shall also be considered a responsible person.

(46) "Screenings" means organic waste materials resulting from the seed cleaning process of grass seed and cereal grain.

(47) "Small-Seeded Seed Crops Requiring Flame Sanitation" means small-seeded grass, legume, and vegetable crops, or other types approved by the Department, which are planted in early autumn, are grown specifically for seed production, and which require flame sanitation for proper cultivation. For purposes of this Division, clover and sugar beets are specifically included. Cereal grains, hairy vetch, or field peas are specifically not included.

(48) "Smoke Management" means a system for the daily or hourly control of open field burning, propane flaming, or stack or pile burning through authorization of the times, locations, amounts and other restrictions on burning, so as to provide for suitable atmospheric dispersion of smoke particulate and to minimize impact on the public.

(49) "Southerly Winds" means winds coming from directions between 90° to 270° in the south part of the compass, averaged through the effective mixing height.

(50) "Stack Burning" means the open burning of bound, baled, collected, gathered, accumulated, piled or stacked straw residue from perennial or annual grass seed or cereal grain crops.

(51) "Stack Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575 that identifies the responsible person, date of permit issuance, and specifies the acreage and location authorized for stack burning.

(52) "Test Fires" means individual field burns specifically authorized by the Department for the purpose of determining or monitoring atmospheric dispersion conditions.

(53) "Training Fires" means individual field burns set by or for a public agency for the official purpose of training personnel in fire-fighting techniques.

(54) "Unusually High Evaporative Weather Conditions" means a combination of meteorological conditions following periods of rain that result in sufficiently high rates of evaporation, as determined by the Department, where fuel (residue) moisture content would be expected to approach about 12 percent or less.

# ADMINISTRATIVE RULES

(55) "Validation Number" is used interchangeably with "Burn Permit" and means:

(a) For open field burning a unique five-part number issued by the Department or its delegate identifying a specific field and acreage allowed to be open field burned and the date and time the permit was issued (e.g., a validation number issued August 26 at 2:30 p.m. for a 70-acre burn for a field registered on Line 2 of registration form number 1953 would be 1953-2-0826-1430-070);

(b) For propane flaming and stack burning a unique five part alphanumeric, issued by the Department or its delegate, identifying a specific field and acreage allowed to be propane flamed or stack burned, the date and time the permit was issued, and the burn type (e.g., a validation number issued on July 15 for a 100 acre field to be propane flamed registered on Line 4 of registration form 9999 would be 9999-4-0715-P-100).

(56) "Ventilation Index (VI)" means a calculated value used as a criterion of atmospheric ventilation capabilities. The Ventilation Index as used in this Division is defined by the following identity:

$$VI = (\text{Effective mixing height (feet)}) / 1,000 \times (\text{Average wind speed through the effective mixing height (knots)}).$$

(57) "Wildfire" means an uncontrollable fire that is not intentionally started, caused by man, machine, nature, or an other cause, usually but not necessarily traveling and spreading rapidly.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09

## 603-077-0110

### General Requirements

(1) No person shall cause or allow open field burning or propane flaming on any acreage unless said acreage has first been registered and mapped pursuant to OAR 603-077-0112(1), the registration fee has been paid, and the registration (permit application) has been approved by the Department.

(2) No person shall cause or allow open field burning, propane flaming, or stack burning without first obtaining and being able to readily demonstrate a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 603-077-0112(2). On the specific day of and prior to open field burning, propane flaming, or stack burning of any grass seed or cereal grain crop or associated residue the grower registrant shall obtain, in person or by telephone, a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to 603-077-0112.

(3) The Department may prohibit any person from registering acreage for open field burning or propane flaming and may deny burn permits for open field burning, propane flaming, and stack burning until all delinquent registration fees, late fees, burn permit fees, and adjudicated penalties from previous seasons are paid. The Department may also institute appropriate legal action to collect the delinquent fees.

(4) No person shall open field burn cereal grain acreage unless that person first issues to the Department a signed statement, and then acts to ensure, that said acreage will be planted in the following growing season to a small-seeded seed crop requiring flame sanitation for proper cultivation, as defined in OAR 603-077-0105(46).

(5) No person shall cause or allow open field burning, propane flaming, or stack burning which is contrary to the Department's announced burning schedule specifying the times, locations and amounts of burning permitted, or to any other provision announced or set forth by the Department or this Division.

(6) Each responsible person open field burning or propane flaming shall have an operating radio receiver and shall directly monitor the Department's burn schedule announcements at all times while open field burning or propane flaming.

(7) Each responsible person open field burning or propane flaming shall actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employee of the Department.

(8) No person shall cause or allow open field burning or stack burning within 1/4 mile of either side of any Interstate freeway within the counties listed in ORS 468A.560 as amended by SB 528 or within 1/8 mile of either side of the designated roadways listed in OAR 837-110-0080(2)(c). In addition, no person shall cause or allow open field burning in any of the remaining area within a fire safety buffer zone unless a noncombustible ground surface has been provided between the field to be burned and the nearest edge of the roadway right-of-way as required by 837-110-0080.

(9) No person shall cause or allow open field burning, propane flaming or stack burning inside Critical Nonburn Areas as defined in OAR 603-077-0105(7). In addition each responsible person open field burning, propane flaming, or stack burning adjacent to a Critical Nonburn Area shall take appropriate precautions to ensure that the Critical Nonburn Area remains unburned. These precautions may include, but are not limited to, plowing or disking the Critical Nonburn Area prior to burning adjacent to

the Critical Nonburn Area, or providing a noncombustible barrier of sufficient width adjacent to the Critical Nonburn Area.

(10) Each responsible person open field burning, propane flaming, or stack burning within a priority area or fire safety buffer zone around a designated city, airport or highway shall refrain from burning and promptly extinguish any burning if it is likely that the resulting smoke would noticeably affect the designated city, airport or highway.

(11) Each responsible person open field burning shall make every reasonable effort to expedite and promote efficient burning and prevent excessive emissions of smoke by:

(a) Meeting all of the State Fire Marshal requirements specified in OAR 837-110-0040 through 837-110-0080;

(b) Ensuring field residues are evenly distributed, dry, and in good burning condition;

(c) Employing rapid ignition techniques on all acreage where there are no imminent fire hazards or public safety concerns.

(12) In the event of a "wildfire" and a grower is unable to comply with all of the requirements of this Division because of a breakdown of equipment, an accident caused by human error or negligence, or any other cause, the grower shall:

(a) Immediately take action to stop, contain, and correct the problem.

(b) As soon as practicable notify the designated permit agent. If the permit agent is unavailable, the grower must contact the department.

(A) Notification must be by phone, fax, email, or in person.

(B) If a grower is unable to contact his/her designated permit agent or the department, then a detailed message must be left with the department and the permit agent explaining the problem, the solution, the field information, and grower information.

(13) Open field burning, propane flaming, or stack burning in compliance with this Division does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable law, ordinance, regulation, rule, permit, order or decree of the Department, Commission or any other government entity having jurisdiction.

(14) 1st, 2nd, 3rd, and 4th priority open field burning shall be regulated in a manner consistent with the requirements of the Oregon Visibility Protection Plan for Class I Areas (Section 5.2 of the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-200-0040).

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09

## 603-077-0112

### Registration, Permits, Fees, Records

In administering a field burning smoke management program, the Department may contract with counties or fire districts or any other responsible individual to administer registration of acreage, issuance of permits, collection of fees, and keeping of records for open field burning, propane flaming, or stack burning within their permit jurisdictions. The Department shall pay said authority for these services in accordance with the payment schedule provided for in ORS 468A.615. Three-quarters of said payment shall be made prior to July 1 of each year and the remainder shall be paid within ten days after completion of the end of season reconciliation:

(1) Registration of acreage:

(a) On or before April 1 of each year, each grower intending to open burn or propane flame under this Division shall register the total acreage to be open burned or propane flamed. Said acreage shall be registered with the Department or its authorized permit agent on the registration forms provided. Candidate fields for open field burning or propane flaming shall be listed on the registration form and shall also be delineated on specially provided registration map materials and identified using a unique field reference code. Each candidate field listing shall state if the field is located in a priority area, contains Critical Nonburn Areas, and/or is a problem field. Registration, listing of fields, and mapping shall be completed according to the established procedures of the Department. At the time of registration, a non-refundable registration fee of \$4 shall be paid for each acre registered for open field burning and \$2 shall be paid for each acre registered for propane flaming. A complete registration (permit application) shall consist of a fully executed registration form, map and fee. Acreage registered by April 1 may be issued a burn permit if:

(A) Allocation is available; and

(B) The initial registration fee account has a sufficient balance.

(b) Registration of open field burning and propane flaming acreage after April 1 of each year shall require the prior approval of the Department and an additional \$2 per acre late registration fee. The late registration fee shall not be charged if the late registration is not due to the fault of the registrant or one under the registrant's control;

(c) Copies of all registration forms and fees shall be forwarded to the Department promptly by the permit agent. Registration map materials shall



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be made available to the Department at all times for inspection and reproduction;

(d) The Department shall act on any registration application within 60 days of receipt of a completed application. The Department may deny or revoke any registration application which is incomplete, false or contrary to state law or this Division;

(e) The grower registrant shall insure the information presented on the registration form and map is complete and accurate.

(2) Permits:

(a) Permits for open field burning, propane flaming, or stack burning shall be issued by the Department, or its authorized permit agent, to the grower registrant in accordance with the established procedures of the Department, and the times, locations, amounts and other restrictions set forth by the Department or this Division;

(b) A fire permit from the local fire permit issuing agency is also required for all open field burning pursuant to ORS 477.515, 476.380, 478.960;

(c) A valid open field burning permit shall consist of:

(A) An open field burning permit issued by the Department which specifies the permit conditions in effect at all times while burning and which identifies the acreage specifically registered and annually allocated for burning;

(B) A validation number issued by the designated permit agent on the day of the burn identifying the specific acreage allowed for burning and the date and time the permit was issued.

(d) A valid propane flaming permit shall consist of:

(A) A propane flaming registration form issued by the Department which specifies the permit conditions in effect at all times while flaming and which identifies the acreage specifically registered and annually allocated for propane flaming;

(B) A validation number issued by the designated permit agent identifying the specific acreage allowed for propane flaming and the date and time the permit was issued.

(e) A valid stack burning permit shall consist of the name of the responsible person and date the permit was issued, and shall specify the acreage and location authorized;

(f) Each responsible person open field burning, propane flaming, or stack burning shall pay a per acre burn fee within ten days of the date the permit was issued. The fee shall be:

(A) \$16 per acre sanitized by open field burning;

(B) \$4 per acre sanitized by propane flaming;

(C) \$10 per acre burned in stacks.

(D) For grass seed and cereal grain residue from previous seasons, broken bales, or fields where a portion of straw was removed using usual or standard baling methods, the acreage actually burned shall be estimated and the same per acre fee as imposed in paragraph (C) of this subsection shall be charged. The estimated acreage shall be rounded to the nearest whole acre.

(g) Burning permits shall at all times be limited by and subject to the burn schedule and other requirements or conditions announced or set forth by the Department;

(h) No person shall issue burning permits for open field burning, propane flaming, or stack burning of:

(A) More acreage than the amount sub-allocated annually to the District by the Department pursuant to OAR 603-077-0113(2);

(B)(i) Priority or fire safety buffer zone acreage located on the upwind side of any city, airport, Interstate freeway or highway within the same priority area or buffer zone.

(ii) It is the responsibility of each designated permit agent to establish and implement a system for distributing open field burning, propane flaming, or stack burning permits to individual grower registrants when burning is authorized, provided that such system is fair, orderly and consistent with state law, this Division and any other provisions set forth by the Department.

(3) Fees:

(a) Permit agents shall collect, properly document, and promptly forward all required registration fees, late registration fees, and burn fees to the Department;

(b) All fees shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund.

(4) Records:

(a) Permit agents shall at all times keep proper and accurate records of all transactions pertaining to registrations, permits, fees, allocations, and other matters specified by the Department. Such records shall be kept by the permit agent for a period of at least five years and made available for inspection by the appropriate authorities;

(b) Permit agents shall submit to the Department on specially provided forms weekly reports of all acreage burned in their permit jurisdictions. These reports shall cover the weekly period of Monday through Sunday,

and shall be mailed and post-marked no later than the first working day of the following week.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09

## 603-077-0113

### Acreage Limitations, Allocations

(1) Limitation of Acreage:

(a) Except for acreage and residue open field burned pursuant to OAR 603-077-0135, 603-077-0140, 603-077-0145, and 603-077-0155, the maximum acreage to be open field burned annually in the counties listed in ORS 468A.560 as amended by SB 528 under this Division shall not exceed 20,000 acres for the year 2009. For the year 2010 and thereafter no acres shall be allowed to be open field burned in the counties listed in ORS 468A.560 as amended by SB 528.

(b) Notwithstanding the annual limitation, up to 15,000 acres may be open field burned annually in the counties listed in ORS 468A.560 as amended by SB 528 and shall be considered outside the limitation:

(A) Consideration for these acres shall be given to creeping red fescue, chewings fescue and highland bentgrass as grass species identified by the Director of Agriculture as well as to terrain defined by Revised Universal Soil Loss Equation (RUSLE) and percent slope criteria as steep terrain identified by the Director of Agriculture.

(B) Steep terrain and species identified by the Director of Agriculture may not be open burned under the provisions of this subsection in Benton and Lane Counties and in Linn County, except for portions of northeast Linn County that are east of Stayton-Scio Road and north of Highway 226, and portions of northeast Linn County that are east of Richardson Gap Road and north of Fish Hatchery Drive.

(c) Other limitations on acreage allowed to be open field burned are specified in OAR 603-077-0115(7), 603-077-0131(2), 603-077-0133(1) and 603-077-0135(1);

(d) The maximum acreage to be propane flamed annually in the counties listed in ORS 468A.560 as amended by SB 528 under this Division shall not exceed 500 acres for the years 2009, 2010, 2011 and 2012. For the year 2013 and thereafter no propane flaming acreage will be allowed to be burned in the counties listed in ORS 468A.560 as amended by SB 528;

(e) Other limitations on acreage allowed to be propane flamed are specified in OAR 603-077-0145.

(f) The maximum acreage to be stack or pile burned annually in the counties listed in ORS 468A.560 as amended by SB 528 under this Division shall not exceed 1000 acres for the years 2009, 2010, 2011 and 2012. For the year 2013 and thereafter no stack or pile burning acreage will be allowed to be burned in the counties listed in ORS 468A.560 as amended by SB 528;

(2) Allocation of Acreage:

(a) In the event that total registration as of April 1 is less than or equal to the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a), (b) and (d) of this rule, the Department shall sub-allocate to each grower registrant and each district (subject to daily burn authorization) 100 percent of their respective registered acreage;

(b) In the event that total registration as of April 1 exceeds the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a), (b) and (d) of this rule, the Department may sub-allocate to growers on a pro rata share basis not more than 100 percent of the maximum acreage limit, referred to as "grower allocation." In addition, the Department shall sub-allocate to each respective fire district, its pro rata share of the maximum acreage limit based on acreage registered within the district, referred to as "district allocation";

(c) To ensure optimum permit utilization, the Department may adjust fire district allocations;

(d) Transfer of allocations for farm management purposes may be made within and between fire districts and between grower registrants on a one-in/one-out basis under the supervision of the Department. The Department may assist grower registrants by administering a reserve of released allocation for first come-first served utilization.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09

## 603-077-0115

### Daily Burning Authorization Criteria

As part of the Smoke Management Program provided for in ORS 468A.590, the Department shall set forth the types and extent of open field burning, propane flaming, and stack burning to be allowed each day according to the provisions established in this section and this Division:

(1) During the active burning season and on an as needed basis, the Department shall announce the burning schedule over the burning radio

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network operated specifically for this purpose or by other appropriate means. The schedule shall specify the times, locations, amounts and other restrictions in effect for open field burning, propane flaming, and stack burning. The Department shall notify Oregon Emergency Management of the burning schedule for dissemination to appropriate Willamette Valley agencies.

(2) Prohibition conditions:

(a) Prohibition conditions shall be in effect at all times unless specifically determined and announced otherwise by the Department;

(b) Under prohibition conditions, no permits shall be issued and no open field burning shall be conducted in any area except for individual burns specifically authorized by the Department on a limited extent basis. Such limited burning may include field-by-field burning, preparatory burning, or burning of test fires, except that:

(A) No open field burning shall be allowed:

(i) In any area subject to a ventilation index of less than 10.0;

(ii) In any area upwind, or in the immediate vicinity, of any area in which, based upon real-time monitoring, a violation of federal or state air quality standards is projected to occur.

(B) Only test-fire burning may be allowed:

(i) In any area subject to a ventilation index of between 10.0 and 15.0, inclusive, except for experimental burning specifically authorized by the Department pursuant to OAR 603-077-0135;

(ii) When relative humidity at the nearest reliable measuring station exceeds 50 percent under forecast northerly winds or 65 percent under forecast southerly winds.

(3) Marginal conditions:

(a) The Department shall announce that marginal conditions are in effect and open field burning is allowed when, in its best judgment and within the established limits of this Division, the prevailing atmospheric dispersion and burning conditions are suitable for satisfactory smoke dispersal with minimal impact on the public, provided that the minimum conditions set forth in paragraphs (2)(b)(A) and (B) of this rule are satisfied;

(b) Under marginal conditions, permits may be issued and open field burning may be conducted in accordance with the times, locations, amounts, and other restrictions set forth by the Department and this Division.

(4) Hours of burning:

(a) Burning hours shall be limited to those specifically authorized by the Department each day and may be changed at any time when necessary to attain and maintain air quality;

(b) Burning hours may be reduced by the fire chief or his deputy, and burning may be prohibited by the State Fire Marshal, when necessary to prevent danger to life or property from fire, pursuant to ORS 478.960.

(5) Locations of burning:

(a) Locations of burning shall at all times be limited to those areas specifically authorized by the Department; except that:

(b) No priority or fire safety buffer zone acreage shall be burned upwind of any city, airport, Interstate freeway or highway within the same priority area or buffer zone;

(c) No Lane, Linn or Benton county priority acreage shall be burned upwind of the Eugene-Springfield non-attainment area.

(6) Amounts of burning:

(a) To provide for an efficient and equitable distribution of burning, daily authorizations of acreages shall be issued by the Department in terms of single or multiple fire district quotas. The Department shall establish quotas for each fire district and may adjust the quotas of any district when conditions in its judgment warrant such action;

(b) Unless otherwise specifically announced by the Department, a one quota limit shall be considered in effect for each district authorized for burning;

(c) The Department may issue more restrictive limitations on the amount, density or frequency of burning in any area or on the basis of crop type, when conditions in its judgment warrant such action.

(7) Limitations on burning based on air quality:

(a) The Department shall establish the minimum allowable effective mixing height required for burning based upon cumulative hours of smoke intrusion in the Eugene-Springfield area as follows;

(b) Except as provided in paragraph (c) of this subsection, burning shall only be permitted whenever the following conditions are met:

(A) West Eugene area; defined as south of Eugene Airport, north of highway 126, for open burning of perennial grass crops;

Mixing Height is equal to or greater than 4500'

Transport wind direction = 50 - 120 degrees

Transport wind speed minimum = 12 mph

Surface wind speed = calm to 7 mph

(B) Creswell area for open burning of perennial grass crops:

Mixing Height is equal to or greater than 4000'

Transport wind direction = 30 - 90 degrees

Transport wind speed minimum = 12 mph

Surface wind speed = calm to 7 mph

(c) Notwithstanding the effective mixing height restrictions of paragraph (b) of this subsection, the Department may authorize burning of up to 1,000 acres total per day for the counties listed in ORS 468A.560 as amended by SB 528, consistent with smoke management considerations and this Division.

(8) Limitations on burning based on rainfall:

(a) Open field burning and propane flaming shall be prohibited in any area for one drying day (up to a maximum of four consecutive drying days) for each 0.10 inch increment of rainfall received per day at the nearest reliable measuring station;

(b) The Department may waive the restrictions of subsection (a) of this section when dry fields are available as a result of special field preparation or condition, irregular rainfall patterns, or unusually high evaporative weather condition.

(9) Other discretionary provisions and restrictions:

(a) The Department may require special field preparations before burning, such as, but not limited to, mechanical fluffing of residues, when conditions in its judgment warrant such action;

(b) The Department may designate specified periods following permit issuance within which time active field ignition must be initiated and/or all flames must be actively extinguished before said permit is automatically rendered invalid;

(c) The Department may designate additional areas as priority areas when conditions in its judgment warrant such action.

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

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 17-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09

## 603-077-0137

### Burning Fees Outside Willamette Valley

Notwithstanding OAR 603-077-0135(3), each person sanitizing perennial or annual grass seed crops by open field burning, in counties outside the counties listed in ORS 468A.560 as amended by SB 528, shall pay the Department 8.00 for each acre burned.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09

## 603-077-0140

### Emergency Burning Cessation

Pursuant to ORS 468A.610 and upon finding of danger to public health or safety, the Commission or the Department may order temporary emergency cessation of all open field burning in any area of the counties listed in 468A.560 as amended by SB 528.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09

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## Department of Community Colleges and Workforce Development Chapter 589

**Rule Caption:** Amend rule to increase certification fee from \$25 to \$35 in order to prevent program deficit in next biennium.

**Adm. Order No.:** DCCWD 1-2009

**Filed with Sec. of State:** 7-6-2009

**Certified to be Effective:** 7-6-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 589-007-0500

**Subject:** The State GED program and office are funded entirely by state fees. Due to increased costs associated with the administration of the GED program in the next biennium a deficit of \$113,000 is projected by June 2011. To remedy the projected deficit, CCWD and its advisory group, the State Board of Education, have decided to raise the state fee from \$25 to \$35 to provide the State office sufficient revenue to operate the GED program.

**Rules Coordinator:** Linda Hutchins—(503) 378-8648, ext. 474

## 589-007-0500

### GED Fees

The State Board of Education authorizes the Department of Community Colleges and Workforce Development to charge the following fees for the General Education Development (GED) Equivalency Certificate:

(1) All persons taking the General Education Development (GED) tests shall be required to pay a \$35 state fee at the time they begin testing;

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(2) Persons seeking a GED Equivalency Certificate shall be issued that certificate upon verification that the state fee has been paid and that the requirements of OAR 589-007-0400 have been met;

(3) Duplicate certificates and/or transcripts can be secured upon payment of \$5 each;

(4) The State Board authorizes the Commissioner to waive the \$35 fee upon the recommendation of the Chief Examiner of a testing center after a finding that a person is indigent and unable to pay;

(5) The \$35 state fee shall cover the cost of state administration for each test taker during a three-year period or until the transition to a new test battery in which prior tests taken are not included as part of the new battery; any person not completing the test battery within the three-year period or upon implementation of a new test battery shall be required to pay an additional \$35 state fee.

Stat. Auth.: ORS 326.051 & 326.550  
Stats. Implemented: ORS 192.440 & 326.550  
Hist.: IEB 130, f. 5-5-72, ef. 10-15-72; IEB 258, f. 1-31-77, ef. 2-1-77; IEB 6-1984(Temp), f. & ef. 3-7-84; IEB 10-1984, f. & ef. 4-13-84; EB 12-1991, f. & cert. ef. 7-19-91; Renumbered from 581-046-0005; ODE 1-2001, f. 1-25-01, cert. ef. 1-26-01; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-041-0011; DCCWD 1-2009, f. & cert. ef. 7-6-09

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**Rule Caption:** Career Readiness Certification Program.

**Adm. Order No.:** DCCWD 2-2009(Temp)

**Filed with Sec. of State:** 7-15-2009

**Certified to be Effective:** 7-15-09 thru 1-8-10

**Notice Publication Date:**

**Rules Adopted:** 589-007-0700

**Subject:** 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—(503) 947-2456

**589-007-0700**

**Career Readiness Certificate Program**

(1) The purpose of the Career Readiness Certification (CRC) 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.

(2) 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.

(3) The Department of Community Colleges and Workforce Development (CCWD) implements the statewide program for the Career Readiness Certificate called for in Section 2, HB 2398, 2009 session.

(4) CCWD shall execute and oversee statewide implementation of the Career Readiness Certificate. Implementation and administration of the CRC must involve, at a minimum, developing and establishing policies and procedures for:

- (a) Initial skills review assessments to identify participant's skill levels;
- (b) Targeted instruction and remedial skill-building for participants;
- (c) Foundational skills assessments for participants;
- (d) Training of staff to administer assessments based on established guidelines;
- (e) Delivery site criteria and validation of these criteria;
- (f) Quality Assurance processes;
- (g) Development of systems to collect, track, and maintain data;
- (h) Printing and distribution of certificates;
- (i) Participant's Eligibility criteria:
  - (A) Must be a resident of Oregon, Washington, or Idaho;
  - (B) Must be a United States citizen;
  - (C) Must comply with CRC assessment-taking procedures and requirements as outlined in American College Testing (ACT) test coordinator manual and directions for administration.

(5) Services provided by the CRC program shall include, but are not limited to:

(a) An assessment process that includes an initial skills review and a foundational skills assessment of examinees in reading for information, applied mathematics, and locating information at a minimum;

(b) Targeted and accelerated instruction and remedial skills training to increase foundational skills for participants as determined by the assessment process;

(c) Issuance of a Career Readiness Certificate to any eligible individual who earns a minimum score of a 3 on each of the CRC assessments for reading for information, applied mathematics, and locating information:

(A) Certificates issued to examinees on successful completion of the assessments must describe the skills demonstrated by the examinee as evidence of the individual's readiness for employment;

(B) Each of the CRC assessments shall be scored on a scale of three to seven. The level of credential examinees receive is based on the following:

(i) A bronze-level certificate requires a minimum score of three or above on each of the assessments.

(ii) A silver-level certificate requires a minimum score of four or above on each of the assessments.

(iii) A gold-level certificate requires a minimum score of five or above on each of the assessments.

(iv) A platinum-level certificate requires a minimum score of six or above on each of the assessments.

(6) The results of the CRC assessments must be used, at a minimum, to determine career readiness as determined by general skills requirements and job profiles; and to determine additional instructional needs for the participant in reading, locating information, and applied mathematics, or other, additional assessments needed or required.

(7) CCWD shall provide participants with the opportunity to agree to opt out of the CRC database by informing the Agency in writing, by mail, and with examinee's signature that he or she wants to opt out of the database.

(8) CCWD shall conduct periodic studies of the assessments used in Oregon to document Essential Skill for high school graduation to compare their effectiveness in preparing graduates for successful transition to post-secondary education and the workplace.

Stat. Auth.: ORS 183, 660.318 & 660.330 - 660.339  
Stats. Implemented:  
Hist.: DCCWD 2-2009(Temp), f. & cert. ef. 7-15-09 thru 1-8-10

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

**Rule Caption:** Clarifies that general supervising electricians may be penalized for failure to perform their responsibilities.

**Adm. Order No.:** BCD 3-2009

**Filed with Sec. of State:** 6-29-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 918-282-0140

**Subject:** This rule amendment clarifies that signing supervising electricians may not allow, either actively or by failure to prevent, an electrician to perform work for which they are not properly licensed. It also clarifies that a signing supervisor may be subject to penalties including fines, license conditioning, suspension, and revocation, where they fail to meet their responsibilities under the rule.

**Rules Coordinator:** Shauna M. Parker—(503) 373-7438

**918-282-0140**

**General Supervising Electrician License**

(1) A general supervising electrician when working for or as an electrical contractor requiring a signing supervisor:

(a) Directs, supervises, makes, or controls the making of electrical installations;

(b) May design, plan, and lay out work for the customers of the contractor with whom the supervising electrician is continuously employed; and

(c) Is the only individual authorized to direct, supervise, or control the installation or alteration of an electrical service.

(2) The general signing supervising electrician must:

(a) Sign all permits;

(b) Ensure all electrical installations meet minimum safety standards;

(c) Be continuously employed as a general supervising electrician on the electrical contractor's regular payroll and be available during working hours to carry out the duties of a supervising electrician under this section;



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- (d) Ensure proper electrical safety procedures are used;
  - (e) Ensure all electrical labels and permits required to perform electrical work are used and signed;
  - (f) Ensure electricians have proper licenses for the work performed, and may not permit either by assent or by failure to prevent, an individual to perform work for which they are not properly licensed;
  - (g) Comply with corrective notices issued by the inspecting authority;
  - (h) Notify the division in writing within five days if the signing supervising electrician terminates the relationship with the electrical contractor; and
  - (i) Not act as a supervising electrician for more than one employer.
- (3) Supervising electricians who fail to comply with the provisions of this rule through act or omission may be subject to penalties. Penalties include, but are not limited to, fines, license conditioning, suspension, and revocation.

(4) If the general supervising electrician leaves the employment of the general electrical contractor or employer, electrical work which requires a general supervising electrician shall not be conducted until a replacement general supervising electrician is employed and written notice designating the supervising electrician is given to the division.

#### (5) License and Equivalent Requirements:

(a) The licensing requirements for a general supervising electrician are set out in ORS 479.630.

(b) To comply with the experience requirements, a non-journeyman applicant relying on equivalent experience shall provide proof that applicant had:

(A) Qualifying experience to become a journeyman electrician, that is at least 8,000 hours of work experience with sufficient minimum hours in each area set out in OAR 918-282-0170; and

(B) Additional qualifying experience as a journeyman, that is at least 8,000 hours of work experience that is equivalent to journeyman work.

(c) A licensed journeyman only needs to document 8,000 hours of experience as a journeyman.

Stat. Auth.: ORS 455.117 & 479.730

Stats. Implemented: ORS 479.620, 479.630 & 479.730

Hist.: DC 15-1987, f. & ef. 5-15-87; Renumbered from 814-022-0880; BCA 28-1989, f. & ef. 12-7-89; BCD 8-1996(Temp), f. & cert. ef. 6-14-96; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-320-0090; BCD 3-2009, f. 6-29-09, cert. ef. 7-1-09

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

**Rule Caption:** GINA Requirements, Minimum Standards to Medicare Supplement Plans and Changes to Guaranteed Issue Eligibility.

**Adm. Order No.:** ID 3-2009

**Filed with Sec. of State:** 6-30-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 6-1-2009

**Rules Adopted:** 836-052-0132, 836-052-0141, 836-052-0192

**Rules Amended:** 836-052-0119, 836-052-0129, 836-052-0133, 836-052-0134, 836-052-0142

**Subject:** Amends rules governing Medicare supplement insurance in order to conform to changes in federal law and in the National Association of Insurance Commissioners' Model Regulation to Implement Revisions to the NAIC Medicare Supplement Insurance Minimum Standards Model Act, and to provide dually eligible Medicaid/Medicare recipients a guarantee issue time period of 63 days to purchase a Medicare supplement plan, when they have received notice that their Medicaid coverage is terminating.

**Rules Coordinator:** Sue Munson—(503) 947-7272

### 836-052-0119

#### Definitions

As used in OAR 836-052-0103 to 836-052-0194:

(1) "Applicant" means:

(a) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits;

(b) In the case of a group Medicare supplement policy, the proposed certificate holder.

(2) "Bankruptcy" occurs when a Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

(3) "Certificate" means any certificate delivered or issued for delivery under a group Medicare supplement policy.

(4) "Certificate Form" means the form on which the certificate is delivered or issued for delivery by the issuer.

(5) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no break in coverage greater than 63 days.

(6)(a) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(A) A group health plan;

(B) Health insurance coverage;

(C) Part A or Part B of Title XVIII of the Social Security Act (Medicare);

(D) Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under section 1928;

(E) Chapter 55 of Title 10 United States Code (CHAMPUS);

(F) A medical care program of the Indian Health Service or of a tribal organization;

(G) A state health benefits risk pool;

(H) A health plan offered under chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);

(I) A public health plan as defined in federal regulation; and

(J) A health benefit plan under Section 5(e) of the Peace Corps Act (22 United States Code 2504(e)).

(b) "Creditable coverage" does not include one or more, or any combination of the following:

(A) Coverage only for accident or disability income insurance, or any combination thereof;

(B) Coverage issued as a supplement to liability insurance;

(C) Liability insurance, including general liability insurance and automobile liability insurance;

(D) Workers' compensation or similar insurance;

(E) Automobile medical payment insurance;

(F) Credit-only insurance;

(G) Coverage for on-site medical clinics; and

(H) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other medical benefits.

(c) "Creditable coverage" does not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(A) Limited scope dental or vision benefits;

(B) Benefits for long-term care, nursing home care, home health care, community based care, or any combination thereof; and

(C) Such other similar, limited benefits as are specified in federal regulations.

(d) "Creditable coverage" does not include the following benefits if offered as independent noncoordinated benefits:

(A) Coverage only for a specified disease or illness; and

(B) Hospital indemnity or other fixed indemnity insurance.

(e) "Creditable coverage" shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

(A) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(B) Coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code; and

(C) Similar supplemental coverage provided to coverage under a group health plan.

(7) "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002 (Employee Retirement Income Security Act).

(8) "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

(9) "Insurance Policy" includes a subscriber contract or a prepayment contract of a health care service contractor and a policy or contract of a fraternal benefit society.

(10) "Issuer" includes insurers, fraternal benefit societies, health care service plans, health maintenance organizations as that term is defined in ORS 750.005, health care service contractors as that term is defined in 750.005, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

(11) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(12) Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C.1395w-28(b)(1), and includes:

(a) Coordinated care plans that provide health care services, including but not limited to health maintenance organization plans (with or without a

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point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;

(b) Medical savings account plans coupled with a contribution into a Medicare Advantage medical savings account; and

(c) Medicare Advantage private fee-for-service plans.

(13) "Medicare Supplement Policy" means a group or individual insurance policy or a subscriber contract, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. section 1395 et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. section 1395ss(g)(1) that is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare. "Medicare Supplement policy" does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under sec. 1833(a)(1)(A) of the Social Security Act.

(14) "Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.

(15) "Pre-Standardized Medicare supplement benefit plan," means a group or individual policy of Medicare supplement insurance issued prior to July 1, 1992.

(16) "Secretary" means the Secretary of the United States Department of Health and Human Services.

(17) "1990 Standardized Medicare supplement benefit plan," means a group or individual policy of Medicare supplement insurance issued on or after July 1, 1992 and with an effective date of coverage prior to June 1, 2010 and includes Medicare supplement insurance policies and certificates renewed on or after that date that are not replaced by the issuer at the request of the insured.

(18) "2010 Standardized Medicare supplement benefit plan," means a group or individual policy of Medicare supplement insurance issued with an effective date of coverage on or after June 1, 2010.

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

Stat. Auth.: ORS 731.244 & 743.682

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 21-1998(Temp), f. 12-8-98, cert. ef. 1-1-99 thru 6-25-99; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 10-2005, f. & cert. ef. 7-26-05; ID 3-2009, f. 6-30-09, cert. ef. 7-1-09

## 836-052-0129

### Policy Provisions

(1) Except for permitted preexisting condition clauses as described in OAR 836-052-0133(2)(a), 836-052-0134(2)(a) and 836-052-0132(1)(a), no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(2) No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(3) No Medicare supplement policy or certificate in force in the state shall contain benefits that duplicate benefits provided by Medicare.

(4)(a) Subject to OAR 836-052-0133(2)(d) and (e), 836-052-0134(2)(d), (e) and (g) and 836-052-0133(1)(d) and (e), a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 may be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(b) A Medicare supplement policy with benefits for outpatient prescription drugs may not be issued after December 31, 2005.

(c) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(A) The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and

(B) Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1996, f. & cert. ef. 4-26-96; ID 10-2005, f. & cert. ef. 7-26-05; ID 3-2009, f. 6-30-09, cert. ef. 7-1-09

## 836-052-0132

### Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date of Coverage on or After June 1, 2010

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date of coverage on or after June 1, 2010. A policy or certificate may not be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with or exceeds the benefit standards set forth in this rule. No issuer may offer a 1990 Standardized Medicare supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued with an effective date of coverage before June 1, 2010 remain subject to the requirements of OAR 836-052-0133, 836-052-0134 and 836-052-0136.

(1) The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of OAR 836-052-0103 to 836-052-0194:

(a) Regarding preexisting conditions, a Medicare supplement policy or certificate shall not:

(A) Exclude or limit benefits for loss incurred more than six months after the effective date of coverage because the loss involved a preexisting condition; or

(B) Define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not cover losses resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(e) Each Medicare supplement policy shall be guaranteed renewable. In addition:

(A) The insurer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(B) The insurer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(C) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under paragraph (E) of this subsection, the issuer shall offer certificate holders an individual Medicare supplement policy that, at the option of the certificate holder:

(i) Provides for continuation of the benefits contained in the group policy; or

(ii) Provides for benefits that otherwise meet the requirements of this subsection.

(D) If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) Offer the certificate holder the conversion opportunity described in paragraph (e)(C) of this subsection; or

(ii) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(E) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(g)(A) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed 24 months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certifi-

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cate holder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to the assistance.

(B) If suspension occurs and if the insured loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of entitlement, as of the termination of entitlement if the insured provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(C) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended for any period that may be provided by federal regulation at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act and is covered under a group health plan as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act. If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated effective as of the date of loss of coverage if the policyholder provides notice of loss of coverage within 90 days after the date of the loss.

(D) Reinstitution of coverages as described in paragraphs (B) and (C):

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of the suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the insured as the premium classification terms that would have applied to the insured had the coverage not been suspended.

(2) This section establishes standards for basic or core benefits common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, F with High Deductible, G, M and N. Each issuer of Medicare supplement insurance benefit plans shall make available each prospective insured a policy or certificate including only the basic core package of benefits established in this section. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic core package, but not in lieu of it. The basic core package includes the following:

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance. Billing the insured for any such balance is an unfair practice in the transaction of insurance that is injurious to the insurance-buying public, and is a violation of ORS 746.240.

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(e) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

(f) Coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

(3) This section establishes standards for additional benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, F with High Deductible, G, M, and N as provided by OAR 836-052-0141.

(a) Medicare Part A deductible benefit, providing coverage for 100 percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(b) Medicare Part A deductible benefit, providing coverage for 50 percent of the Medicare Part A inpatient hospital deductible amount per benefit period.

(c) Skilled Nursing Facility Care benefit, providing coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(d) Medicare Part B Deductible benefit, providing coverage for 100 percent of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(e) 100 percent of the Medicare Part B Excess Charges benefit, providing coverage for 100 percent of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation

established by the Medicare program or state law, and the Medicare-approved Part B charge.

(f) Medically Necessary Emergency Care in a Foreign Country, providing coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, when the care would have been covered by Medicare if provided in the United States and when the care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of \$250, and a lifetime maximum benefit of \$50,000. For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 3-2009, f. 6-30-09, cert. ef. 7-1-09

## 836-052-0133

### Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After July 1, 1992 and with an Effective Date of Coverage Prior to June 1, 2010

(1) The following standards in this rule are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after July 1, 1992 and with an effective date of coverage prior to June 1, 2010. A policy or certificate may not be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with or exceeds the benefit standards set forth in this rule.

(2) The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of OAR 836-052-0103 to 836-052-0194.

(a) Regarding preexisting conditions, a Medicare supplement policy or certificate shall not:

(A) Exclude or limit benefits for a loss incurred more than six months after the effective date of coverage because the loss involved a preexisting condition. The benefits shall be available after the period of exclusion or limitation permitted under this subsection whether or not a claim concerning the condition was made during the period and whether or not a physician gave medical advice or recommended or gave treatment concerning the condition during the period;

(B) Define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not cover losses resulting from sickness on a different basis than losses resulting from accidents;

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment or coinsurance amounts and copayment percentage factors. Premiums may be modified to correspond with such changes. An insurer must justify any premium modification actuarially and must obtain approval from the Director before implementing the modification;

(d) A Medicare supplement policy or certificate shall not provide for termination of coverage of a spouse because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium;

(e) Each Medicare supplement policy shall be guaranteed renewable for the life of the individual in the case of an individual policy and the life of the group in the case of a group policy. In addition:

(A) The insurer shall not cancel or nonrenew the policy on the ground of the health status of the individual;

(B) The insurer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or a material misrepresentation that is discovered within two years after the effective date of coverage;

(C) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under paragraph (E) of this subsection, the issuer shall offer certificate holders an individual Medicare supplement policy at standard rates and without any waiver, limitation or exclusion, that at the option of the certificate holder:

(i) Provides for continuation of the benefits contained in the group policy; or

(ii) Provides for benefits that otherwise meet the requirements of this section.

(D) If an individual is a certificate holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) Offer the certificate holder the conversion opportunity described in paragraph (C) of this subsection; or



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(ii) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(E) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy, whether the same or a different issuer, shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced;

(F) This subsection does not prohibit rate increases otherwise authorized by law.

(G) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this section.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(g)(A) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate holder for the period, not to exceed 24 months, in which the policyholder or certificate holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate holder notifies the issuer of the policy or certificate within 90 days after the date the policyholder or certificate holder becomes entitled to the assistance.

(B) If the suspension occurs and if the insured loses entitlement to the medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of such entitlement, if the insured provides notice of loss of the entitlement within 90 days after the date of the loss and pays the premium attributable to the period;

(C) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended for the period provided by federal regulation at the request of the policyholder if the policyholder is entitled to benefits under section 226(b) of the Social Security Act and is covered under a group health plan as defined in section 1862(b)(1)(A)(v) of the Social Security Act. If the suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan the policy shall be automatically reinstated effective as of the date of loss of coverage if the policyholder provides notice of loss of coverage within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(D) Reinstitution of the coverage:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of such suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstatement of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the insured as the premium classification terms that would have applied to the insured had the coverage not been suspended.

(h) If an issuer makes a written offer to the Medicare supplement policyholders or certificate holders of one or more of its plans, to exchange during a specified period from the holder's 1990 Standardized plan as described in OAR 836-052-0136 to a 2010 Standardized plan as described in 836-052-0141, the offer and subsequent exchange shall comply with the following requirements:

(A) An issuer need not provide justification to the Director if the insured replaces a 1990 Standardized policy or certificate with an issue age rated 2010 Standardized policy or certificate at the insured's original issue age and duration. If an insured's policy or certificate to be replaced is priced on an issue age rate schedule at the time of such offer, the rate charged to the insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the insured. The method proposed to be used by an issuer must be filed with the Director of the Department of Consumer and Business Services according to ORS 743.684.

(B) The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage.

(C) An issuer may not apply new pre-existing condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 Standardized policy or certificate of the insured, but may apply pre-existing condition limitations of no more than six months to any added benefits contained in the new 2010 Standardized policy or certificate not contained in the exchanged policy.

(D) The new policy or certificate shall be offered to all policyholders or certificate holders within a given plan, except where the offer or issue would be in violation of state or federal law.

(3) This section establishes standards for basic or core benefits common to benefit plans A to J. Each issuer shall make available to each prospective insured a policy or certificate including only the basic or core package of benefits established in this section. An issuer may make available to prospective insured any of the other Medicare supplement insurance benefit plans in addition to the basic core package, but not in lieu of it. The basic core package includes the following:

(a) Coverage of Part A Medicare Eligible Expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage of Part A Medicare Eligible Expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day use;

(c) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance. Billing the insured for any such balance is an unfair practice in the transaction of insurance that is injurious to the insurance-buying public, and is a violation of ORS 746.240;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(e) Coverage for the coinsurance amount, or in the case of hospital outpatient department services under a prospective payment system, the copayment amount, of Medicare Eligible Expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(4) This section establishes standards for additional benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by OAR 836-052-0136:

(a) Medicare Part A Deductible benefit, providing coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period;

(b) Skilled Nursing Facility Care benefit, providing coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A;

(c) Medicare Part B Deductible benefit, providing coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement;

(d) 80 percent of the Medicare Part B Excess Charges benefit, providing coverage for 80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(e) 100 percent of the Medicare Part B Excess charges benefit, providing coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge;

(f) Basic Outpatient Prescription Drug benefit, providing coverage for 50 percent of outpatient prescription drug charges, after a \$250 calendar year deductible, to a maximum of \$1,250 in benefit received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006;

(g) Extended Outpatient Prescription Drug benefit, providing coverage for 50 percent of outpatient prescription drug charges, after a \$250 calendar year deductible to a maximum of \$3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(h) Medically Necessary Emergency Care in a Foreign Country, providing coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, when the care would have been covered by Medicare if provided in the United States and when the care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible

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of \$250, and a lifetime maximum benefit of \$50,000. For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden or unexpected onset;

(i) Preventive Medical Care benefit, providing coverage for the preventive health services set forth in this subsection that are not covered by Medicare. Reimbursement shall be for the actual charges up to 100 percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of \$120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare. The preventive health services are:

(A) An annual clinical preventive medical history and physical examination that may include tests and services from paragraph (B) of this subsection and patient education to address preventive health care measures;

(B) Preventive screening tests or preventive services, the selection and frequency of which is determined to be medically appropriate by the attending physician.

(j) At-home recovery benefit, providing coverage for services to furnish short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery. The following provisions apply to the at-home recovery benefit:

(A) For purposes of the benefit, the following definitions apply:

(i) "Activities of Daily Living" include but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self administered, and changing bandages or other dressings;

(ii) "Care Provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry;

(iii) "Home" means any place used by the insured as a place of residence, if the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence;

(iv) "At-Home Recovery Visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except that each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

(B) Coverage requirements and limitations are as follows:

(i) At-home recovery services provided must be primarily services that assist in activities of daily living;

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare;

(iii) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) The actual charges for each visit up to a maximum reimbursement of \$40 per visit;

(III) \$1,600 per calendar year;

(IV) Seven visits in any one week;

(V) Care furnished on a visiting basis in the insured's home;

(VI) Services provided by a care provider as defined in subparagraph (A)(ii) of this subsection;

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(VIII) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

(C) Coverage is excluded for:

(i) Home care visits paid for by Medicare or other government programs; and

(ii) Care provided by family members, unpaid volunteers, or providers who are not care providers.

(5) Standards for Plans K and L:

(a) Standardized Medicare supplement benefit plan "K" shall consist of the following:

(A) Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(B) Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(C) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the

Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(D) Medicare Part A Deductible: Coverage for 50 percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(E) Skilled Nursing Facility Care: Coverage for 50 percent of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(F) Hospice Care: Coverage for 50 percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(G) Coverage for 50 percent, under Medicare Part A or B, of the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(H) Except for coverage provided in paragraph (I) of this subsection, coverage for 50 percent of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(I) Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(J) Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of \$4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(b) Standardized Medicare supplement benefit plan "L" shall consist of the following:

(A) The benefits described in subsection (a)(A), (B), (C), and (I) of this section;

(B) The benefit described in subsection (a)(D), (E), (F), (G), and (H) of this section, but substituting 75 percent for 50 percent; and

(C) The benefit described in subsection (a)(J) of this section, but substituting \$2000 for \$4000.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1993(Temp), f. 8-11-93, cert. ef. 9-1-93; ID 9-1993, f. 9-28-93, cert. ef. 10-1-93; ID 5-1996, f. & cert. ef. 4-26-96; ID 9-1997, f. & cert. ef. 7-10-97; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 10-2005, f. & cert. ef. 7-26-05; ID 3-2009, f. 6-30-09, cert. ef. 7-1-09

### 836-052-0134

#### Minimum Benefit Standards for Policies or Certificates Issued for Delivery Prior to July 1, 1992

(1) A policy or certificate may not be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the standards described in this rule. The standards described in this rule are minimum standards and do not preclude the inclusion of other provisions or benefits that are not inconsistent with the standards.

(2) The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of OAR 836-052-0103 to 836-052-0194:

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses insured more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage;

(b) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents;

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment or coinsurance amounts and copayment percentage factors. Premiums may be modified to correspond with such changes. An insurer must justify any premium modification actuarially and must obtain approval from the Director before implementing the modification;

# ADMINISTRATIVE RULES

(d) A “noncancelable,” “guaranteed renewable” or “noncancelable and guaranteed renewable” Medicare supplement policy shall not:

(A) Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(B) Be canceled or nonrenewed by the issuer on the grounds of deterioration of health.

(e)(A) Except as authorized by the Director, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or a material misrepresentation;

(B) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in paragraph (D) of this subsection, the issuer shall offer certificate holders an individual Medicare supplement policy. The issuer shall offer the certificate holder at least the following choices:

(i) An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(ii) An individual Medicare supplement policy that provides only such benefits as are required to meet the minimum standards as defined in OAR 836-052-0133(3).

(C) If membership in a group is terminated, the issuer shall:

(i) Offer the certificate holder the conversion opportunities described in paragraph (B) of this subsection; or

(ii) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.

(D) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced;

(E) This subsection does not prohibit rate increases otherwise authorized by law.

(f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(g) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this section.

(3) The following minimum benefit standards apply:

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare’s lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of ninety percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare, subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(f) Coverage for the co-insurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible (\$100);

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount; and

(h) Effective January 1, 1990, coverage for the coinsurance amount of Medicare eligible expenses for outpatient drugs used in immunosuppressive therapy, subject to the Medicare outpatient prescription drug deductible, if applicable.

Stat. Auth.: ORS 743.010 & 743.683

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 1-1989(Temp), f. & cert. ef. 1-3-89; ID 5-1989, f. 6-30-89, cert. ef. 7-3-89; ID 11-1990, f. 5-11-90, cert. ef. 9-1-90; ID 7-1992, f. & cert. ef. 5-8-92; ID 5-1996, f. & cert. ef. 4-

26-96; ID 9-1997, f. & cert. ef. 7-10-97; ID 10-2005, f. & cert. ef. 7-26-05; ID 3-2009, f. 6-30-09, cert. ef. 7-1-09

## 836-052-0141

### Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates with an Effective Date of Coverage on or After June 1, 2010

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any 1990 Standardized Medicare supplement benefit plan for sale with an effective date for coverage on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates with an effective date for coverage before June 1, 2010 remain subject to the requirements of OAR 836-052-0133.

(1)(a) An issuer shall make available to each prospective policyholder and certificate holder a policy form or certificate form containing only the basic core benefits, as defined in OAR 836-052-0132(2).

(b) If an issuer makes available any of the additional benefits described in OAR 836-052-0132(3) or offers standardized benefit Plans K or L as described subsections (5)(h) and (i) of this rule, then the issuer shall make available to each prospective policyholder and certificate holder, in addition to a policy form or certificate form with only the basic core benefits as described in subsection (a) of this section, a policy form or certificate form containing either standardized benefit Plan C as described in subsection (5)(c) of this rule or standardized benefit Plan F as described in subsection (5)(e) of this.

(2) No groups, packages or combinations of Medicare supplement benefits other than those listed in this rule shall be offered for sale in this state, except as may be permitted in subsection (6) of this rule and OAR 836-052-0139.

(3) Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans listed in this rule and conform to the definitions in OAR 836-052-0119. Each benefit plan must be structured in accordance with the format provided in 836-052-0132(2) and (3); or, in the case of plans K or L, in subsections (5)(h) and (i) of this rule and list the benefits in the order shown. For purposes of this rule, “structure, language, and format” means style, arrangement and overall content of a benefit.

(4) In addition to the benefit plan designations required in section (3) of this rule, an issuer may use other designations to the extent permitted by law.

(5) The content of the 2010 Standardized Medicare supplement benefit plans must be as follows:

(a) Standardized Medicare supplement benefit Plan A shall include only the basic core benefits as defined in OAR 836-052-0132 (2).

(b) Standardized Medicare supplement benefit Plan B shall include only the following: The basic core benefit as defined in OAR 836-052-0132(2); plus 100 percent of the Medicare Part A deductible as defined in 836-052-0132(3)(a).

(c) Standardized Medicare supplement benefit Plan C shall include only the following: The basic (core) benefit as defined OAR 836-052-0132(2); plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, and Medically necessary emergency care in a foreign country, each as defined in OAR 836-052-0132(3)(a), (c), (d) and (f).

(d) Standardized Medicare supplement benefit Plan D shall include only the following: The basic core benefit as defined in OAR 836-052-0142(2), plus 100 percent of the Medicare Part A deductible skilled nursing facility care, and medically necessary emergency care in an foreign country each as defined in 836-052-0132(3)(a)(c) and (f).

(e) Standardized Medicare supplement regular Plan F shall include only the following: The basic core benefit as defined in OAR 836-052-0132(2), plus 100 percent of the Medicare Part A deductible, the skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country each as defined in 836-052-132(3)(a), (c), (d), (e) and (f).

(f) Standardized Medicare supplement Plan F with high deductible shall include only the following: 100 percent of covered expenses following the payment of the annual deductible set forth in paragraph (B) of this subsection.

(A) The basic core benefit as defined in OAR 836-052-0132(2), plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B deductible, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country each as defined in 836-052-0132(3)(a), (c), (d), (e) and (f).



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(B) The annual deductible in Plan F with high deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the standardized Medicare supplement regular Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be \$1,500 and shall be adjusted annually from 1999 according to the method prescribed by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of \$10.

(g) Standardized Medicare supplement benefit Plan G shall include only the following: The basic core benefit as defined in OAR 836-052-0132(2) of this regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country each as defined in 836-052-0132(3)(a), (c), (e) and (f).

(h) Standardized Medicare supplement Plan K is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following:

(A) Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(B) Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(C) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(D) Medicare Part A Deductible: Coverage for 50 percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(E) Skilled Nursing Facility Care: Coverage for fifty percent (50%) of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(F) Hospice Care: Coverage for 50 percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(G) Blood: Coverage for 50 percent under Medicare Part A or B, of the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(H) Except for coverage provided in paragraph (I) of this subsection, coverage for 50 percent of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in paragraph (J) of this subsection;

(I) Coverage of 100 percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(J) Coverage of 100 percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of \$4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(i) Standardized Medicare supplement Plan L is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following:

(A) The benefits described in section (5)(h)(A)(B)(C) and (I) of this rule;

(B) The benefit described in section (5) (h)(D)(E)(F)(G) and (H) of this rule, but substituting 75 percent for 50 percent; and

(C) The benefit described in section (5)(h)(J) of this rule, but substituting \$2000 for \$4000.

(j) Standardized Medicare supplement Plan M shall include only the following: The basic core benefit as defined in OAR 836-052-0132(2), plus 50 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country each as defined in OAR 836-052-0132(3)(b), (c) and (f).

(k) Standardized Medicare supplement Plan N shall include only the following: The basic core benefit as defined in OAR 836-052-0132(2), plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country each as

defined in 836-052-0132(3)(a), (c) and (f), with copayments in the following amounts:

(A) The lesser of \$20 or the Medicare Part B coinsurance or copayment for each covered health care provider office visit including visits to medical specialists; and

(B) The lesser of \$50 or the Medicare Part B coinsurance or copayment for each covered emergency room visit; however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

(6). With the prior approval of the Director of the Department of Consumer and Business Services, an issuer may offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not otherwise available, and are cost-effective. Approval of new or innovative benefits must not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 3-2009, f. 6-30-09, cert. ef. 7-1-09

### 836-052-0142

#### Guaranteed Issue for Eligible Persons

(1) Guaranteed issue:

(a) Eligible persons are those individuals described in section (2) of this rule who seek to enroll under the policy during the period specified in section (3) of this rule and who submit evidence of the date of termination, disenrollment or Medicare Part D enrollment with the application for a Medicare supplement policy.

(b) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in section (5) of this rule that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(2) Eligible persons. An eligible person is an individual described in any of the following paragraphs:

(a) The individual is enrolled under an employee welfare benefit plan or a state Medicaid plan as described in Title XIX of the Social Security Act that provides health benefits that supplement the benefits under Medicare, and the plan terminates or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual.

(b) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All Inclusive Care for the Elderly (PACE) provider under section 1894 of the Social Security Act, and there are circumstances similar to those described in this subsection that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare Advantage plan:

(A) The certification of the organization or plan has been terminated;

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

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(E) The individual meets such other exceptional conditions as the Secretary may provide.

(c)(A) The individual is enrolled with:

(i) An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

(iv) An organization under a Medicare Select policy; and

(B) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under section (2)(b) of this rule.

(d) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(A)(i) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) Of other involuntary termination of coverage or enrollment under the policy.

(B) The issuer of the policy substantially violated a material provision of the policy; or

(C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.

(e)(A) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act or a Medicare Select policy; and

(B) The subsequent enrollment under paragraph (A) of this subsection is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851 (e) of the federal Social Security Act); or

(f) The individual, upon first becoming enrolled for benefits under Medicare part A, enrolls in a Medicare Advantage plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than 12 months after the effective date of enrollment.

(g) The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in section (5)(d) of this rule.

(3) Guaranteed Issue Time Periods.

(a) In the case of an individual described in section (2)(a) of this rule, the guaranteed issue period begins on the later of:

(A) The date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation); or

(B) The date that the applicable coverage terminates or ceases; and ends 63 days thereafter.

(b) In the case of an individual described in section (2)(b), (c), (e) or (f) of this rule whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated;

(c) In the case of an individual described in section (2)(d)(A), the guaranteed issue period begins on the earlier of:

(A) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any; and

(B) The date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated.

(d) In the case of an individual described in section (2)(b), (d)(B), (d)(C), (e) or (f) of this rule, who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date; and

(e) In the case of an individual described in section (2)(g) of this rule, the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the 60-day period immediately preceding the initial Part D enrollment period and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D; and

(f) In the case of an individual described in section (2) of this rule but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

(4) Extended Medigap access for interrupted trial periods.

(a) In the case of an individual described in section (2)(e) of this rule (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in section (2)(e)(A) is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in section (2)(e) of this rule.

(b) In the case of an individual described in section (2)(f) of this section (or deemed to be so described, pursuant to this paragraph) whose enrollment with a plan or in a program described in section (2)(f) of this rule is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in section (2)(f) of this rule; and

(c) For purposes of sections (2)(e) and (f) of this rule, no enrollment of an individual with an organization or provider described in section (2)(e)(A) of this rule, or with a plan or in a program described in section (2)(f) of this rule, may be deemed to be an initial enrollment under this paragraph after the two year period beginning on the date on which the individual first enrolled with such an organization provider, plan or program.

(5) Products to which eligible persons are entitled. The Medicare supplement policy to which eligible persons are entitled under:

(a) Section (2)(a), (b), (c) (except for coverage described in (c)(iv)) and (d) of this rule is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K or L offered by any issuer;

(b) Section (2)(c)(iv) and (f) of this rule is any Medicare supplement policy described in OAR 836-052-0136 offered by any issuer;

(c)(A) Subject to paragraph (B) of this subsection, section (2)(e) of this rule is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in subsection (a) of this section.

(B) After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this paragraph is:

(i) The policy available from the same issuer but modified to remove prescription drug coverage; or

(ii) At the election of the policyholder, an A, B, C, F (including F with a high deductible), K or L policy that is offered by any issuer.

(d) Section (2)(g) of this rule is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K, or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(6) Notification provisions:

(a) At the time of an event described in section (2) of this rule because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of the individual's rights under this rule, and of the obligations of issuers of Medicare supplement policies under section (1) of this rule. Such notice shall be communicated contemporaneously with the notification of termination.

(b) At the time of an event described in section (2) of this rule because of which an individual ceases enrollment under a contract or agreement, policy or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the individual's rights under this rule, and of the obligations of issuers of Medicare supplement policies under section (1) of this rule. Such notice shall be communicated within ten working days of the issuer's receiving notification of disenrollment.

Stat. Auth.: ORS 743.684

Stats. Implemented: ORS 743.010 & 743.684

Hist.: ID 21-1998(Temp), f. 12-8-98, cert. ef. 1-1-99 thru 6-25-99; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 24-2002, f. & cert. ef. 12-13-02; ID 10-2005, f. & cert. ef. 7-26-05; ID 3-2009, f. 6-30-09, cert. ef. 7-1-09

## 836-052-0192

### Prohibition Against Use of Genetic Information and Requests for Genetic Testing

(1) This section applies to all policies with policy years beginning on or after May 21, 2009.

(2) An issuer of a Medicare supplement policy or certificate shall not:

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(a) Deny or condition the issuance or effectiveness of the policy or certificate including the imposition of any exclusion of benefits under the policy based on a pre-existing condition on the basis of the genetic information with respect to the individual; or

(b) Discriminate in the pricing of the policy or certificate including the adjustment of premium rates of an individual on the basis of the genetic information with respect to the individual.

(3) Nothing in section (2) of this rule shall be construed to limit the ability of an issuer, to the extent otherwise permitted by law, from

(a) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or

(b) Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy. In such case, the manifestation of a disease or disorder in one individual may not also be used as genetic information about other group members and to further increase the premium for the group.

(4) An issuer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of the individual to undergo a genetic test.

(5) Section (4) of this rule shall not be construed to preclude an issuer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment as defined for the purposes of applying the regulations promulgated under part C of title XI and section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time and consistent with section (2) of this rule.

(6) For purposes of carrying out section (5) of this rule, an issuer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

(7) Notwithstanding section (4) of this rule, an issuer of a Medicare supplement policy may request, but not require, that an individual or a family member of the individual undergo a genetic test if each of the following conditions is met:

(a) The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable state or local law or regulation for the protection of human subjects in research.

(b) The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of the child, to whom the request is made that:

(A) Compliance with the request is voluntary; and

(B) Non-compliance will have no effect on enrollment status or premium or contribution amounts.

(c) No genetic information collected or acquired under this section may be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.

(d) The issuer notifies the Secretary of Health and Human Services in writing that the issuer is conducting activities pursuant to the exception provided for under this section, including a description of the activities conducted.

(e) The issuer complies with such other conditions as the Secretary of Health and Human Services may by regulation require for activities conducted under this section.

(8) An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

(9) An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with the enrollment.

(10) If an issuer of a Medicare supplement policy or certificate obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of section (9) of this rule if such request, requirement, or purchase is not in violation of section (8) of this rule.

(11) As used in this rule:

(a) "Issuer of a Medicare supplement policy or certificate" includes third-party administrator, or other person acting for or on behalf of such issuer.

(b) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual.

(c)(A) "Genetic information" means, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. "Genetic information" includes, with respect to any individual, any request for, or receipt of, genetic services,

or participation in clinical research which includes genetic services, by such individual or any family member of such individual. Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, includes genetic information of any fetus carried by such pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member.

(B) "Genetic information" does not include information about the sex or age of any individual.

(d) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(e) "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes. "Genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(f) "Underwriting purposes" means,

(A) Rules for, or determination of, eligibility including enrollment and continued eligibility for benefits under the policy;

(B) The computation of premium or contribution amounts under the policy;

(C) The application of any pre-existing condition exclusion under the policy; and

(D) Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

Stat. Auth.: ORS 743.683

Stats. Implemented: ORS 743.010 & 743.683

Hist.: ID 3-2009, f. 6-30-09, cert. ef. 7-1-09

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**Rule Caption:** Treatment of reinsurance reserve credits or assets under agreements entered prior to November 9, 1995.

**Adm. Order No.:** ID 4-2009(Temp)

**Filed with Sec. of State:** 7-9-2009

**Certified to be Effective:** 7-9-09 thru 12-24-09

**Notice Publication Date:**

**Rules Adopted:** 836-012-0331

**Subject:** NAIC accreditation Part A Laws & Regulations standards require states to include in statute or regulation a provision that insurers reduce to zero any reserve credits or assets established with respect to existing reinsurance agreements entered into prior to the effective date of the Life and Health Reinsurance Agreements Model Regulation (OAR 836-012-0300 to 836-012-0330) which would not be recognized under the provisions of this regulation. This requirement was contained in OAR 836-012-0330, which was repealed September 26, 2006. The purpose of the 2006 rulemaking was to correct and update erroneous or superseded statutory, rule and other references in OAR chapter 836; to eliminate and replace obsolete material; and to make other editorial and nonsubstantive changes.

OAR 836-012-0330 appears to have been repealed in error. The repeal of that rule removed the prohibition of an insurer reporting reserve credits or assets established with respect to existing reinsurance agreements entered into prior to the effective date of the Life and Health Reinsurance Agreements Model Regulation. The repeal violates the Reinsurance Ceded accreditation standard, Part A, 10(m).

In order to remain accredited, the Division must enact this replacement rule prior to July 10, 2009. The replacement rule simply states that any reserve credits or assets established with respect to reinsurance agreements entered into prior to November 9, 1995 that would not be entitled to recognition under the provisions of OAR 836-012-0300 to 836-012-0330 must be reduced to zero for purposes of the insurer's annual statement filing.

The Division is undergoing an accreditation review at this time; this rule must be adopted before the review can proceed.

**Rules Coordinator:** Sue Munson—(503) 947-7272

**836-012-0331**

**Existing Agreements**

For purposes of an insurer's statutory financial statement filings, each insurer subject to OAR 836-012-0300 to 836-012-330 shall reduce to zero any reserve credits or assets established with respect to reinsurance agree-



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ments entered into prior to November 9, 1995 that, under the provisions of 836-012-0300 to 836-012-330 as amended, would not be entitled to recognition of the reserve credits or assets.

Stat. Auth.: ORS 731.244 & ORS 731.508

Stats. Implemented: ORS 731.508(6)

Hist.: ID 4-2009(Temp), f. & cert. ef. 7-9-09 thru 12-24-09

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

**Rule Caption:** Adopt changes to compactors and balers rules in general industry.

**Adm. Order No.:** OSHA 7-2009

**Filed with Sec. of State:** 7-7-2009

**Certified to be Effective:** 7-21-09

**Notice Publication Date:** 4-1-2009

**Rules Amended:** 437-002-0256

**Subject:** The general industry rule in Division 2/O (OAR 437-002-0256, Oregon Rules for Refuse Collection and Compaction Equipment) is amended to include balers, stationary compactors, and self-contained compactors. It identifies guarding measures, appropriate signage, installation procedures, inspection requirements, and maintenance instructions. It is in plain language for easy reading and understanding.

Based on feedback received during the public hearing held on April 29th, 2009, field site visits, and the absence of any additional comments being made during the extended comment period, it has been decided by Oregon OSHA not to adopt the proposed baler rules for Division 4, Agriculture.

Please visit OR-OSHA's web site at [www.orosha.org](http://www.orosha.org)

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

## 437-002-0256

### Stationary Compactors, Self-Contained Compactors and Balers.

This applies to all stationary compactors, self-contained compactors, and balers.

You must comply with:  
Subdivision 2/D Walking/Working Surfaces, for ladders, stairs and other walking/working surfaces.

Subdivision 2/J 1910.147, Control of Hazardous Energy, for maintenance, servicing, and repair activities.

Subdivision 2/J 1910.146, Permit Required Confined Space for confined space hazards.

Subdivision 2/O Machine Guarding for any guarding hazard not covered in these rules.

#### YOUR RESPONSIBILITY:

To protect employees from hazards associated with stationary compactors, self-contained compactors, and balers.

Operators and other employees.

#### (1) You must:

Train and supervise equipment operators. Training must include information from the operation manual, when available, and these rules.

Document the name(s) of the trainer and trainees along with the date of the training.

Provide supervision to ensure employees follow correct operating procedures.

Instruct all employees how to identify and report exposure to hazards.

Prohibit wearing loose clothing, jewelry, or long loose hair that can become entangled in the equipment.

Installation, inspection and maintenance.

#### (2) You must:

Install the equipment according to the manufacturer's instructions.

Keep the equipment in safe working order.

Maintain the equipment according to manufacturer's recommendations when available.

Follow the manufacturer's recommendations for inspecting and testing. If there are no manufacturer's recommendations available, inspect and test annually.

Keep a record of inspections for a minimum of two years.

Make sure that modifications do not diminish the original level of safety.

Add safety precautions, resulting from modifications, to the operation manual, when available, and to the training information.

Not allow the use of damaged, malfunctioning, or defective equipment.

Ensure only qualified employees, trained and authorized by your management, or authorized service technicians are allowed to maintain and repair the equipment. Qualified employees must demonstrate a proficiency in maintaining and repairing the equipment.

Guard moving parts.

#### (3) You must:

Have guards that prevent body parts from getting caught by moving parts during the equipment's cycle.

Use sustained manual pressure controls when not using point of operation guarding

Make certain the point of operation is visible to the operator when using sustained manual pressure controls.

Make sure the equipment manufactured with interlocks will not function with the gate or door open.

#### Controls.

#### (4) You must:

Clearly label the function of each control.

Make sure controls are not subject to unintentional activation.

Have stop controls that are red, a different size than other controls, and not recessed.

Keep emergency stop controls readily accessible to the operator, or within 3 feet of the operating feed area or chute opening at equipment location.

Provide a way to stop the complete operation of the baler or compactor at any point in the cycle.

Require horizontal balers equipped with an automatic start, to have a minimum 5-second audible and visual warning when the startup control is activated. Before the main motor starts, there must be visual warning lasting for not less than 10 additional seconds.

No alarm or delay is required when the horizontal baler is restarting from sleep mode.

Access points for Maintenance or Repairs.

#### (5) You must:

Make sure access covers.

Have functional interlocks or locks that require hand tools for removal.

Have warning signs on compactors that read:

Restricted Area, Authorized Employees Only.

Warning — Stand Clear When Tailgate or Container is in Motion and During Loading and Unloading.

Warning — This Compactor Starts Automatically.

Warning — Gate Must Be Closed Before Operating This Compactor.

Have warning signs on balers that read:

CAUTION — Stand clear When Bale is Ejected.

WARNING — This Baler Starts Automatically.

DANGER — High Voltage.

DANGER — Disconnect and Lock Out Power Before Opening This Panel

Replace missing or defaced signs.

**NOTE:** Additional sign requirements are in ANSI Z245-2-1997 7.10 compactors and ANSI Z245.5 — 1997 5.1.6. balers.

Immediate work area.

#### (6) You must:

Not allow clutter or waste material that causes a safety hazard or obstructs safe operation to accumulate around the operator station.

Include warning signs at all loading points and the point of operation on automatic cycling equipment indicating that the baler or compactor starts automatically.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 22-1988, f. 12-30-88, cert. ef. 1-1-89; OSHA 6-1994, f. & cert. ef. 9-30-94,

Renumbered from 437-002-0242(1); OSHA 7-2009, f. 7-7-09, cert. ef. 7-21-09

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**Rule Caption:** Adopt changes to division 2/L, Fire Protection/Oregon Rules for Firefighters.

**Adm. Order No.:** OSHA 8-2009

**Filed with Sec. of State:** 7-9-2009

**Certified to be Effective:** 10-1-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 437-002-0182

**Subject:** Oregon OSHA amended OAR 437-002-0182, Oregon Rules for Fire Fighters related to confined space rescue. The rule change focuses on fire departments that respond to calls prompted by the public, typically 911 calls, for rescue from confined spaces. The adopted language was drawn heavily from the 2000 edition of the National Fire Protection Agency (NFPA) Standard for Rescue Technician Professional Qualifications (NFPA 1006), and the 1999 edition of the NFPA Standard on Operations and Training for Technical Rescue Incidents (NFPA 1670). This rule was initiated in part based on the need to standardize methods for all fire fighters and first responders in the state for the rescue of victims from confined spaces.

We also added definitions specific to the confined space rule to include confined space, immediately dangerous to life or health (IDLH), pressure demand respirator, and air purifying and positive pressure respirators. Some rules in 437-002-0182 such as paragraph (9) (a), (13) (e), (15) (b), (25) (a), (28) (a) and (29) (b) have specific reference dates and rule numbers removed that are no longer relevant.

Please visit OR-OSHA's web site at [www.orosha.org](http://www.orosha.org)

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

## 437-002-0182

### Oregon Rules for Fire Fighters.

#### (1) Scope and Application.

(a) These rules apply to all activities, operations and equipment of employers and employees providing fire protection services, emergency first response, and related activities that are subject to the provisions of the Oregon Safe Employment Act. These rules do not apply to the following exempted fire fighting activities:

(A) Aircraft fire fighting and rescue;

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(B) Forest and uncultivated, wildland fire fighting;

(C) Private industry fire brigades.

(D) Marine Fire Fighting and rescue.

**EXCEPTION:** When a public fire department elects to participate in one or more of the exempted fire fighting activities, that fire department must comply with all of the provisions of OAR 437-002-0182.

(b) The provisions of OAR 437-002-0182 must be supplemented by the provisions of other applicable safety and health rules of Oregon OSHA.

(2) Definitions.

**Aerial device:** An aerial ladder, elevating platform, aerial ladder platform, or water tower that is designed to position personnel, handle materials, provide egress and discharge water.

**Afterflame:** The time a test specimen continues to flame after the flame source has been removed.

**ANSI:** American National Standards Institute.

**Apparatus:** A mobile piece of fire fighting equipment such as pumper, water tender, etc.

**Confined space means a space that:**

Is large enough and so configured that a person can bodily enter and perform assigned work; and

Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and

Is not designed for continuous occupancy.

**Drill tower:** A structure, which may or may not be attached to the station that is over two stories high and primarily used for nonclassroom training of the fire fighters in fire service techniques.

**Emergency incident:** Any situation where the fire department delivers emergency services, rescue, fire suppression, medical treatment, and other forms of hazard control and mitigation.

**Emergency scene:** The site where the suppression of a fire or the emergency exists.

**Fire chief:** An employer representative responsible for managing the fire department's operation.

**Fire fighter:**

A person involved in performing fire department duties and responsibilities, including fire suppression.

A fire fighter may be a career or volunteer member of a fire department and may occupy any position or rank within the fire department.

**Fire retardant:** A material to reduce, stop or prevent flame spread.

**Fire training:** Training received by fire fighters to maintain proficiency in performing their assigned duties.

**Flame-resistance:** The property of materials, or combinations of component materials, to retard ignition and restrict the spread of flame.

**Hazardous material incident:** The accidental release of hazardous materials from their containers.

**Helmet:** A head protective device consisting of a rigid shell, energy absorption system, and chin strap intended to protect the head against impact, flying or falling objects, electric shock, penetration, heat, and flame.

**Hose tower:** A vertical structure where a hose is hung to dry.

**Immediately dangerous to life or health (IDLH):** Any condition that poses a threat to life, could cause irreversible adverse health effects, or could interfere with an individual's ability to escape unaided from a confined space.

**IFSTA:** International Fire Service Training Association.

**Lifeline:** The rope that secures employees when in extremely hazardous areas.

**Live fire training:** Any fire set within a structure, tank, pipe, pan, etc., under controlled conditions to facilitate the training of fire fighters under actual fire conditions.

**MSHA:** Mine Safety and Health Administration.

**NFPA:** National Fire Protection Association.

**Nondestructive testing:** A test to determine the characteristics or properties of a material or substance that does not involve its destruction or deterioration.

**Private Industry Fire Brigades:** A group of employees within an industry who are required to fight interior structural fires at their place of employment.

**Protective clothing:** The clothing or equipment worn to protect the head, body, and extremities from chemical, physical, and health hazards.

**Rescue saw (Cutoff saw):** A powered saw with a large circular cutting blade covered in part by a movable guard used to cut metal, wood, or concrete enclosures.

**Respirators:**

**Atmosphere-supplying respirator** is a respirator that supplies the respirator user with air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

**Air-purifying respirator** is a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

**Positive Pressure demand respirator** is a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

**Pressure demand respirator** is a positive pressure atmosphere-supplying respirator that admits air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

**SCBA** is a self-contained breathing apparatus designed to provide the wearer with a supply of respirable air carried in and generated by the breathain apparatus. This apparatus requires no intake of oxygen from the outside atmosphere, and can be designed to be a demand or pressure demand type respirator.

**Supplied-air respirator (SAR)** or **airline respirator** is an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

**Responding:** Answering an emergency call or other alarm.

**Scabbard:** A guard that prevents injury and covers the blade and pick of an axe or other sharp instrument when worn by the fire fighter.

**Station (Fire station):** Structure to house the fire service apparatus and personnel.

**Tailboard:** Standing space at rear of an engine or pumper apparatus where fire fighters ride.

**Training:** Instruction with hands-on practice in the operation of equipment, including respiratory protection equipment, that is expected to be used and in the performance of assigned duties.

**Warning light:** A flashing or rotating light.

**GENERAL REQUIREMENTS**

(3) **Organizational statement.** The employer must prepare and maintain a statement or written policy that includes basic organizational structure and functions of the organization, in addition to the type, amount, and frequency of training to be provided to fire fighters. This statement must be made available for inspection by the administrator and by employees or their designated representatives.

(4) **Personnel.**

(a) The employer must review and evaluate the physical capability of each employee annually to determine their ability to perform duties that may be assigned. The review and evaluation will be accomplished through physical examination, stress testing, or satisfactory performance demonstrated during the performance of their assigned duties.

(b) The employer must not permit an employee with known medical condition that would significantly impair their ability to engage in fire suppression activities at the emergency scene unless a physician's certificate of the employees' fitness to participate in such activities is provided. This will not limit the employer's ability to assign personnel to support activities (versus fire suppression activities).

(5) **Employer's Responsibility.**

(a) Each employer must comply with the provisions of this division to protect the life, safety, and health of employees.

(b) It is the responsibility of the employer to establish and supervise:

(A) A safe and healthful working environment, as it applies to non-emergency conditions or to emergency conditions at the scene after the incident has been terminated, as determined by the officer in charge.

(B) Programs for training employees in the fundamentals of accident prevention.

(C) A safe and healthful working environment as it applies to live fire training exercises.

(c) The employer must maintain all equipment in a safe condition.

(d) The employer must see that employees who participate in exempted fire fighting activities listed in OAR 437-002-0182(1) are properly trained, protected, clothed, and equipped for the known hazards of that particular emergency operation. The following note refers to the Respiratory Protection Standard, 1910.134(g)(3) and (4), Procedures for Interior Structural Fire Fighting ("two-in/two-out rule") adopted in Oregon on July 7, 1998.

**NOTE:** If, upon arriving at the scene, members find an imminent life threatening situation where immediate action may prevent the loss of life or serious injury, the requirements for personnel in the outside standby mode may be suspended, when notification is given by radio to incoming companies that they must provide necessary support and backup upon their arrival.

(6) **Employee's Responsibility.**

(a) Each fire fighter must comply with the sections of OAR 437-002-0182 that are applicable to their own actions and conduct in the course of their employment.

(b) Fire fighters must notify the appropriate employer or safety committee representative of unsafe practices, equipment, or workplaces.

(c) All fire fighters, at regularly scheduled times, must attend required training and orientation programs designed to increase their competency in occupational safety and health.

(d) Fire fighters and other employees must apply the principles of accident prevention in their work. They must use all required safety devices and protective equipment.

(e) Each fire fighter must take proper care of their protective equipment.

(f) Fire fighters who are expected to perform fire fighting operations must notify their employer when health conditions arise that will limit their capability of performing those duties.

(7) **Safety Committee.**

(a) Fire departments must have a separate safety committee or hold safety meetings according to the requirements of OAR 437-001-0765 in division 1, General Administrative Rules.

(b) When applicable, the representation on the safety committee must include both career and volunteer fire fighters.

(8) **Incident Management.** An incident management system that meets the requirements of NFPA standard 1561, on Fire Department Incident Management, must be established with written standard operating procedures, applying to all members involved in emergency operations. All members involved in emergency operations must be familiar with the system.

(9) **Accountability.**

(a) The fire department must establish written standard operating procedures for a personnel accountability system according to Section 2-6, 1995 of NFPA 1561, standard on Fire Department Incident Management System, that provides for the tracking and inventory of all members operating at an emergency incident.

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(b) It is the responsibility of all members operating at an emergency incident to actively participate in the personnel accountability system.

### (10) Fire Fighting Training and Education.

(a) The employer or employer representative must establish and implement a policy for educating and training throughout the fire fighting classifications (ranks). Such education and training must be provided to fire fighters before they perform assigned duties on a continuing basis.

(b) Before fire fighters participate in structural fire fighting activities, or in live fire training in a structure, they must meet the training levels prescribed by the Department of Public Safety Standards and Training's (DPSST) 'Entry-level Firefighter' or have equivalent training.

(c) When live fire training occurs, it must be conducted under the direction of the fire department training officer, or employer authorized representative. All live fire training must be conducted following the requirements of Appendix C of this standard.

(d) During live fire training, fire fighters must wear the protective equipment normally required for that type of fire fighting.

(e) When rope rescue training occurs, it must be conducted under the direction of the fire department training officer or department-designated authority according to the equipment manufacturers' recommendations. The training officer must keep records of the manufacturers' training requirements, and must comply with all such requirements.

(f) All fire hoses used by fire departments for training and fire combat must meet the service testing requirements noted in Chapter 5 of NFPA 1962, 1993 edition.

(g) The employer must provide training for the purpose, proper selection, fitting, and limitations of personal protective equipment.

(h) The employer must ensure that each employee is informed of the procedure of reporting unsafe work conditions or equipment.

### (11) General Requirements for Protective Clothing.

(a) The employer must provide employees all required protective clothing, except that an employee may opt to supply protective clothing. The employer must provide the protective clothing at no cost to employees. The protective clothing must meet the requirements in OAR 437-002-0182(11) through (16), whether supplied by the employer or employee.

(b) The employer must ensure that new protective clothing intended for structural fire fighting that is ordered, used, or purchased after the effective date of this division, meets the requirements contained in OAR 437-002-0182(11) through (16). The employer must ensure that fire fighters wear this clothing when performing structural fire fighting.

(c) In situations other than structural fire fighting, the employer must ensure that protective clothing appropriate for the known hazards of that particular emergency operation is worn.

(d) The employer must ensure that appropriate protective clothing protects the head, body, and extremities. It must consist of at least the following components: foot and leg protection, hand protection, body protection, and eye, face, and head protection.

(12) Body Protection. To ensure full body protection for the wearer coats and trousers used by structural fire fighters shall be at least equivalent to the National Fire Protection Association (NFPA) standard, No. 1971, 1991 edition, entitled "Protective Clothing for Structural Fire Fighting." (See also Appendix A.)

### (13) Head Protection.

(a) Head protection must consist of a protective head device, ear protection, flaps, and chin strap, which meet the requirements of NFPA Standard 1971-2000, Protective Ensemble for Structural Fire Fighting.

(b) Use, care, alterations, and maintenance instructions for protective headgear must be supplied for each helmet.

(c) Care, maintenance, and alteration of helmets must conform to the manufacturer's recommendations.

(d) During structural fire fighting helmet accessories designed to provide or maintain protection from health and safety hazards must be worn in the manufacturer's recommended position. (See also Appendix A.)

(e) A flame-resistant protective hood that will not adversely affect the seal of a respirator facepiece and meeting the requirements of NFPA Standard 1971, 1996 edition, must be worn during interior structural fire fighting operations to protect the sides of the face and hair.

(14) Hand Protection. Hand protection for fire fighting activities must consist of protective gloves or glove system that will provide protection against cut, puncture, and heat penetration. Gloves or glove system must meet the requirements of NFPA Standard 1973, 1988 edition, titled "Gloves for Structural Fire Fighting."

### (15) Foot and Leg Protection.

(a) Foot and leg protection must meet the requirements of OAR 437-002-0182(15)(a)(A) and (B) and may be achieved by either of the following methods:

(A) Fully extended boots, which provide protection for the legs; or

(B) Protective shoes or boots worn in combination with protective trousers that meet the requirements of OAR 437-002-0182(12).

(b) Protective footwear must meet the requirements of NAPA Standard 1971, 1996 edition, titled "Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting."

(c) Fire fighters' boots may be resoled but must meet the requirements of this rule.

(16) Eye and Face Protection. Eye and face protection worn by fire fighters at the fire ground must comply with the following regulations:

(a) General requirements. Face protection must be required where there is a reasonable probability of injury that can be prevented by such protection. When such face protection does not protect the eyes from foreign objects, additional eye protection must be provided.

(b) When self-contained respiratory equipment is being used by fire fighters, additional eye and face protection will not be required. Employers must make conveniently available a type of protection suitable for the work performed, and employees must use such protectors. Protectors must meet the following minimum requirements.

(A) They must provide adequate protection against the particular hazards for which they are designed.

(B) They must be reasonably comfortable when worn under the designated conditions.

(C) They must be durable.

(D) They must be capable of being disinfected.

(E) They must be easy to clean.

(F) Protectors that can be worn over corrective lenses must be available for those who need them, and should be kept clean and in good repair.

(c) Face shields.

(A) Face shields must be clear transparent or colored transparent.

(B) Disinfection. When a person is assigned protective equipment, this equipment must be cleaned and disinfected regularly.

(C) Face shields must be an integral part of the fire helmet and may be installed in a fixed position or hinged allowing adjustment of the shields.

(D) In the event a breathing apparatus within a face mask is being used, the face mask will be considered an acceptable face shield.

(d) Goggles, flexible, or cushioned fitting. Goggles must consist of a fully flexible frame, a lens holder or a rigid frame with integral lens or lenses, and a separate cushioned fitting surface on the full periphery of the facial contact area.

(A) Materials used must be chemical-resistant, nontoxic, nonirritating and slow-burning.

(B) There must be support on the face, such as an adjustable headband of suitable material or other appropriate support to hold the frame comfortably and snugly in front of the eyes.

(e) Design, construction, testing, and use of eye and face protection must be according to ANSI Z87.1, Occupational Eye and Face Protection (1979).

**NOTE:** Fire fighters must be protected from noise that exceeds the levels deemed safe in OAR 437, Division 2/G, 1910.95, Occupational Noise Exposure.

(17) Requirements for Respiratory Protection. See OAR 437, division 2/I, 1910.134, Respiratory Protection.

### (18) Criteria for Approved Self-Contained Breathing Apparatus.

(a) All compressed air cylinders used with self-contained breathing apparatus must meet Department Of Transportation and NIOSH criteria. In emergency and lifesaving situations, approved self-contained compressed-air breathing apparatus may be used with approved cylinders from other approved self-contained compressed-air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. Once the emergency is over, return SCBA's to their original approved condition.

(b) Self-contained breathing apparatus must be provided with an indicator that automatically sounds an alarm when the remaining air supply of the apparatus is reduced to within a range of 20 to 25 percent of its rated service time.

(19) (Reserved)

(20) Personal Alert Safety System (PASS). Each member involved in rescue, fire suppression, or other hazardous duties, must be provided with and must use a PASS device in the hazardous area when self-contained breathing apparatus is in use. PASS devices must meet the requirements of NFPA 1982, Standard on Personal Alert Safety Systems for Fire Fighters. Each PASS device must be tested at least monthly and must be maintained according to the manufacturer's instructions.

(21) (Reserved)

(22) (Reserved)

(23) (Reserved)

(24) Breathing Air Compressors and Cylinders. In addition to the requirements contained in 1910.134(i), air samples must be taken every six months from the compressor and analyzed by the employer or an independent laboratory for Grade D breathing air. Air samples must also be tested when the system is installed or repaired. Analysis must be conducted according to ANSI/CGA Standard G7.1-1989 edition, Commodity Specification for Air.

(25) Identification of Hazardous Material Locations.



## ADMINISTRATIVE RULES

(a) A means must be provided for identifying nonresidential premises where hazardous materials are stored, as defined in the Uniform Fire Code, 1991 edition, Articles 4 and 80, and in quantities as set forth in the hazardous material permit required by Article 4 of the Uniform Fire Code.

(b) Hazardous chemicals required to be identified defined in Article 9, Section 9.110, and Article 80, Section 80.101 of the Uniform Fire Code.

(26) Hazardous Material Response Plan.

(a) Fire departments that expect or plan to respond to hazardous material incidents must develop a written response plan.

(b) The written response plan must contain the policies and procedures on:

- (A) Pre-emergency planning and coordination with outside parties,
- (B) Personnel roles, lines of authority, training, and communication,
- (C) Emergency recognition and prevention,
- (D) Safe distances,
- (E) Scene security and control,
- (F) Evacuation procedures,
- (G) Decontamination,
- (H) Emergency medical treatment and first aid,
- (I) Personnel withdrawal procedures,
- (J) Critique of response and follow-up,
- (K) Personal protective equipment and emergency equipment and response procedures.

(c) The incident commander must be responsible for:

- (A) Identifying the hazardous substance and condition,
- (B) Implementing emergency operations,
- (C) Ensuring personal protective equipment is worn,
- (D) Limiting access of hot zone to those with a specific mission assignment,

(E) Implementing decontamination procedures,  
(F) Designating a safety officer,  
(G) Using appropriately trained personnel,  
(H) Providing on-scene medical surveillance for emergency responders.

### FIRE FIGHTING APPARATUS

(27) Fire Apparatus Area.

(a) Walkways around apparatus must be kept free of obstructions.

(b) The station's apparatus floors must be kept free of grease, oil, and tripping hazards.

(c) Class I or II flammable liquids must not be used to remove grease or dirt from apparatus.

(d) Exhaust gases from diesel or gasoline apparatus within buildings must be maintained within the limits of OAR 437, division 2/Z, OAR 437-002-0382, Oregon Air Contaminant Rules.

(28) Design and Construction of Fire Apparatus.

(a) All fire apparatus with the exception of specialized apparatus must conform to OAR 437, division 2/N, Oregon Rules for Commercial and Industrial Vehicles.

(b) Employers who have purchased used fire apparatus or used military equipment prior to the effective date of this division are not required to bring them under a more stringent code than the one in force at the time the apparatus was manufactured. The exception to this rule is regarding seat belts and communication systems between the tailboard and driver compartment as required by OAR 437-002-0182(29) (Automotive Fire Apparatus Equipment) and roll bars on all open top off-road vehicles as required by OAR 437-002-0182(28)(f).

(c) Fire fighters' vehicle tailboards must not project out of the vehicle sides or fenders and must be designed to provide safe footing.

(d) Exhaust systems must be installed and properly maintained and must be designed to minimize the exposure of exhaust gases by the fire fighter.

(e) The loaded gross weight and empty height of the vehicle must be posted in the vehicle such that it can be clearly read by the driver.

(f) Roll bars must be in place on all open top off-road vehicles for rollover protection.

(29) Automotive Fire Apparatus Equipment.

(a) All equipment on a vehicle must be adequately secured when the vehicle is in motion.

(b) Workers being transported by fire department vehicles must ride only in designated secure positions. Safety restraints must be provided for fire fighters riding the tailboard. (See also OAR 437, division 2/N, Oregon Rules for Commercial and Industrial Vehicles.)

(c) Vehicles with obstructed view to the rear of the vehicle when backing, must be equipped with:

- (A) An automatic back-up alarm that must sound when backing; or
- (B) A fire fighter, who is visible in the driver's left-side mirror, must stand to the rear of the truck to guide the driver while backing.

(d) Fire fighting vehicles must come to a full stop before workers disembark.

(e) If workers are required to ride the tailboard, an electrical signal system or voice communication system must be installed between the tailboard and the driver's compartment. A code of signals must be used for controlling the movement of the vehicle.

(f) When traffic flow is inhibited, vehicles equipped with emergency warning lights must be used to control traffic at emergency scenes. The use of traffic cones, fire department personnel, police, or other traffic control measures must be used as soon as practical.

(30) Automotive Apparatus Maintenance and Repair. Each employer must establish written records and procedures whereby apparatus has:

(a) A scheduled monthly maintenance check; or

(b) A maintenance check each time the apparatus is returned following an emergency response, drill, or test drive.

(31) Tires. Tires that are excessively worn, cracked, deteriorated or damaged in any way must not be used. All tires must have a minimum tread depth of 2/32-inch.

(32) Aerial Devices.

(a) Aerial devices used for fire fighting must be inspected and tested by a person competent in performing such tests and inspections according to the recommendations of NFPA Standard 1914, 1991 edition, at least annually.

(b) Where defects are found in critical components of an aerial device, the repairs must be tested and certified according to NFPA Standard 1914, 1991 edition, by a registered professional engineer or manufacturer of the apparatus or an American Welding Society (AWS) Certified Welding Inspector. A permanent record of such tests and repairs must be maintained for each unit.

### HOSE DRYING AND DRILL TOWERS

(33) Hose Drying Towers.

(a) Floor openings on hose tower platforms must be equipped with a guardrail meeting the requirements of OAR 437, division 2/D, 1910.23, Guarding Floor and Wall Openings and Holes.

(b) The toeboard requirements for elevated work platforms in hose drying towers must not apply unless hand tools or objects other than hoses are carried onto the platforms.

(c) The requirements for ladders must meet the requirements of OAR 437, division 2/D, 437-002-0027, Fixed Ladders.

(d) Ropes used to hoist hose in the hose towers must have a breaking strength to safe load strength (rated working load) ratio of 3 to 1.

(34) Drill Towers. Permanent fixed ladders on the outside of drill towers and drill buildings are exempt from the requirements of offset platform landings and ladder cage guards.

### FIRE SERVICE EQUIPMENT

(35) Testing, Maintenance and Inspection of Fire Service Equipment. The employer must maintain and inspect fire service equipment at least annually and perform any tests recommended by the manufacturers at the date of manufacture, or the recommendations of NFPA or IFSTA.

(36) Confined Space Rescue

(a) Employers subject to this section must comply with 1910.146 for their own confined spaces.

(b) Employers subject to this section must comply with 1910.146(k)(2) when they agree to serve as a designated rescue service provider.

(c) Employers subject to this section that will respond to emergency calls for rescue from confined spaces must:

(A) Train responders to recognize inherent confined space hazards before assigning or attempting any related duties in confined space rescues.

(i) Provide responders with understanding, knowledge, and skills necessary for safe performance of confined space rescues.

(ii) Practice a confined space rescue operation at least once every year from a real or simulated confined space.

(B) Certify responders in writing to Department of Public Safety Standards and Training (DPSST) Fire Fighter 1 levels or equivalent.

(C) Use the Incident Management System during confined space rescue incidents that meet the requirements of the NFPA Standard 1561, Fire Department Incident Management.

(D) Assess the situation and determine if it qualifies as a confined space incident.

(i) Classify the operation as a rescue or body recovery.

(ii) Assess and secure physical hazards related to the incident or rescue.

(iii) Assess atmospheric hazards.

(I) Use calibrated direct-reading instruments to test the atmosphere in confined spaces for oxygen content, flammable gases and vapors, and toxic air contaminants.

(II) When calibrated direct-reading instruments are not available, the Incident Commander must assume the situation is immediately dangerous to life and health (IDLH) and assure that responders who enter are equipped with appropriate respiratory protective equipment.

(iv) Determine if the space should be ventilated.

# ADMINISTRATIVE RULES

(E) Provide the appropriate rescue, emergency, and personal protective equipment for safe entry into and rescue from confined spaces.

(F) Provide necessary equipment to facilitate non-entry retrieval for responders, unless the retrieval equipment would increase the overall risk or would not contribute to the rescue operations.

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1993, f. 7-29-93, cert. ef. 9-15-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 2-2000, f. & cert. ef. 1-28-00; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 3-2005, f. & cert. ef. 6-10-05; OSHA 9-2008, f. 9-19-08, cert. ef. 1-1-09; OSHA 8-2009, f. 7-9-09, cert. ef. 10-1-09

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## Department of Corrections Chapter 291

**Rule Caption:** Rule Violations for Prohibited Inmate Conduct.

**Adm. Order No.:** DOC 9-2009

**Filed with Sec. of State:** 6-24-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 291-105-0015

**Subject:** This rule modification is necessary to update and redefine rule violation of prohibited conduct for inmates in Department of Corrections facilities. The rule violations have been renumbered to provide consistency for any future revisions.

**Rules Coordinator:** Janet R. Worley — (503) 945-0933

### 291-105-0015

#### Rules of Misconduct

(1) Violations Involving Property:

(a) **1.01 Arson:** An inmate commits arson if he/she starts an unauthorized fire or causes an explosion.

(b) **1.05 Property I:** An inmate commits Property I when he/she, except as authorized by a DOC or OCE employee, destroys, abuses, alters, damages, defaces, misuses, tampers with, or wastes materials or property, or fails to properly protect or produce property issued to him/her in a timely manner and:

(A) **1.05.01** The property involved exceeds \$75 in value; or

(B) **1.05.02** The misconduct involves the functioning of a security device; or

(C) **1.05.03** The misconduct involves a threat to the safety, security or orderly operation of the facility; or

(D) **1.05.04** The misconduct includes possession of an unauthorized or altered blade, such as a razor blade or pencil sharpener.

(c) **1.06 Property II** (minor violation): An inmate commits Property II when he/she, except as authorized by a DOC or OCE employee, destroys, alters, abuses, damages, defaces, misuses, tampers with or wastes materials or property or fails to properly protect or produce property issued to him/her in a timely manner.

(d) **1.10 Contraband I:** An inmate commits Contraband I if he/she:

(A) **1.10.01** Possesses any intoxicant; or

(B) **1.10.02** Possesses any drug paraphernalia; or

(C) **1.10.03** Has any controlled substance or intoxicant in his/her urine or blood, or other body parts that is found under any Department-authorized screening process such as urinalysis, breathalyzer, oral swabs, etc.; or

(D) **1.10.04** Fails to provide, refuses to submit, or submits an unacceptable urine sample for testing; or

(E) **1.10.05** Alters, taints, substitutes, contaminates or destroys a urine sample; or

(F) **1.10.06** Possesses money in the amount of \$10 or more; or

(G) **1.10.07** Possesses an unauthorized electronic communication device, including but not limited to, cell phone, pagers, or Blue-tooth enabled devices; etc.

(e) **1.11 Contraband II:** An inmate commits Contraband II if he/she possesses contraband other than that listed in Contraband I (OAR 291-105-0015(d)(A)-(G) and Contraband III (291-105-0015(f) and it creates a threat to the safety, security or orderly operation of the facility, including but not limited to:

(A) **1.11.01** Tobacco or smoking paraphernalia, unauthorized medication, items of barter (such as jewelry or canteen items not purchased by the inmate), checks, money under \$10, or unauthorized sexually explicit material; or

(B) **1.11.02** Items that were obtained by threats of or actual theft, forgery or coercion.

(f) **1.12 Contraband III** (minor violation): An inmate commits Contraband III if he/she possesses contraband other than that listed on Contraband I (OAR 291-105-0015(d)(A)-(G) and Contraband II (291-105-0015(e)(A)-(B), including uncanceled stamps, expired self-medication,

legal material belonging to another inmate, or property in excess of that authorized by staff.

(g) **1.15 Drug Possession:** An inmate commits Drug Possession if he/she possesses a controlled substance.

(h) **1.20 Possession of Body Modification Paraphernalia:** An inmate commits Possession of Body Modification Paraphernalia if he/she possesses items capable of being used in body modification, including but not limited to motors, needles, ink.

(i) **1.25 Unauthorized Use of Information Systems I:** An inmate commits Unauthorized Use of Information Systems I if he/she operates or uses any DOC, OCE or unauthorized information system equipment including, but not limited to, terminals, personal computers, minicomputers, work stations, controllers, printers, copiers, fax machines or phones that exceeds the conditions of use or access granted by the Director, functional unit manager, or designee, as appropriate, in the following manner:

(A) **1.25.01** To send, receive, or read messages or e-mails; access the Internet, or access the AS400, DOC servers or network devices, programs, other unauthorized computer programs, etc;

(B) **1.25.02** To conduct illegitimate business activity; or

(C) **1.25.03** To do unauthorized legal work.

(j) **1.26 Unauthorized Use of Information Systems II:** An inmate commits Unauthorized Use of Information Systems II if he/she operates or uses any DOC, OCE or unauthorized information system equipment including, but not limited to, terminals, personal computers, copiers, fax machines, or phones that exceeds the conditions of use or access granted by the Director, functional unit manager, or designee, as appropriate, in the following manner:

(A) **1.26.01** To prepare a letter or other unauthorized document;

(B) **1.26.02** To make copies for personal use (e.g., photos, greeting cards, pictures, newspaper articles); or

(C) **1.26.03** To use the phone in excess of or outside the parameters permitted under the Department's rules.

(2) **Violations Against Persons:**

(a) **2.01 Staff Assault:** An inmate commits Staff Assault if he/she:

(A) **2.01.01** Causes physical injury to a DOC or OCE employee, visitor or volunteer; or

(B) **2.01.02** Causes bodily fluids (human or animal) to come in contact with a DOC or OCE employee, visitor or volunteer, including (human or animal) feces, urine, spit, semen and blood, etc.; or

(C) **2.01.03** Causes physical injury to a DOC or OCE employee, visitor or volunteer and uses a dangerous or deadly weapon; or

(D) **2.01.04** Refuses to stop his/her assaultive behavior after being ordered to do so which necessitates a DOC or OCE staff member(s) to use physical force to stop the assaultive behavior; or

(E) **2.01.05** Harms or endangers the well being of an animal used to conduct DOC affairs.

(b) **2.05 Inmate Assault I:** An inmate commits Inmate Assault I if he/she:

(A) **2.05.01** Causes serious physical injury to another inmate or causes injury to an inmate that requires staff transporting the inmate to an outside agency for medical care; or

(B) **2.05.02** Causes physical injury to another inmate and uses a dangerous or deadly weapon; or

(C) **2.05.03** Commits a unilateral attack in a location or under circumstances which creates a threat to the safety, security, or orderly operation of the facility, such as the dining hall or the recreation area.

(c) **2.06 Inmate Assault II:** An inmate commits Inmate Assault II if he/she:

(A) **2.06.1** Causes bodily fluids (human or animal) to come in contact with another inmate, including (human or animal) feces, urine, spit, semen and blood, etc.; or

(B) **2.06.02** Commits a unilateral attack or is involved in a mutual fight that causes physical injury to another inmate; or

(C) **2.06.03** Is involved in a mutual fight in a location or under circumstances which creates a threat to the safety, security, or orderly operation of the facility, such as a dining hall or recreation area.

(d) **2.07 Inmate Assault III:** An inmate commits Inmate Assault III if he/she commits a unilateral attack or is involved in a mutual fight.

(e) **2.10 Disrespect I:** An inmate commits Disrespect I if he/she directs hostile, sexual, abusive or threatening language or gestures, verbal or written, towards or about another person that involves racial, religious or sexual harassment or a physical threat to the other person.

(f) **2.11 Disrespect II:** An inmate commits Disrespect II if he/she directs hostile, sexual, abusive or threatening language or gestures, verbal or written, towards or about another person the expression of which or under circumstances that create a threat to the safety, security or orderly operation of the facility (including, but not limited to, when one or more other persons are present, or in a location such as a dining hall or recreation yard).

# ADMINISTRATIVE RULES

(g) **2.12 Disrespect III** (minor violation): An inmate commits Disrespect III when he/she directs hostile, sexual, abusive or threatening language or gestures, verbal or written, towards or about another person.

(h) **2.15 Extortion I**: An inmate commits Extortion I if he/she compels or induces a DOC or OCE employee or any other person who is not an inmate to act or refrain from acting by threats, force or intimidation. (Extortion includes the use of threats, force or intimidation to collect gambling and other types of debt.)

(i) **2.16 Extortion II**: An inmate commits Extortion II if he/she:

(A) **2.16.01** Compels or induces an inmate to act or refrain from acting by threats, force or intimidation (Extortion includes the use of threats, force or intimidation to collect gambling and other types of debt.); or

(B) **2.16.02** Compels or induces a DOC or OCE employee to act or refrain from performing a job duty through use of demands, including but not limited to, changes to housing or work assignments; etc.

(j) **2.20 Sexual Assault**: An inmate commits Sexual Assault if he/she engages in non-consensual sexual activity with another person, or when force is used or when the person is unable to consent because of age or incapacitation (mental defect, mental incapacitation or physical helplessness).

(k) **2.25 Sexual Coercion**: An inmate commits Sexual Coercion if he/she compels or induces another person to engage in sexual activity by deceit, threats, force or intimidation or for personal favors.

(l) **2.30 Non-assaultive Sexual Activity**: An inmate commits Non assaultive Sexual Activity if he/she engages in sexual activity and the sexual activity is conducted without violence, threat of violence, coercion, or use of a weapon.

(m) **2.35 Sexual Solicitation**: An inmate commits Sexual Solicitation if he/she solicits another person to engage in sexual activity.

(n) **2.40 Hostage Taking**: An inmate commits Hostage Taking if he/she interferes with another person's personal liberty by taking him/her hostage.

(o) **2.45 Body Modification**: An inmate commits body modification if he/she alters or allows to be altered his/her body or the body of another by tattooing, piercing, puncturing, scarring, etc., that includes modifying or perpetuating a previous piercing or tattoo.

(3) **Violations Involving Fraud or Deception**:

(a) **3.01 False Information to Employees I**: An inmate commits False Information to Employees I if he/she presents or causes the presentation of false or misleading information to a DOC or OCE employee that creates a threat to the safety, security or orderly operation of the facility. False or misleading information shall include gestures, verbal or written communication.

(b) **3.02 False Information to Employees II** (minor violation): An inmate commits False Information to Employees II when he/she presents or causes the presentation of false and misleading information to DOC or OCE employees. False or misleading information includes gestures, verbal or written communication.

(c) **3.05 Forgery**: An inmate commits Forgery if he/she falsely makes, completes, alters or presents a written instrument.

(d) **3.10 Gambling** (minor violation): An inmate commits Gambling when he/she wagers anything of value in games of chance, or an inmate possesses paraphernalia associated with gambling or possesses the proceeds of gambling activity, money or otherwise.

(e) **3.15 Fraud**: An inmate commits fraud if he/she deceives another person or business in order to obtain money, property or something of value.

(4) **Violations Against the Orderly Operation of the Department or Facility**:

(a) **4.01 Disobedience of an Order I**: An inmate commits Disobedience of an Order I if he/she overtly refuses to promptly, or in a timely manner, comply with a valid order, which creates a threat to the safety, security, or orderly operation of the facility (such as when one or more other persons are present).

(b) **4.02 Disobedience of an Order II**: An inmate commits Disobedience of an Order II if he/she fails to comply with a valid order, which creates a threat to the safety, security or orderly operation of the facility (such as when one or more other persons are present).

(c) **4.03 Disobedience of an Order III** (minor violation): An inmate commits Disobedience of an Order III if he/she fails to comply with a valid order.

(d) **4.05 Disturbance**: An inmate commits a Disturbance if he/she advocates, incites, creates, engages in, maintains or promotes a situation characterized by unruly, noisy, or violent conduct or unauthorized group activity, which disrupts the orderly administration of or poses a direct threat to the security of a facility, facility programs or the safety of DOC or OCE employees or other persons.

(e) **4.10 Distribution I**: An inmate commits Distribution I if he/she:

(A) **4.10.01** Distributes or has distributed to him/her any controlled substance, intoxicant, drug paraphernalia or money in the amount of \$10 or more; or

(B) **4.10.02** Possesses such items as listed in (A) above which have been packaged for distribution.

(f) **4.11 Distribution II**: An inmate commits Distribution II if he/she:

(A) **4.11.01** Distributes or has distributed to him/her intoxicants or contraband that creates a threat to the safety, security and orderly operation of the facility; or

(B) **4.11.02** Possesses such items as listed in (A) above which have been packaged for distribution.

(g) **4.15 Compromising an Employee**: An inmate commits Compromising an Employee when he/she knowingly engages a DOC or OCE employee or DOC contractor or volunteer in a personal or business transaction including, but not limited to, through the use of bribery, contraband distribution or sexual solicitation, either directly or through another person(s).

(h) **4.20 Escape I**: An inmate commits Escape I if he/she departs without authorization from:

(A) **4.20.01** Within the security perimeter of a facility; or

(B) **4.20.02** The immediate control of DOC or OCE staff while in secure physical custody and outside the facility security perimeter.

(i) **4.21 Escape II**: An inmate commits Escape II if he/she departs without authorization from:

(A) **4.21.01** The grounds of a minimum security facility without a security perimeter; or

(B) **4.21.02** The direct supervision of personnel authorized to supervise inmates while outside the facility security perimeter; or

(C) **4.21.03** Transitional leave and an escape warrant has been issued.

(j) **4.25 Possession of an Escape Device**: An inmate commits Possession of an Escape Device if he/she possesses any item specifically designed for, physically altered for, or readily capable of being used to facilitate an escape from a DOC facility or from custody.

(k) **4.30 Possession of a Weapon**: An inmate commits Possession of a Weapon if he/she possesses an instrument, article or substance that is specifically designed for, physically altered for, or readily capable of causing death or serious physical injury to a person or animal used to conduct DOC affairs.

(l) **4.35 Racketeering**: An inmate commits Racketeering if he/she engages in illicit activity that is carried out for the purpose of personal or financial gain through acts of crime, extortion of money or advantage by threats of force.

(m) **4.40 Unauthorized Area I**: An inmate commits Unauthorized Area I when he/she fails to be present or is in any location not designated by assignment, programmed activity, call out or staff directive that creates a threat to the safety, security or orderly operation of the facility.

(n) **4.41 Unauthorized Area II** (minor violation): An inmate commits Unauthorized Area II when he/she fails to be present or is in any location not designated by assignment, programmed activity, call out or staff directive.

(o) **4.45 Unauthorized Organization I**: An inmate commits Unauthorized Organization I if, except as specified by Department of Corrections rule on Group Activities (Inmate) (OAR 291-145) he/she creates or actively promotes, recruits, participates in or involves himself/herself in high risk security threat group behavior as determined by the facilities security threat manager.

(p) **4.46 Unauthorized Organization II**: An inmate commits Unauthorized Organization II if, except as specified by Department of Corrections rule on Group Activities (Inmate) (OAR 291-145):

(A) **4.46.01** Supports, displays, or endorses through verbal, visual or written acts or communication (e.g., STG tattoos, STG graffiti, STG hand signs) any club, association or organization which is a security threat group; or

(B) **4.46.02** Engages in a petition drive without specific authorization from the functional unit manager.

(5) **Attempt and Conspiracy**: An inmate who attempts or conspires to commit a violation of a rule(s) of prohibited conduct shall be found in violation of the rule(s), and shall be subject to appropriate sanction(s) on the same basis as if the inmate had committed a completed violation(s). (See definitions for attempt and conspiracy.)

Stat. Auth.: ORS 179.040, 421.068, 421.180, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.068, 421.180, 423.020, 423.030, 423.075

Hist.: CD 8(Temp)/CD 11(Temp)/CD 12(Temp), f. & ef. 10-20-72 thru 2-16-73; CD 33, f. 6-16-76, ef. 7-1-76; CD 34(Temp), f. & ef. 7-19-76; CD 36, f. 11-5-76, ef. 11-15-76; CD 7-1979, f. & ef. 3-14-79; CD 19-1979(Temp), f. & ef. 10-19-79, Renumbered from 291-040-0050; CD 13-1980, f. & ef. 4-15-80, Renumbered from 291-040-0050; CD 25-1982, f. & ef. 11-19-82; CD 8-1985(Temp), f. & ef. 6-19-85; CD 30-1985, f. & ef. 8-16-85; CD 6-1986(Temp), f. 3-14-86, ef. 4-15-86; CD 29-1986, f. & ef. 8-20-86; CD 38-1987, f. & ef. 10-2-87; CD 5-1989, f. & cert. ef. 4-21-89; CD 8-1992, f. 3-27-92, cert. ef. 4-14-92; CD 6-1993, f. 3-10-93, cert. ef. 4-1-93; CD 9-1995, f. 5-23-95, cert. ef. 6-1-95; CD 16-1996, f. 11-13-96, cert. ef. 11-15-96; DOC 3-1999, f. 2-25-99, cert. ef. 3-1-99; DOC 28-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 16-2000, f. & cert. ef. 6-19-00; DOC 6-2002, f. 4-30-02, cert. ef. 5-1-02; DOC 9-2005, f. 7-22-05, cert. ef. 7-24-05; DOC 9-2009, f. 6-24-09, cert. ef. 7-1-09



# ADMINISTRATIVE RULES

**Rule Caption:** Behavioral Adjustments to Performance Awards Provided to Inmates in DOC Facilities.

**Adm. Order No.:** DOC 10-2009

**Filed with Sec. of State:** 6-30-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 11-1-2008

**Rules Amended:** 291-077-0033

**Subject:** This rule modification is necessary to ensure the behavioral adjustments to monthly performance points provided to inmates under the Department's Performance Recognition and Award System align with the changes to the Department's rule on inmate misconduct, specifically OAR 291-105-0015. The number of levels of misconduct for rule violations has been reduced from eight down to six levels on the disciplinary sanctioning grids. Monthly performance points are adjusted downward based on the level of misconduct.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-077-0033

### Behavioral Adjustments, Unsatisfactory Performance and Program Failures

(1) Daily Fail: Program supervisors may submit a fail assessment of an inmate's daily performance in any qualifying program.

(a) When a daily fail assessment is submitted, it is the supervisor's responsibility to complete a Record of Inmate Daily Performance Failure (CD 118a).

(b) One copy will be given directly to the inmate, one copy attached to the daily attendance roster, and remaining copies distributed in accordance with institution-specific procedures.

(2) Program Fail: The inmate assignment supervisor or counselor, in his/her sole discretion, with reasonable cause based upon an inmate's poor performance and non-compliance with prescribed programming may fail an inmate from any qualifying program. Poor performance and non-compliance include the following behaviors: refusal to participate, non-attendance, poor performance quality, poor performance effort, poor interpersonal communications with staff and fellow inmates, poor self-improvement effort and inability to follow directions or to ensure the orderly continued operation of the program.

(a) When a program failure is submitted, it is the supervisor's responsibility to complete an Inmate Performance Report (CD 118b).

(b) One copy will be given directly to the inmate, one copy attached to the daily attendance roster, and remaining copies distributed in accordance with institution-specific procedures.

(3) For purposes of this rule, inmates who dispute a program fail may use the inmate grievance system as described in the rule on Inmate Grievance Review System (OAR 291-109).

(4) Evaluation Period: There is also a 30-day program pass evaluation period that is a total of 30 successful programming days (30 daily passes). Inmates will not earn daily points during this evaluation period. An inmate will undergo the 30-day program pass evaluation period if involved in any of the following:

(a) Removal from a program for failure to satisfactorily perform in a program assignment; or

(b) Placement in segregated housing in connection with an inmate disciplinary sanction order.

(c) If an inmate is involved in any of the above events during the initial 120-day evaluation period described in OAR 291-077-0030(3), the 30-day program pass evaluation will not start until after the 120-day evaluation period is completed.

(4) Behavioral Adjustment:

(a) The department will record all inmate disciplinary sanction orders and adjust downward the inmate's monthly performance points based on the level of misconduct assigned to the disciplinary rule violation(s) by the corresponding inmate disciplinary grid(s) contained in the department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). For each disciplinary order sanctioning an inmate for a disciplinary rule violation, the department will deduct points from an inmate's monthly performance points based on the level of misconduct as follows:

- (A) Level 1 — 100% Deducted
- (B) Level 2 — 80% Deducted
- (C) Level 3 — 65% Deducted
- (D) Level 4 — 40% Deducted
- (E) Level 5 — 20% Deducted
- (F) Level 6 — 10% Deducted

(b) Deductions for behavioral adjustment will be made in the month in which the final disciplinary order is issued in the disciplinary case. Monthly performance points with behavioral adjustments will be calculated

ed by taking the monthly performance points, subtracting for behavioral adjustments to determine the total monthly performance points.

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

Stat. Auth.: ORS 179.040, 421.440, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 421.440, 423.020, 423.030 & 423.075

Hist.: DOC 2-2001(Temp), f. & cert. ef. 1-22-01 thru 7-18-01; DOC 15-2001, f. & cert. ef. 7-9-01; DOC 14-2003, f. 9-25-03, cert. ef. 10-1-03; DOC 1-2006, f. & cert. ef. 2-15-06; DOC 10-2009, f. 6-30-09, cert. ef. 7-1-09

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**Rule Caption:** Food Services — Kosher Diets.

**Adm. Order No.:** DOC 11-2009(Temp)

**Filed with Sec. of State:** 7-2-2009

**Certified to be Effective:** 7-2-09 thru 12-29-09

**Notice Publication Date:**

**Rules Suspended:** 291-084-0010, 291-084-0020, 291-084-0030, 291-084-0040

**Subject:** Temporary repeal of the Department's rules is necessary because they are inconsistent with current Department policy and procedures governing inmate access to a kosher diet.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-084-0010

### Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030 and 423.075.

(2) Purpose: The purpose of this rule is to establish Department of Corrections policy and procedures regarding inmate participation in the Department's Kosher Diet Program.

(3) Policy: Within inherent limitation of resources, and the need for facility security, safety, health and order, it is the policy of the Department of Corrections to afford inmates a reasonable opportunity to observe the religious dietary requirements of Kashruth by offering an approved Kosher diet to Jewish inmates in Department of Corrections facilities in accordance with these rules.

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

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

Hist.: DOC 17-1998(Temp), f. 7-14-98, cert. ef. 7-15-98 thru 1-11-99; DOC 1-1999, f. & cert. ef. 1-8-99; Suspended by DOC 11-2009(Temp), f. & cert. ef. 7-2-09 thru 12-29-09

## 291-084-0020

### Definitions

(1) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(2) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

(3) Kosher Diet: A diet prepared and served in accordance with Kashruth standards established by the Union of Orthodox Congregations of America.

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

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

Hist.: DOC 17-1998(Temp), f. 7-14-98, cert. ef. 7-15-98 thru 1-11-99; DOC 1-1999, f. & cert. ef. 1-8-99; Suspended by DOC 11-2009(Temp), f. & cert. ef. 7-2-09 thru 12-29-09

## 291-084-0030

### General

(1) Jewish inmates in Department of Corrections facilities may request approval to participate in the Department's Kosher diet program as provided in these rules.

(2) Approval:

(a) A Jewish inmate who desires to participate in the Department's Kosher diet program may request to do so by submitting a written request on an inmate communication form (CD 214) to the facility chaplain or designee.

(b) Upon receiving an inmate's written request to participate in the program, the facility chaplain or designee will furnish the inmate with a questionnaire that must be completed by the inmate and returned to the facility chaplain or designee as part of the approval process. The facility chaplain or designee will forward the completed questionnaire to an approved Jewish religious representative for verification that the inmate is Jewish by birth or by conversion in accordance with the religious doctrinal requirements of Judaism. If the Jewish religious representative verifies that the inmate is Jewish in accordance with the religious doctrinal requirements of Judaism. If the Jewish religious representative verifies that the inmate is Jewish in accordance with the religious doctrinal requirements of Judaism, the facility chaplain will schedule the inmate for a conference to discuss the requirements of program participation. If, after discussing program participation requirements, the inmate still desires to participate in the Kosher diet program, he/she will be required to sign an acknowledgment form indicat-

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ing the inmate's agreement to abide by the conditions of program participation — Koshers Diet Program Participation Agreement.

(c) Upon receiving the inmate's signed Koshers Diet Program Participation Agreement, the facility chaplain or designee will approve the inmate's request unless the inmate has previously been disqualified from participation in the Koshers diet program in accordance with these rules. If the inmate's request is approved, the facility chaplain or designee will document the inmate's program status in the Department's offender information system. The facility chaplain or designee will forward the signed Koshers Diet Program Participation Agreement to the facility records office for filing in the inmate's institution working file. A copy of the signed agreement will be kept on file in the facility chaplain's office and one copy will be sent to the inmate.

(3) Suspension/Termination/Reinstatement:

(a) Voluntary Termination:

(A) An inmate may terminate his/her participation in the Koshers diet program by submitting a written request on an inmate communication form (CD 214) to the facility chaplain or designee. Upon receiving the inmate's written request, the facility chaplain or designee will terminate the inmate from the Koshers diet program, and document the inmate's voluntary termination in the offender information system.

(B) An inmate who is voluntarily terminated from participation in the Koshers diet program may request reinstatement to the program by submitting a written request to the facility chaplain or designee no sooner than 60 days following the date of termination from the program. Upon receiving the written request, the facility chaplain or designee will reinstate the inmate to the Koshers diet program, and document the inmate's reinstatement in the offender information system.

(b) Seven-Day Suspension:

(A) An inmate who violates the conditions of participation set forth in the Koshers Diet Program Participation Agreement (i.e., the inmate is observed and documented by staff during a meal to be eating or possessing foods on his/her food tray other than that served as part of the Koshers diet) will receive a seven-day suspension. Upon suspension, the facility chaplain or designee will document the suspension in the offender information system.

(B) An inmate who has been suspended from participation in the Koshers diet program and who desires reinstatement must submit a written request for reinstatement on an inmate communication form (CD 214) to the facility chaplain or designee. Upon receiving the written request, the facility chaplain or designee will reinstate the inmate to the Koshers diet program, and document the inmate's reinstatement in the offender information system.

(c) Thirty-Day Suspension:

(A) An inmate who violates the conditions of participation set forth in the Koshers Diet Program Participation Agreement after receiving a seven-day suspension will be suspended from the program for 30 days by the facility chaplain or designee. Upon suspension, the facility chaplain or designee will document the suspension in the offender information system.

(B) An inmate who has been suspended from participation in the Koshers diet program and who desires reinstatement must submit a written request for reinstatement on an inmate communication form (CD 214) to the facility chaplain or designee no sooner than 30 days following the date of suspension from the program. Upon receiving the written request, the facility chaplain or designee will reinstate the inmate to the Koshers diet program, and document the inmate's reinstatement in the offender information system.

(d) Involuntary Termination: An inmate who violates the conditions of participation set forth in the Koshers Diet Program Participation Agreement after reinstatement from a 30-day suspension will be permanently terminated from participation in the Koshers diet program, subject only to the decision of the Administrator of Religious Services upon administrative review. Upon involuntary termination, the facility chaplain or designee will document the suspension in the offender information system.

(e) Administrative Review:

(A) An inmate who has been involuntarily terminated from participation in the Department's Koshers diet program may request an independent review of the termination decision and reinstatement to the program by writing to the Administrator of Religious Services within seven days of the date of termination from the program. The review request must be in writing, and should specify the reason(s) why the inmate should be reinstated to the program.

(B) Upon review, the Administrator may determine, in his/her sole discretion, to reinstate the inmate to the Koshers diet program or to order the inmate's permanent termination from the program. The Administrator will notify the inmate in writing of his/her decision, and will document the inmate's program status in the offender information system.

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

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

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

Hist.: DOC 17-1998(Temp), f. 7-14-98, cert. ef. 7-15-98 thru 1-11-99; DOC 1-1999, f. & cert. ef. 1-8-99; Suspended by DOC 11-2009(Temp), f. & cert. ef. 7-2-09 thru 12-29-09

## 291-084-0040

### Food Services

(1) Jewish inmates in Department of Corrections facilities who have received approval to participate in the Department's Koshers diet program will be served a Koshers diet.

(2) Food offered as part of the Department's Koshers diet program will only be served with disposable tray, cup and tableware.

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

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

Hist.: DOC 17-1998(Temp), f. 7-14-98, cert. ef. 7-15-98 thru 1-11-99; DOC 1-1999, f. & cert. ef. 1-8-99; Suspended by DOC 11-2009(Temp), f. & cert. ef. 7-2-09 thru 12-29-09

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**Rule Caption:** Alternative Incarceration Programs for Inmates.

**Adm. Order No.:** DOC 12-2009

**Filed with Sec. of State:** 7-13-2009

**Certified to be Effective:** 7-13-09

**Notice Publication Date:** 7-1-2009

**Rules Adopted:** 291-062-0170

**Rules Amended:** 291-062-0100, 291-062-0110, 291-062-0120, 291-062-0130, 291-062-0140, 291-062-0150, 291-062-0160

**Rules Repealed:** 291-062-0100(T), 291-062-0110(T), 291-062-0120(T), 291-062-0130(T), 291-062-0140(T), 291-062-0150(T), 291-062-0160(T), 291-062-0170(T)

**Subject:** 2008 OR Laws, Ch 35 (HB 3658) modifies the process for release of an inmate on post-prison supervision following successful completion of alternative incarceration program. These rule amendments are necessary to update the Department's policy and procedures for releasing an inmate on post-prison supervision after successful completion of an alternative incarceration program to the provisions of the new legislation. These amendments modify the eligibility criteria for inmate participation in an alternative incarceration program. Other amendments are necessary to reflect the operational and organizational changes that have occurred in the Department since the last rule revision.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-062-0100

### Authority, Purpose and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with 2003 Or Laws, Ch 464, 2008 Or Laws, Ch 35, ORS 179.040, 421.500 to 421.512, 423.020, 423.030 and 423.075.

(2) Purpose: The purpose of these rules is to establish special alternative incarceration programs and establish Department policy and procedures for the program's operation and management in accordance with ORS 421.500 to 421.512.

(3) Policy: Within the inherent limitations of resources, and the need to maintain facility security, internal order, and discipline, and the health and safety of staff, inmates, and the public, it is the policy of the Department of Corrections to discharge its statutory responsibilities to establish alternative incarceration programs by creating and operating programs that promote inmate rehabilitation during incarceration and reduce the risk of continuing criminal conduct when the inmate is returned to the community.

Stat. Auth.: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075 & 2008 OL Ch. 35

Stats. Implemented: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075

Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09

## 291-062-0110

### Definitions

(1) Alternative Incarceration Program (AIP): A highly structured corrections program that includes intensive interventions, rigorous personal responsibility and accountability, physical labor, and service to the community.

(2) Custody Cycle: The time period during which an offender begins incarceration with the Department of Corrections and is under the supervision of community corrections until discharge from all Department of Corrections and community corrections incarceration and supervision.

(3) Other charges: Any criminal or civil accusatory instrument that alleges wrong doing and for which a person may be imprisoned or incarcerated.

(4) Short-Term Transitional Leave/Non-Prison Leave: A leave for a period not to exceed 90 days preceding an established release date that

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allows an inmate opportunity to secure appropriate transitional support when necessary for successful reintegration into the community. Short-term transitional leave/non-prison leave is granted in accordance with ORS 421.148, 421.510 and the Department's rule on Short-Term Transitional Leave, Emergency Leaves and Supervised Trips (OAR 291-063). For purposes of these rules, short-term transitional leave is non-prison leave.

(5) Static 99: An actuarial instrument designed to estimate the probability of sexual recidivism among adults. It is used to determine which offenders will be designated "predatory".

(6) Term of Incarceration: The period of commitment to the legal and physical custody of the Department imposed by a sentencing court in a judgment. For purposes of these administrative rules, "term of Incarceration" includes pre-sentence incarceration credit granted to an inmate by the Department under ORS 137.370(2)(a), as well as any time an inmate spends on short-term transitional/non-prison leave under 421.510.

Stat. Auth.: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075 & OL Ch. 35  
Stats. Implemented: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075  
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 11-2005, f. 8-19-05, cert. ef. 8-22-05; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09

## 291-062-0120

### General

(1) The Department of Corrections has established and operates two types of alternative incarceration programs.

(a) One of the alternative incarceration programs is an intensive cognitive program and the other is an intensive addictions program that includes intensive addiction intervention and treatment.

(b) Each alternative incarceration program is a minimum of 270 days duration and includes two components — a structured institution program and a period of structured short-term transitional leave.

(c) Each alternative incarceration program will require its participants to engage in a minimum of 14 hours per day of highly structured routine seven days per week for the duration of the program.

(2) Inmates are required to participate in and successfully complete transition classes offered as a condition of program graduation. The number and frequency of these classes will be determined by each facility.

(3) Short-Term Transitional Leave: The Department in its discretion may grant individual inmates a period of structured, short-term transitional leave as part of their alternative incarceration program assignment if:

(a) The inmate has identified viable self-support options in the community; or

(b) The supervising community corrections agency has approved a temporary subsidy that will allow the inmate to successfully transition in the community.

(c) All expenses must be borne by the inmate unless otherwise specifically authorized.

Stat. Auth.: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075 & OL Ch. 35  
Stats. Implemented: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075  
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 11-2005, f. 8-19-05, cert. ef. 8-22-05; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09

## 291-062-0130

### Inmate Eligibility

(1) The Department will identify inmates eligible to participate in alternative incarceration programs. To be eligible to participate in the program an inmate must:

(a) Be sentenced to the legal and physical custody of the Department and be subject to a term of post-prison supervision upon satisfaction of a term of physical confinement in a Department of Corrections facility;

(b) Be at least 18 years of age at the time of entry into the program, or may be under 18 years of age and have been convicted of a crime upon remand from juvenile court; and

(c) Be assigned Level 1 or Level 2 in accordance with the Department's rule on Classification (Inmate) (OAR 291-104) and have no more than 36 months to serve at the time of program entry.

(2) An inmate is not eligible to participate in alternative incarceration programs during service of a sentence for conviction of a crime described in:

- (a) ORS 163.095 (Aggravated Murder);
- (b) ORS 163.115 (Murder);
- (c) ORS 163.118 (Manslaughter I);
- (d) ORS 163.235 (Kidnapping I);
- (e) ORS 163.355 (Rape III);
- (f) ORS 163.365 (Rape II);
- (g) ORS 163.375 (Rape I);
- (h) ORS 163.385 (Sodomy III);
- (i) ORS 163.395 (Sodomy II);
- (j) ORS 163.405 (Sodomy I);
- (k) ORS 163.408 (Unlawful Sexual Penetration II);
- (l) ORS 163.411 (Unlawful Sexual Penetration I);

(m) ORS 163.415 (Sexual Abuse III);

(n) ORS 163.425 (Sexual Abuse II);

(o) ORS 163.427 (Sexual Abuse I);

(p) ORS 163.435 (Contributing to the Delinquency of a Minor);

(q) ORS 163.525 (Incest);

(r) ORS 164.325 (Arson I); or

(s) ORS 164.415 (Robbery I).

(3) An inmate who is serving a sentence, including a sentence imposed under ORS 137.712, for a crime listed in 137.700, 137.707, 163.095, or 181.594(4) committed on or after January 1, 2009, is not eligible to participate in alternative incarceration programs.

(4) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provisions of ORS 137.635.

(5) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under ORS 161.610 until the inmate completes the minimum incarceration term imposed by the court less earned time under 421.121.

(6) An inmate is not eligible to participate in alternative incarceration programs if the inmate:

(a) Has an adult conviction for felony escape which was committed within three years prior to the time of program entry, or has a conviction for unauthorized departure from the legal and/or physical custody of the Oregon Department of Corrections or its authorized agents which was committed within three years prior to the time of program entry.

(b) Is serving non-sentencing guidelines prison terms (sentences with crime dates prior to November 1, 1989), or has unresolved criminal prosecutions, consecutive county jail terms, or any other circumstances that would conflict with his/her release from prison upon satisfactory completion of an alternative incarceration program.

(c) Has a current detainer.

(A) Inmates who are serving a sentence for a crime committed prior to January 1, 2009, and who have detainers lodged with the Department after they have been selected and assigned to one of the programs, and the detainer is discovered after the inmate has completed approximately one-half of the program may be permitted to continue their participation in the program at the discretion of the functional unit manager or designee based on their program performance to date.

(B) Inmates who are serving a sentence for a crime committed on or after January 1, 2009, and who have a current detainer from any jurisdiction that will not expire prior to the inmate's calculated date of release onto post-prison supervision are not eligible for, and shall not be permitted to continue participation in, an alternative incarceration program.

(d) Is currently assigned to special security housing for reasons of protective custody, and the inmate's assignment to the program is otherwise determined by Department officials to pose a threat to the safe, secure and orderly operation and management of the program, including the safety of Department staff and inmates.

(e) Has less than ten months to serve from the first day of program entry. Inmates that have between nine and ten months to serve may participate in alternative incarceration programs with the functional unit manager's or designee's approval.

(f) Is serving a parole or post-prison supervision violation sanction pursuant to ORS 421.168(1) and 144.108(3)(b).

(7) For sentences imposed for crimes committed prior to January 1, 2009, an inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provision of ORS 137.700 or 137.707 until completion of the mandatory minimum incarceration term. For sentences imposed for crimes committed on or after December 5, 1996, the inmate is eligible after completion of the mandatory minimum incarceration term only upon order of the sentencing court as ordered in a judgment pursuant to 137.750.

(8) For sentences imposed for crimes committed prior to January 1, 2009, an inmate is not eligible to participate in alternative incarceration programs if the inmate, on or after April 1, 1995, commits and is convicted of:

(a) Assault II as defined in ORS 163.175(1)(b) (Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon);

(b) Kidnapping II (ORS 163.225); or

(c) Robbery II (ORS 164.405); unless the sentencing court, notwithstanding 137.700 and 137.707, has imposed a lesser sentence pursuant to 137.712 and (for crimes committed on or after December 5, 1996 and prior to January 1, 2009) only upon order of the sentencing court as directed in the judgment pursuant to 137.750.

(9) For sentences imposed for crimes committed prior to January 1, 2009, an inmate is not eligible to participate in alternative incarceration programs if the inmate on or after October 23, 1999, commits and is convicted of Manslaughter II as defined in ORS 163.125, unless the sentencing court, notwithstanding 137.700 and 137.707, has imposed a lesser sen-



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tence pursuant to 137.712 and only upon order of the sentencing court as directed in the judgment pursuant to 137.750.

(10) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provisions of ORS 161.725 or 161.737 (dangerous offenders) for a crime committed on or after November 1, 1989. An inmate shall not be allowed to participate in alternative incarceration programs even after completion of the required minimum incarceration term (determinate sentence) even if the Board of Parole and Post-Prison Supervision finds that the person is no longer dangerous or finds that the person remains dangerous but can be adequately controlled with supervision and mental health treatment and sets a post-prison supervision release date.

(11) If otherwise eligible under Oregon law, any person sentenced for a crime committed on or after December 5, 1996 and prior to January 1, 2009, may be considered for alternative incarceration programs only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(12) If otherwise eligible under Oregon law, an inmate sentenced for a crime committed on or after January 1, 2009, may be considered for short-term transitional leave and release onto post-prison supervision only upon order of the sentencing court as directed in a judgment pursuant to ORS 421.508(4).

Stat. Auth.: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075 & OL Ch. 35  
Stats. Implemented: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075  
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 11-2005, f. 8-19-05, cert. ef. 8-22-05; DOC 7-2007, f. & cert. ef. 10-9-07; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09

## 291-062-0140 Inmate Selection

(1) The Department in its discretion may accept eligible inmates into an alternative incarceration program based on its determination that the inmate's participation in such a program is consistent with the safety of the community, the welfare of the applicant, the program objectives and the rules of the Department.

(2) The functional unit manager or designee of each facility that has an alternative incarceration program shall appoint a committee that is responsible for making recommendations to the functional unit manager or designee on the placement of inmates in the program based on treatment readiness.

(3) An inmate will not be accepted into an alternative incarceration program unless the inmate submits a written request to participate.

(a) The request must contain a statement signed by the inmate applicant providing that he/she:

(A) Is physically and mentally able to withstand the rigors of the program; and

(B) Has reviewed the alternative incarceration program descriptions provided by the Department and agrees to comply with each of the requirements.

(b) Otherwise eligible inmate applicants with a physical or mental disability will be evaluated individually by the Department to determine whether the inmate may successfully participate in the fundamental components of an alternative incarceration program.

(c) The Department shall make the final determination regarding an inmate's physical or mental ability to withstand the rigors of the program.

(4) Inmates who score a six or higher on the Static 99 will not be accepted into an AIP.

(5) Inmates with a predatory designation will not be accepted into an AIP.

Stat. Auth.: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075 & 2008 OL Ch. 35  
Stats. Implemented: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075  
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 11-2005, f. 8-19-05, cert. ef. 8-22-05; DOC 7-2007, f. & cert. ef. 10-9-07; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09

## 291-062-0150 Removal or Suspension From an Alternative Incarceration Program

(1) The functional unit manager or designee in his/her discretion may remove or suspend an inmate from any portion of an alternative incarceration program, and may reassign the inmate to another Department of Corrections facility to serve the balance of the inmate's court-imposed incarceration term(s), for administrative or disciplinary reasons. The decision to remove or suspend an inmate from the program will be made in consultation with a committee appointed by the functional unit manager or designee that is responsible to review the performance of inmates participating in an alternative incarceration program.

(2) Administrative Removal/ Suspension:

(a) The functional unit manager or designee in his/her discretion may immediately remove or suspend an inmate from the program and reassign the inmate to another Department of Corrections facility without a hearing, for administrative reasons.

(b) An inmate who is not available to participate substantially in the program (e.g., physical and mental illness, court appearance(s), disciplinary segregation, etc.) for up to 30 days following placement will have his/her program participation suspended and be evaluated by the committee to determine whether the inmate will be removed from the program or accepted back into the program at the program level deemed appropriate by the functional unit manager or designee.

(c) Any change in status that would cause an inmate to be ineligible to continue participating in the program as described in OAR 291-062-0130 (e.g., discovery of a detainer), may result in a suspension.

(A) If suspended, the inmate will have 30 days to resolve his/her eligibility status with the Department. If the inmate's eligibility status remains unresolved, the inmate will be removed from the program.

(B) An extension may be made by the functional unit manager or designee on a case-by-case basis.

(d) If other charges will result in immediate incarceration upon release to short-term transitional leave, the inmate will have 30 days to resolve his/her eligibility status with the Department. If the inmate's eligibility status remains unresolved, the inmate will be removed from the program. An extension may be made by the functional unit manager or designee on a case-by-case basis.

(e) Inmates are expected to participate in all aspects of their program assignment at a level consistent with the length of time they have been assigned to the program.

(A) The functional unit manager or designee in his/her discretion may suspend an inmate from the program for 30 days or more when, in consultation with the program performance review committee, the functional unit manager or designee determines that the inmate is not making adequate program progress. During the suspension, the inmate will be given an opportunity to come into compliance with established program standards.

(B) If the inmate comes into compliance, he/she will be placed at a program level deemed appropriate by the functional unit manager or designee. If the inmate fails to meet program expectations, he/she may be removed from the program. If the inmate is assigned to an intensive alternative incarceration addiction program, the inmate may have the length of his/her program extended beyond 270 days.

(3) Disciplinary Removal/ Suspension: An inmate who after a hearing in accordance with procedures provided in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) is found to have committed a major disciplinary rule violation may be removed from the program and transferred to another Department of Corrections facility at the discretion of the functional unit manager or designee.

(4) Voluntary Removal: An inmate may elect to remove himself/herself from an alternative incarceration program; however, to do so the inmate must sign a document requesting removal from the program to the functional unit manager or designee. Voluntary removal from the program constitutes a program failure.

(5) Once an inmate has been removed from an alternative incarceration program as a program failure or completes the program and returns to prison on another crime, he/she will be ineligible to participate in another alternative incarceration program during the same custody cycle. If the failure is from an alternative incarceration addictions program, he/she will be ineligible to participate in any other alcohol and drug treatment program during the same custody cycle (this does not include dual diagnosis programs).

(6) Administrative Review of Removal for Program Failure:

(a) When the functional unit manager or designee removes an inmate from the inmate's program assignment for a program failure, the inmate will be notified in writing of the reason(s) for the removal decision, and the opportunity for administrative review of the decision.

(b) To obtain an administrative review of the removal decision, an inmate must send a request for administrative review in writing to the Assistant Director for Transitional Services or designee, together with any supporting documentation. The Assistant Director for Transitional Services or designee must receive the request within 15 calendar days of the date of the notice of the administrative removal.

(c) The review should be completed within 15 days after receiving an inmate's review request. The Assistant Director for Transitional Services or designee's decision on administrative review shall be final.

Stat. Auth.: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075 & 2008 OL Ch. 35  
Stats. Implemented: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075  
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 11-2005, f. 8-19-05, cert. ef. 8-22-05; DOC 7-2007, f. & cert. ef. 10-9-07; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09

## 291-062-0160 Alternative Incarceration Program Prison Management

(1) To the extent that other Department of Corrections rules may conflict with provisions in these rules (OAR 291-062-0100 to 291-062-0160), such rules are inapplicable to alternative incarceration programs and are

# ADMINISTRATIVE RULES

modified as provided below to reflect the purposes of alternative incarceration programs and the relatively short period of confinement.

(2) Modified Rules:

(a) Short-Term Transitional Leave, Emergency Leaves and Supervised Trips (OAR 291 063):

(A) An inmate who completes, to the Department's satisfaction, all of the requirements of the structured institution program may be released into the community on short-term transitional leave.

(B) OAR 291-063 is modified with respect to alternative incarceration program participants to provide that violations of short-term transitional leave conditions will be addressed in accordance with Department of Corrections rule on Structured Intermediate Sanctions, OAR 291-058.

(C) Additionally, an inmate's short-term transitional leave agreement will constitute the Department of Corrections expectations for both behavior and programming compliance. Accordingly, if an inmate violates his/her conditions of short-term transitional leave, he/she will not be awarded either institutional conduct or programming compliance credit for the period of time while on short-term transitional leave status.

(b) Hygiene, Grooming and Sanitation (Inmate) (OAR 291-123) and Personal Property (Inmate) (OAR 291-117): The functional unit managers in the facilities where alternative incarceration programs are provided may establish separate and distinct standards for personal grooming and hygiene as a means to support program goals. Commissary operations and purchases, food services and educational requirements for participants may be modified by those facilities where alternative incarceration programs are offered as a means of supporting program goals. Each facility may develop internal processes for staff and inmates outlining the applicable requirements or restrictions specific to these programs.

(c) Performance Recognition and Award System (PRAS) (OAR 291-077): Inmates assigned to an alternative incarceration program will receive a standard number of points for their PRAS award as determined by the Department for work and program participation. Inmates are eligible for special recognition awards pursuant to the Department's rule on Performance Recognition and Award System.

(d) Mail (Inmate) (OAR 291-131): Inmates participating in the SUMMIT alternative incarceration program may not be allowed to correspond with inmates participating in the same program and may not be allowed to correspond with other inmates housed in general population at the facility where the program is operating.

(e) Prison Term Modification (OAR 291-097): Inmates who begin an alternative incarceration program will be considered to be participating in their primary program plan. If an inmate fails to complete any portion of the program because of inadequate program performance, disciplinary reasons, or voluntary removal, the inmate will be considered noncompliant with his/her primary program plan, and will not be granted earned time credit for programming during that review period.

(f) Assessment, Assignment, and Supervision of Inmates for Work Assignments and Unfenced Minimum Housing (OAR 291-082): Inmates participating in the SUMMIT alternative incarceration program and who are otherwise ineligible for outside work crews and unfenced minimum housing may participate in outside work crews after reaching red hat status and reside in an unfenced minimum housing so long as the victim of their crime does not reside in the area.

Stat. Auth.: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075 & 2008 OL Ch. 35  
Stats. Implemented: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075  
Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 11-2005, f. 8-19-05, cert. ef. 8-22-05; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09

## 291-062-0170

### Release onto Post-Prison Supervision

(1) For inmates serving a sentence for a crime committed prior to January 1, 2009, upon successfully conforming to directed activities while participating in the short-term transitional leave component of the program, the inmate shall be released into the community on post-prison supervision.

(2) For inmates serving a sentence for a crime committed on or after January 1, 2009, the inmate shall be released onto post-prison supervision only if all of the following requirements are met:

(a) The sentencing court has issued an order contained in a judgment that authorizes the Department to release the inmate onto post-prison supervision;

(b) The inmate has served at least one year of the term of incarceration imposed by the sentencing court;

(c) The inmate's release does not result in the inmate being released onto post-prison supervision earlier than the length of physical confinement imposed by the sentencing court, including any earned time credits, minus 20 percent; and

(d) The inmate has successfully conformed to directed activities while participating in the short-term transitional leave component of the program.

Stat. Auth.: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075 & 2008 OL Ch. 35  
Stats. Implemented: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075

Hist.: DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09

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**Rule Caption:** Release of Public Information.

**Adm. Order No.:** DOC 13-2009

**Filed with Sec. of State:** 7-14-2009

**Certified to be Effective:** 7-14-09

**Notice Publication Date:** 4-1-2009

**Rules Amended:** 291-039-0010, 291-039-0015

**Subject:** This rule is necessary to protect the confidentiality and integrity of inmate/officer records and make clear to employees their obligation to protect and keep secure the Department's information assets and public information when accessing inmate/offender files.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-039-0010

### Definitions

(1) Correction Information Systems (CIS): A computer system that has information about inmates in prison and offenders on probation, parole and post-prison supervision.

(2) Communications Manager: The employee who is designated by the Director of the Department of Corrections to coordinate media relations and public inquiries concerning policy.

(3) Criminal Justice Agency: An agency as defined in ORS 181.010(8).

(4) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(5) Director: The Director of the Department of Corrections.

(6) Employee: Any person employed full time, part time, or under temporary appointment by the Department of Corrections; any person employed under contractual arrangement to provide services to the Department; any person employed by private or public sector agencies who is serving under Department sanctioned special assignment to provide services or support to Department programs.

(7) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of program operations.

(8) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, assistant director, or administrator and has responsibility for the delivery of services or coordination of program operations.

(9) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post prison supervision, or probation status.

(10) News Release: An official statement or announcement relating to the Department of Corrections intended for distribution to the news media.

(11) Offender: Any person under the supervision of local Community Corrections who is on parole, post prison supervision, or probation status.

(12) Public Information: All Department of Corrections information that is not exempt from disclosure by statute.

(13) Public Information Officer(s): One or more employees within a functional unit who coordinate the release of information for that unit consistent with Department policy and all laws governing release of public information and disclosure of public records.

(14) Offender Public Information Screen: The screen accessed through CIS which details the following information about an inmate or offender:

(a) Name and State Identification number (SID) of inmate/offender;

(b) Date of birth;

(c) Sentence(s) and beginning dates of sentences (past and present);

(d) Offense(s) (past and present);

(e) County of commitment (past and present);

(f) Institution admission date or field admission date;

(g) Location of incarceration or supervision;

(h) Earliest release date;

(i) Discharge date (past and present); and

(j) Physical description;

(k) Name of institution counselor or Community Corrections parole or probation officer.

(15) Volunteer: An approved person who donates time, knowledge, skills, and effort to enhance the mission, activities and programs of the Department. Volunteers serve at the pleasure of the Department and are not considered employees.

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

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

Hist.: CD 12-1979, f. & ef. 5-17-79; CD 2-1983, f. & ef. 1-4-83; CD 45-1985, f. & ef. 8-16-85; CD 52-1986, f. & ef. 11-20-86; CD 25-1990, f. & cert. ef. 12-4-90; CD 15-1993, f. 6-7-93, cert. ef. 6-25-93; CD 1-1998, f. 1-23-98, cert. ef. 2-1-98; DOC 29-2008(Temp), f. & cert.

# ADMINISTRATIVE RULES

ef. 12-16-08 thru 6-12-09; Administrative correction 6-22-09; DOC 13-2009, f. & cert. ef. 7-14-09

## 291-039-0015

### Request for Release of Information

(1) Any person, including the news media, may request information about Department programs, services, facilities, employees, volunteers, inmates, and offenders.

(2) Each functional unit manager, in consultation with the Communications Manager, will designate one or more employees to serve as the public information officer(s). The functional unit manager may perform this function if he/she desires.

(3) Upon request, information listed on the Offender Public Information screen regarding inmates and offenders may be released by the designated staff at Department facilities. Staff shall act in their official capacity only when releasing this information.

(4) Inmate/offender photographs may be released when the release will enlist public assistance in apprehending fugitives from justice and/or the release will not interfere with other law enforcement efforts. Employees, contractors, and authorized volunteers have a responsibility to volunteer such inmate/offender related information to an inmate's/offender's employer and other law enforcement agencies when, in their professional judgment, the public's right to know outweighs the individual's right to privacy, because public safety may be in jeopardy based on an analysis of the inmate's/offender's actions or criminal history.

(5) Request for other than the routine information listed above will be referred to the unit's public information officer.

(6) If the information request involves questions of Department policy, major issues or news developments, the unit's public information officer will direct such requests to the Director or the Communications Manager.

(7) If death or serious injury has occurred, the names of inmate(s), offender(s), [and/] or victim(s) will not be released until the next of kin have been notified and, where applicable, the cause of death will not be released until the death certificate has been signed.

(8) Inmate/offender presentence reports are not public records. The presentence report, or any reports based on the contents of that report, may be made available to the victim by Department of Corrections employees in accordance with the provisions in ORS 137.077.

(9) Request for information concerning a current or former contractor(s) will be referred to the Department of Corrections Purchasing Unit for response.

(10) Request for information concerning a current or former employee(s) or volunteer(s) will be referred to the Department's Human Resource Section for response. Employment reference checks concerning a current or former employee(s) or volunteer(s) will be referred to the supervisor of the current or former employee(s) or volunteer(s) for response.

(11) Request for release of records and copies of such records will be handled in accordance with the Department's rule on Release of Public Records (OAR 291-037).

(12) No Department employee will issue an official Department of Corrections press release, schedule an official press conference, or hold an official media event without prior approval from the Director or the Communications Manager.

(13) Employees shall not, without written authorization from the Director or the Communications Manager, make written or oral statements, in what he/she gives others reasonable grounds to believe to be an official capacity, where the effect of such statements would be to impair or diminish the security, supervision, discipline, or the orderly and effective operation of any Department facility or program.

(14) Employees desiring to provide DOC public information as defined in these rules that they wish to make public through the news media must notify the functional unit's public information officer or the Communications Manager before contacting news media representative(s).

(15) Employees who are not authorized to make public statements as official Department representatives are not restricted in their access to the news media, but must clearly specify in contacting the media that they are not official Department representatives and are speaking solely on their own behalf rather than on behalf of the Department.

### (16) Community Corrections:

(a) Community corrections employees in counties have access to the statewide Corrections Information System. Information listed on

the Public Information screen regarding inmates and offenders may be released. Staff shall act in their official capacity only when releasing this information.

(b) If, in the interest of public safety, information other than that listed should be released to an employer or law enforcement agency, then that release of information must be documented in the case file. Documentation must include the information released, the person or agency who received the information, and the public safety reason for the release.

(c) If a county employee wishes to release inmate or offender information other than routine information or information related to the protection of public safety, the county shall receive approval from the Assistant Director for Community Corrections.

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

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

Hist.: CD 12-1979, f. & ef. 5-17-79; CD 2-1983, f. & ef. 1-4-83; CD 45-1985, f. & ef. 8-16-85; CD 52-1986, f. & ef. 11-20-86; CD 25-1990, f. & cert. ef. 12-4-90; CD 15-1993, f. 6-7-93, cert. ef. 6-25-93; CD 1-1998, f. 1-23-98, cert. ef. 2-1-98; DOC 29-2008(Temp), f. & cert. ef. 12-16-08 thru 6-12-09; Administrative correction 6-22-09; DOC 13-2009, f. & cert. ef. 7-14-09

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**Rule Caption:** Records Management (Inmate and Offender).

**Adm. Order No.:** DOC 14-2009

**Filed with Sec. of State:** 7-14-2009

**Certified to be Effective:** 7-14-09

**Notice Publication Date:** 4-1-2009

**Rules Amended:** 291-070-0120

**Subject:** This rule is necessary to protect the confidentiality and integrity of inmate/offender records and make clear to employees their obligation to protect and keep secure the Department's information assets and public information when accessing inmate/offender files.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-070-0120

### Access to Files

(1) Only employees of the Department of Corrections and representatives of criminal justice agencies shall have authorized access to inmate and offender files. Department of Corrections employees shall request access to inmate/offender files for business purposes directly related to the employee's current position duties and responsibilities only.

(a) An example of acceptable access would include an employee reviewing an inmate's/offender's file because the inmate/offender is in the employee's housing unit or on the employee's caseload.

(b) An example of unacceptable access would include an employee reviewing the file on their neighbor for personal background purposes.

(2) The Records Office is a restricted area; only individuals authorized by the OISC Administrator or institution functional unit manager shall enter the Records Office.

(a) In emergency situations, the institution functional unit manager or designee may designate an employee to enter the Records Office and remove working files.

(b) A list of these authorized individuals may be posted in the Records Office.

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

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

Hist.: DOC 9-2008, f. & cert. ef. 4-10-08; DOC 30-2008(Temp), f. & cert. ef. 12-16-08 thru 6-12-09; Administrative correction 6-22-09; DOC 14-2009, f. & cert. ef. 7-14-09

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## Department of Environmental Quality Chapter 340

**Rule Caption:** 2009 Omnibus Hazardous Waste Rulemaking.

**Adm. Order No.:** DEQ 2-2009

**Filed with Sec. of State:** 6-25-2009

**Certified to be Effective:** 6-25-09

**Notice Publication Date:** 1-1-2009

**Rules Adopted:** 340-104-0021, 340-105-0140

**Rules Amended:** 340-100-0002, 340-102-0065

**Rules Repealed:** 340-102-0060

**Subject:** The Department of Environmental Quality operates the Federal hazardous waste program in Oregon under delegation from the Environmental Protection Agency. A requirement for continuing delegation is that the State must periodically review and adopt new



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or changed Federal rules. DEQ last updated its rules October 2003, incorporating by reference most Federal rules promulgated through June 30, 2002. This rulemaking adopted 13 Federal rules published between July 1, 2002 and July 28, 2007. None of the rules adopted are more stringent than DEQ's current rules, so DEQ does not expect any negative fiscal or economic impacts to regulated entities in Oregon.

In addition, this rulemaking deleted one State rule that has been preempted by Federal rules, adding two State rules that delete references to an EPA program DEQ has not adopted, and amended one State rule to reflect changes made to statute during the 2007 legislative session. None of the State rule changes increase wither regulation or costs to regulated entities.

**Rules Coordinator:** Larry McAllister—(503) 229-6412

## 340-100-0002

### Adoption of United States Environmental Protection Agency Hazardous Waste and Used Oil Management Regulations

(1) Except as otherwise modified or specified by OAR 340, divisions 100 to 106, 109, 111, 113, 120, 124 and 142 the rules and regulations governing the management of hazardous waste, including its generation, transportation, treatment, storage, recycling and disposal, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Parts 260 to 266, 268, 270, 273 and Subpart A and Subpart B of Part 124 promulgated through July 1, 2007, and including the rules promulgated July 14, 2006 at 71 Federal Register 40254-40280 and July 28, 2006 at 71 Federal Register 42928-42949, except the amendments to 40 CFR Parts 124, 260, 261, 262, 264, 265, 267, and 270 as promulgated at 63 Federal Register 56710-56735, October 22, 1998, 65 Federal Register 30886-30913, May 15, 2000, 69 Federal Register 21737-21754, April 22, 2004, 69 Federal Register 62217-62224, October 25, 2004, and 70 Federal Register 53420-53478, September 8, 2005, are adopted by reference and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080 and 466.090 to 466.215.

(2) Except as otherwise modified or specified by OAR 340, division 111, the rules and regulations governing the standards for the management of used oil, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Part 279 promulgated through July 24, 2002, are adopted by reference into Oregon Administrative Rules and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080 and 466.090 to 466.215.

**COMMENT:** The Department uses the federal preamble accompanying the federal regulations and federal guidance as a basis for regulatory decision-making.  
[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 465.009, 466.020 & 465.505

Stat. Implemented: ORS 465.003, 465.009, 466.005, 466.075, 466.105 & 465.505  
Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 10-1987, f. & ef. 6-11-87; DEQ 23-1987, f. & ef. 12-16-87; DEQ 19-1988, f. & cert. ef. 7-13-88; DEQ 12-1989, f. & cert. ef. 6-12-89; DEQ 4-1991, f. & cert. ef. 3-15-91 (and corrected 6-20-91); DEQ 24-1992, f. 10-23-92, cert. ef. 11-1-92; DEQ 11-1993, f. & cert. ef. 7-29-93; DEQ 6-1994, f. & cert. ef. 3-22-94; DEQ 31-1994(Temp), f. 12-6-94, cert. ef. 12-19-94; DEQ 11-1995, f. & cert. ef. 5-19-95; DEQ 12-1996, f. & cert. ef. 7-31-96; DEQ 14-1997, f. & cert. ef. 7-23-97; DEQ 11-1998, f. & cert. ef. 6-26-98; DEQ 26-1998(Temp), f. & cert. ef. 11-3-98 thru 3-19-99; DEQ 4-1999, f. & cert. ef. 3-19-99; DEQ 10-2000, f. & cert. ef. 7-21-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 13-2002, f. & cert. ef. 10-9-02; DEQ 13-2003, f. & cert. ef. 10-24-03; DEQ 8-2005, f. & cert. ef. 7-14-05; DEQ 2-2009, f. & cert. ef. 6-25-09

## 340-102-0065

### Hazardous Waste Generator Fees

(1) Each person generating more than 100 kilograms (220 pounds) of hazardous waste, or more than 1 kilogram (2.2 pounds) of acutely hazardous waste, in any calendar month, or accumulating more than 1,000 kilograms (2,200 pounds) of hazardous waste at any time in a calendar year, shall be subject to an annual hazardous waste generation fee. Fees shall be assessed annually for hazardous waste management activities in the previous year.

(2) A late charge equal to ten percent of the fee due shall be assessed if the fees are not received by the Department by the due date shown on the invoice. An additional late charge of ten percent of the unpaid amount shall also be assessed each 30 days that the invoice remains unpaid. After 90 days no further Department late charges shall be assessed; however, such invoices may be referred to the Department of Revenue for collection or collected in Small Claims Court. Accounts referred to the Department of Revenue for collection or collected in Small Claims Court shall be increased by 20 percent of the unpaid amount or \$100, whichever is greater, to recover a portion of the costs for referral or collection.

(3) The base hazardous waste generation fee is set at ORS 466.165. Each person's hazardous waste generation fee shall be calculated by multiplying the base fee by the weight of each hazardous waste stream and by the fee factors listed below for the management method reported in the annual generation report (OAR 340-102-0041) as follows:

Management Method — Fee Factor  
Metals Recovery (For Reuse) — 0.50  
Solvents Recovery — 0.50  
Other Recovery — 0.50  
Hazardous wastewater that is not managed immediately upon generation only in on-site elementary neutralization unit(s) (ENU) or wastewater treatment unit(s) (WWTU) — 0.50  
Incineration — 1.00  
Energy Recovery (Reuse as Fuel) — 0.75  
Fuel Blending — 0.75  
Aqueous Inorganic Treatment — 1.00  
Aqueous Organic Treatment — 1.00  
Aqueous Organic and Inorganic Treatment (Combined) — 1.00  
Sludge Treatment — 1.00  
Other Treatment — 1.00  
Stabilization — 1.00  
Neutralization (offsite) — 0.75  
Land Disposal — 1.50  
Management method unknown or not reported — 2.00  
RCRA-Exempt Management Elementary Neutralization Unit(s) on-site (Includes only corrosive characteristic hazardous waste that is managed immediately upon generation only in an on-site elementary neutralization unit(s)) — 0.00  
Permitted Discharge under Clean Water Act Section 402 or 307b (Includes only hazardous wastewater that is managed immediately upon generation only in an on-site wastewater treatment unit(s)) -- 0.00

In order to determine annual hazardous waste generation fees, the Department may use generator reports required by OAR 340-102-0041; facility reports required by OAR 340-104-0075; information derived from manifests required by 40 CFR 262.20; and any other relevant information. Unless density information is reported, the Department will use the following conversion factors: 1 metric ton = 1,000 kilograms 2,205 pounds 1.10 short tons = 1.31 cubic yards = 264.23 gallons = 4.80 drums (55 gallon).

(4) Effective January 1, 1997, in addition to the annual hazardous waste generation fee, each hazardous waste generator shall be subject to an annual hazardous waste activity verification fee, upon billing by the Department, as follows:

- (a) Large Quantity Generator: \$525;
- (b) Small Quantity Generator: \$300;
- (c) Conditionally Exempt Small Quantity Generator: No Fee.

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

Stat. Auth.: ORS 466.165 & 468.020

Stats. Implemented: ORS 466.165

Hist.: DEQ 8-1985, f. & ef. 7-25-85; DEQ 14-1987, f. & ef. 7-28-87; DEQ 11-1988, f. & cert. ef. 5-19-88; DEQ 19-1989(Temp), f. & cert. ef. 7-31-89 (and corrected 8-3-89); DEQ 33-1989, f. & cert. ef. 12-14-89; DEQ 13-1991, f. & cert. ef. 8-5-91; DEQ 11-1992, f. & cert. ef. 6-9-92; DEQ 2-1994, f. & cert. ef. 2-2-94; DEQ 14-1997, f. & cert. ef. 7-23-97; DEQ 11-1998, f. & cert. ef. 6-26-98; DEQ 8-2005, f. & cert. ef. 7-14-05; DEQ 2-2009, f. & cert. ef. 6-25-09

## 340-104-0021

### General Inspection Provisions

(1) The provisions of 40 CFR 264.15(b)(4) and (5) that reference Performance Track are deleted.

(2) The provisions of 40 CFR 264.174 that reference Performance Track are deleted.

(3) The provisions of 264.195(e) that reference Performance Track are deleted.

Stat. Auth.: ORS 183, 459, 466 & 468

Stats. Implemented: ORS 466.195 & 466.150

Hist.: DEQ 2-2009, f. & cert. ef. 6-25-09

## 340-105-0140

### General Inspection Provisions

(1) The provisions of 40 CFR 265.15(b)(4) and (5) that reference Performance Track are deleted.

(2) The provisions of 40 CFR 265.174 that reference Performance Track are deleted.

(3) The provisions of 265.195 (d) that reference Performance Track are deleted.

(4) The provisions of 265.201 (e) that reference Performance Track are deleted.

(5) The requirements of 40 CFR 270.42 that reference Performance Track are deleted.

Stat. Auth.: ORS 183, 459, 466 & 468

Stats. Implemented: ORS 466.020, 466.105 & 466.150

Hist.: DEQ 2-2009, f. & cert. ef. 6-25-09

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**Rule Caption:** Adoption of Oregon 2008 Regional Haze Plan and New Controls for PGE Boardman Power Plant.

**Adm. Order No.:** DEQ 3-2009

**Filed with Sec. of State:** 6-30-2009

**Certified to be Effective:** 6-30-09

**Notice Publication Date:** 12-1-2008

**Rules Adopted:** 340-223-0010, 340-223-0020, 340-223-0030, 340-223-0040, 340-223-0050

**Rules Amended:** 340-200-0040, 340-228-0606

**Subject:** Over the next several decades, DEQ must develop a series of regional haze plans to meet the federal Regional Haze Rule. This rule requires States to make incremental progress in reducing air

# ADMINISTRATIVE RULES

pollution in federal "Class I" wilderness areas and national parks by the year 2064. The 2008 Oregon Regional Haze Plan is the first step in haze reduction, and will be updated every five years. This plan and the associated rulemaking (except for Mercury rule amendments) are a revision to the Oregon State Implementation Plan (SIP).

The most significant action associated with the 2008 Oregon Regional Haze plan are DEQ rules requiring emission controls at the PGE Boardman coal-fired power plant. These rules are in response to the federal requirement for Best Available Retrofit Technology (BART), which is a mandatory requirement under the Regional Haze Rule. The 2008 Oregon Regional Haze plan also contains the following:

(1) An analysis of current visibility conditions in Oregon Class I areas, a forecast of expected haze levels in 2018, and an analysis of how well Oregon Class I areas are making Reasonable Progress by the 2018 Milestone;

(2) In addition to the new rules for PGE Boardman, it describes actions to reduce emissions of visibility impairing pollutants from four other industrial facilities in Oregon that were shown to have a significant impact on visibility in one or more Class I areas. These sources have taken federally enforceable permit limits related to the BART requirements mentioned above;

(3) Identifies a list of emission source categories (such as other large industrial facilities, and forestry burning) that will be evaluated for visibility impacts by the next regional haze plan update in 2013;

(4) It adopts revisions made to the Oregon Smoke Management Plan (OSMP) by the Oregon Department of Forestry in 2007. These revisions include measures to protect visibility in Class I areas.

This rulemaking also aligns the installation of mercury controls (adopted in 2006) for PGE Boardman with the required Phase 1 SO<sub>2</sub> controls. This rulemaking retains the July 1, 2012 compliance date for mercury controls, but changes the compliance extension contingency from 1 year to 2 years, and adds fly ash contamination as a contingency for granting an extension.

**Rules Coordinator:** Larry McAllister—(503) 229-6412

## 340-200-0040

### State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval. The State Implementation Plan was last modified by the Commission on June 19, 2009.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

**NOTE:** Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f.

& cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996 (Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09

## 340-223-0010

### Purpose

OAR 340-223-0020 through 340-223-0050 establish requirements for certain sources emitting air pollutants that reduce visibility and contribute to regional haze in Class I areas, for the purpose of implementing Best Available Retrofit Technology (BART) requirements and other requirements associated with the federal Regional Haze Rules in 40° CFR 51.308, as in effect on June 19, 2009.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 3-2009, f. & cert. ef. 6-30-09

## 340-223-0020

### Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "BART-eligible source" means any source determined by the Department to meet the criteria for a BART-eligible source established in the federal BART rule in 40° CFR 51.308, Appendix Y to Part 51, "Guidelines for BART Determinations Under the Regional Haze Rule", and in accordance with the Regional Haze Rule under 40° CFR 51.308(e), as in effect on June 19, 2009.

(2) "Best Available Retrofit Technology (BART)" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source or unit, the remaining useful life of the source or unit, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(3) "Deciview" means a measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements):

Deciview haze index=10 ln(e<sup>(bext/10 Mm-1)</sup>)

Where bext= the atmospheric light extinction coefficient, expressed in inverse megameters (Mm<sup>-1</sup>).

(4) "Subject to BART" means a BART-eligible source that based on air quality dispersion modeling causes visibility impairment equal to or greater than 0.5 deciview in any Class I area, at the 98th percentile for both a three-year period and one-year period.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 3-2009, f. & cert. ef. 6-30-09

# ADMINISTRATIVE RULES

## 340-223-0030

### **BART Requirements for the Foster-Wheeler Boiler at the Boardman Coal-Fired Power Plant (Federal Acid Rain Program Facility ORISPL Code 6106)**

#### (1) Emissions limits:

(a) On and after July 1, 2011, nitrogen oxides emissions must not exceed 0.28 lb/mmBtu heat input as a 30-day rolling average and 0.23 lb/mmBtu heat input as a 12-month rolling average.

(A) If it is demonstrated by July 1, 2012 that the emission limits in (a) cannot be achieved with combustion controls, the Department may grant an extension of compliance to July 1, 2014.

(B) If an extension is granted, the nitrogen oxides emissions must not exceed 0.23 lb/mm Btu heat input as a 30-day rolling average on and after July 1, 2014.

(b) On and after July 1, 2014, sulfur dioxide emissions must not exceed 0.12 lb/mmBtu heat input as a 30-day rolling average.

(c) On and after July 1, 2014, particulate matter emissions must not exceed 0.012 lb/mmBtu heat input as determined by compliance source testing.

(d) The emission limits in (a) through (c) above do not apply during periods of startup or shutdown.

(2) Compliance demonstration. Using the procedures specified in section (3) of this rule:

(a) Compliance with a 30-day rolling average limit must be demonstrated within 180 days of the compliance date specified in section (1) of this rule.

(b) Compliance with a 12-month rolling average must be demonstrated within 12 months of the compliance date specified in section (1) of this rule.

#### (3) Compliance Monitoring and Testing

(a) Compliance with the emissions limits in (1)(a) and (b) must be determined with a continuous emissions monitoring system (CEMS) installed, operated, calibrated, and maintained in accordance with the acid rain monitoring requirements in 40 CFR Part 75 as in effect on June 19, 2009.

(A) The hourly emission rate in terms of lb/mmBtu heat input must be recorded each operating hour, including periods of startup and shutdown.

(B) The daily average emission rate must be determined for each boiler operating day using the hourly emission rates recorded in (A), excluding periods of startup and shutdown.

(C) 30-day rolling averages must be determined using all daily average emissions rates recorded in (B) whether or not the days are consecutive.

(D) 12-month rolling averages must be determined using calendar month averages based on all daily averages during the calendar month.

(b) Compliance with the particulate matter emissions limit in (1)(c) must be determined by EPA Methods 5 and 19 as in effect on June 19, 2009.

(A) An initial test must be conducted by January 1, 2015.

(B) Subsequent tests must be conducted in accordance with a schedule specified in the Oregon Title V Operating Permit, but not less than once every 5 years.

(C) All testing must be performed in accordance with the Department's Source Sampling Manual as in effect on June 19, 2009.

#### (4) Notifications and Reports

(a) The Department must be notified in writing within 7 days after any control equipment (including combustion controls) used to comply with emissions limits in section (1) begin operation.

(b) For NOx and SO2 limits based on a 30-day rolling average, a compliance status report, including CEMS data, must be submitted within 180 days of the compliance dates specified in section (1).

(c) If applicable, a compliance status report for the 12-month rolling average NOx limit in section (1)(a) must be submitted by August 1, 2012.

(d) For particulate matter, a compliance status report, including a source test report, must be submitted within 60 days of completing the initial compliance test specified in section (3)(b).

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 3-2009, f. & cert. ef. 6-30-09

## 340-223-0040

### **Additional NOx Requirements for the Foster-Wheeler Boiler at the Boardman Coal-Fired Power Plant (Federal Acid Rain Program Facility ORISPL Code 6106)**

On and after July 1, 2017, nitrogen oxides emissions must not exceed 0.070 lb/mmBtu heat input, excluding periods of startup and shutdown.

(1) Compliance with the NOx emissions limit must be determined with a continuous emissions monitoring system in accordance with OAR 340-223-0030(2) and (3).

(2) The Department must be notified in writing within 7 days after any control equipment used to comply with the emission limit begins operation.

(3) A compliance status report, including CEMS data, must be submitted by January 1, 2018.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 3-2009, f. & cert. ef. 6-30-09

## 340-223-0050

### **Federally Enforceable Permit Limits**

(1) Any BART-eligible source that causes visibility impairment less than 0.5 deciview in all Class I areas, at the 98th percentile for both a three-year period and one-year period, based on a federally enforceable permit limit or limits, is not subject to BART.

(2) If a BART-eligible source's federally enforceable permit limit will be terminated, and as a result the source will be subject to BART, the source is required to submit a BART analysis and install BART as determined by the Department prior to terminating the federally enforceable permit limit.

(3) The Foster-Wheeler boiler at The Amalgamated Sugar Company plant in Nyssa, Oregon (Title V permit number 23-0002) is a BART-eligible source, and air quality dispersion modeling demonstrates that it would be subject to BART while operating. However, it is not operating as of June 19, 2009, and therefore is not subject to BART. Prior to resuming operation, the owner or operator of the source must either:

(a) Submit a BART analysis and install BART as determined by the Department by no later than July 1, 2014 or before resuming operation, whichever is later; or

(b) Obtain and comply with a federally enforceable permit limit assuring that the source's emissions will not cause the source to be subject to BART.

**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-200-0040.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: DEQ 3-2009, f. & cert. ef. 6-30-09

## 340-228-0606

### **Hg Emission Standards**

(1) Mercury reduction plan. By July 1, 2009 or 1-year prior to commencement of commercial operation, whichever is later, the owner or operator of each coal-fired electric generating unit must develop and submit for Department approval a mercury reduction plan for each coal-fired electric generating unit. The plan must propose a control strategy for mercury that is most likely to result in the capture of at least 90 percent of the mercury emitted from the unit or that will limit mercury emissions to 0.60 pounds per trillion BTU of heat input. The owner or operator must demonstrate that the plan reflects technology that could reasonably be expected to meet the limits in this section if the technology operates as anticipated by the manufacturer. The plan must provide a timeframe for implementation of the selected control strategy including major milestones, installation and operation requirements, and work practice standards for the selected technology. The owner and operator of the coal-fired electric generating unit may proceed with the plan within 60 days of submittal unless, within the 60 day period, the Department notifies the owner or operator of the coal-fired electric generating unit that the plan must be revised.

(2) Mercury emission standards. On and after July 1, 2012 or at commencement of commercial startup, whichever is later, except as allowed under section (3) of this rule, each coal-fired electric generating unit must have implemented the approved control strategy projected to achieve at least 90 percent mercury capture or that will limit mercury emissions to 0.60 pounds per trillion BTU of heat input.

(3) Compliance extension. Up to a 2-year extension of the requirement to implement the approved control strategy may be granted by the Department if the owner or operator of a coal-fired electric generating unit demonstrates that it is not practical to install mercury control equipment by July 1, 2012 due to supply limitations, ESP fly ash contamination, or other extenuating circumstances that are beyond the control of the owner or operator.

(4) Compliance demonstration. Commencing in July 2013 or 12 months after commercial startup or 12 months after expiration of the extension granted under section (3) of this rule, whichever is later, each coal-fired electric generating unit must thereafter demonstrate compliance with one of the standards in subsections (4)(a) or (4)(b) of this rule for each compliance period, except as allowed under sections (5) and (6) of this rule. A compliance period consists of twelve months. Each month commencing with June 2013 or the twelfth month after commencement of commercial operation or twelfth month after expiration of the extension granted under section (3) of this rule, whichever is later, is the end of a compliance period consisting of that month and the previous 11 months.



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(a) A mercury emission standard of 0.60 pounds per trillion BTU of heat input calculated by dividing the Hg mass emissions determined using a mercury CEMS or sorbent trap monitoring system by heat input as determined according to 40 CFR part 75, appendix F (procedure 5); or

(b) A minimum 90 percent capture of inlet mercury determined as follows:

(A) Inlet mercury must be determined as specified in subparagraph (4)(b)(A)(i) or (4)(b)(A)(ii) of this rule:

(i) Coal sampling and analysis. To demonstrate compliance by coal sampling and analysis, the owner or operator of a coal-fired electric generating unit must test its coal for mercury consistent with a coal sampling and analysis plan. The coal sampling and analysis plan must be consistent with the requirements of 40 CFR 63.7521.

(ii) Hg mass emissions prior to any control device(s). To demonstrate compliance by measuring Hg mass emissions, the owner or operator of a coal-fired electric generating unit must measure mercury emissions prior to any control device(s) using a Hg CEMS or sorbent trap.

(B) The mercury capture efficiency must be calculated using the Hg emissions determined using a mercury CEMS or sorbent trap monitoring system and the inlet mercury determined using the coal mercury content data obtained in accordance with subparagraph (4)(b)(A)(i) of this rule or the measured inlet mercury data obtained in accordance with subparagraph (4)(b)(A)(ii) of this rule and a calculation methodology approved by the Department.

(5) Temporary compliance alternative. If the owner or operator of a coal-fired electric generating unit properly implements the approved control strategy and the strategy fails to achieve at least 90 percent mercury capture or limit mercury emissions to 0.60 pounds per trillion BTU of heat input:

(a) The owner or operator must notify the Department of the failure within 30 days of the end of the initial compliance period; and

(b) The owner or operator must file an application with the Department for a permit or permit modification in accordance with OAR 340 division 216 to establish a temporary alternative mercury emission limit. The application must be filed within 60 days of the end of the initial compliance period, and must include a continual program of mercury control progression able to achieve at least 90 percent mercury capture or to limit mercury emissions to 0.60 pounds per trillion BTU of heat input and all monitoring and operating data for the coal-fired electric generating unit.

(c) The Department may establish a temporary alternative mercury emission limit only if the owner or operator applies for a permit or permit modification, that includes a control strategy that the Department determines constitutes a continual program of mercury control progression able to achieve at least 90 percent mercury capture or to limit mercury emissions to 0.60 pounds per trillion BTU of heat input.

(d) Establishment of a temporary alternative mercury emission limit requires public notice in accordance with OAR 340 division 209 for Category III permit actions.

(e) If the owner or operator files an application under subsection (5)(b) of this rule, the coal-fired electric generating unit must operate according to the temporary alternative mercury emission limit proposed in the permit or permit modification application until the Department either denies the application or issues the permit or permit modification. Compliance with the proposed temporary alternative mercury emission limit prior to final Department action on the application shall constitute compliance with the limits in section (2) of this rule.

(f) A temporary alternative mercury emission limit established in a permit expires July 1, 2016 or within 2 years of commencement of commercial operation, whichever is later.

(6) Permanent compliance alternative. If the owner or operator of a coal-fired electric generating unit is unable to achieve at least 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input by July 1, 2016 or within 2 years of commencement of commercial operation, whichever is later, despite properly implementing the continual program of mercury progression required in section (5) of this rule:

(a) The owner or operator of the coal-fired electric generating unit may file an application with the Department for a permit modification in accordance with OAR 340 division 216 to establish a permanent alternative mercury emission limit that comes as near as technically possible to achieving 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input.

(b) The Department may establish a permanent alternative mercury emission limit only if the owner or operator applies for a permit modification, that proposes an alternative mercury emission limit that the Department determines comes as near as technically possible to achieving 90 percent mercury capture or an emission level of 0.60 pounds per trillion BTU of heat input.

(c) Establishment of a permanent alternative mercury emission limit requires public notice in accordance with OAR 340 division 209 for Category IV permit actions.

(d) If the owner or operator files an application under subsection (6)(a) of this rule, the coal-fired electric generating unit must operate according to the permanent alternative mercury emission limit proposed in the permit modification application until the Department either denies the application or modifies the permit. Compliance with the proposed permanent alternative mercury emission limit prior to final Department action on the application shall constitute compliance with the limits in section (4) of this rule.

(7) Emission Caps. Beginning in calendar year 2018, the following coal-fired electric generating unit specific emission caps shall apply.

(a) Existing Boardman coal-fired electric generating unit cap. The existing coal-fired electric generating unit in Boardman shall emit no more than:

(A) 60 pounds of mercury in any calendar year in which there are no new coal-fired electric generating units operated in Oregon.

(B) 35 pounds of mercury in any calendar year in which there are new coal-fired electric generating units operated in Oregon.

(b) New coal-fired electric generating unit cap:

(A) New coal-fired electric generating units, in aggregate, shall emit no more than:

(i) 25 pounds of mercury in any calendar year in which the existing coal-fired electric generating unit in Boardman is operated.

(ii) 60 pounds of mercury in any calendar year in which the existing coal-fired electric generating unit in Boardman is not operated.

(B) The owner or operator of each new coal-fired electric generating unit must submit to the Department a request, in a format specified by the Department, to receive a portion of the new coal-fired electric generating unit cap. The request may not be submitted until the new coal-fired electric generating unit has received its Site Certification from the Facility Siting Council, or if the new coal-fired electric generating unit is not required to obtain a Site Certificate, all governmental approvals necessary to commence construction.

(C) The Department will allocate the new coal-fired electric generating unit cap in order of receipt of requests and, once allocated, the new coal-fired electric generating unit shall be entitled to receive an equal allocation in future years unless the new coal-fired electric generating unit permanently ceases operations.

(D) Each individual new coal-fired electric generating unit shall emit no more than the lesser of:

(i) An amount of mercury determined by multiplying the design heat input in TBtu of such coal-fired electric generating unit by 0.60 pounds per TBtu rounded to the nearest pound as appropriate, or

(ii) The amount of the emission cap under (7)(b) less the amount of the emission cap under (7)(b) that has been allocated to other new coal-fired electric generating units.

(c) Compliance demonstration. Each coal-fired electric generating unit must demonstrate compliance with the applicable calendar year emission cap in subsection (7)(a) or (7)(b) of this rule using a mercury CEMS or sorbent trap monitoring system.

(5) Recordkeeping and reporting requirements.

(a) Unless otherwise provided, the owners and operators of the Hg Budget source and each Hg Budget unit at the source must keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Department or the Administrator.

(A) The certificate of representation under OAR 340-228-0618 for the Hg designated representative for the source and each Hg Budget unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents are retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under OAR 340-228-0618 changing the Hg designated representative.

(B) All emissions monitoring information, in accordance with OAR 340-228-0658 through 0670, provided that to the extent that OAR 340-228-0658 through 0670 provides for a 3-year period for recordkeeping, the 3-year period applies.

(C) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Hg Budget Trading Program.

(D) Copies of all documents used to complete a Hg Budget permit application and any other submission under the Hg Budget Trading Program or to demonstrate compliance with the requirements of the Hg Budget Trading Program.

(b) The Hg designated representative of a Hg Budget source and each Hg Budget unit at the source must submit the reports required under the Hg Budget Trading Program, including those under OAR 340-228-0658 through 0670.

(6) Liability.

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(a) Each Hg Budget source and each Hg Budget unit must meet the requirements of the Hg Budget Trading Program for the control periods of 2010 through 2017.

(b) Any provision of the Hg Budget Trading Program that applies to a Hg Budget source or the Hg designated representative of a Hg Budget source also applies to the owners and operators of such source and of the Hg Budget units at the source.

(c) Any provision of the Hg Budget Trading Program that applies to a Hg Budget unit or the Hg designated representative of a Hg Budget unit also applies to the owners and operators of such unit.

(7) Effect on other authorities. No provision of the Hg Budget Trading Program, a Hg Budget permit application, a Hg Budget permit, or an exemption under OAR 340-228-0605 must be construed as exempting or excluding the owners and operators, and the Hg designated representative, of a Hg Budget source or Hg Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a Federally enforceable permit, or the CAA.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-2006, f. & cert. ef. 12-22-06; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09

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## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Allow Conversion of Glazed Sablefish Processed at Sea to Round Weight Pounds.

**Adm. Order No.:** DFW 73-2009(Temp)

**Filed with Sec. of State:** 6-24-2009

**Certified to be Effective:** 6-25-09 thru 12-21-09

**Notice Publication Date:**

**Rules Amended:** 635-006-0215

**Rules Suspended:** 635-006-0215(T)

**Subject:** This amended rule allows fishers with Federal Groundfish Fixed Catcher Processor permits who process sablefish at sea to accurately record glazed sablefish pounds on a Fish Receiving Ticket. Wholesale fish dealers, cannerys, and buyers must report in round weight on the Fish Receiving Ticket using the conversion factor 0.95 to one.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

### 635-006-0215

#### Monthly Remittance Report

(1) A monthly report is required of all licensed:

(a) Wholesale fish dealers, wholesale fish bait dealers, food fish cannerys, or shellfish cannerys receiving food fish or shellfish from licensed fishers or bait fishers;

(b) Limited Fish Sellers selling food fish or shellfish.

(2) Except as provided in OAR 635-006-0220, the report is required even though no food fish or shellfish are received or sold during the calendar month covered by the report.

(3) The following information shall be included on the report:

(a) Fish dealer's name, license number, and address;

(b) Calendar month of the report;

(c) Serial numbers of all Fish Receiving Tickets issued during the month;

(d) Total pounds of all salmon and steelhead received or sold during the calendar month on which poundage fees are due. Salmon and steelhead may be reported as round weight, dressed head on or dressed head off;

(e) Total value of salmon and steelhead received or sold during the calendar month including fish eggs and parts;

(f) Total value of all other food fish and shellfish including eggs and parts;

(g) Total pounds in the round of all other species of food fish or shellfish received or sold during the calendar month on which taxes are due. The following listed species may be converted to round weight for the purposes of completing monthly reports, by multiplying the below-listed factor by the dressed weight of that species:

(A) Troll salmon:

(i) Gilled and gutted — 1.15

(ii) Gilled, gutted, and headed — 1.30

(B) Tribal Columbia River salmon and steelhead trout: Gilled and gutted — 1.17

(C) Halibut:

(i) Gilled and gutted — 1.15

(ii) Gilled, gutted, and headed — 1.35

(D) Sablefish:

(i) Gutted and headed — 1.60

(ii) Glazed — 0.95

(E) Pacific whiting:

(i) Fillet — 2.86

(ii) Headed and gutted — 1.56

(iii) Surimi — 6.25

(F) Razor Clams, shelled and cleaned — 2.0

(G) Scallops, shelled and cleaned — 12.2

(H) Thresher shark — 2.0

(I) Skates — 2.6

(J) Lingcod:

(i) Gilled and gutted — 1.1

(ii) Gilled, gutted and headed — 1.5

(K) Spot prawn, tails — 2.24

(h) Total value of food fish landed in another state but not taxed by that state;

(i) Total pounds in the round of all food fish landed in another state but not taxed by that state;

(j) Total fees due - in accordance with ORS 508.505 the fees are the value of the food fish at the point of landing multiplied by the following rates:

(A) All salmon and steelhead, 3.15 percent;

(B) Effective January 1, 2005, all black rockfish, blue rockfish and nearshore fish (as defined by ORS 506.011), 5 percent.

(C) All other food fish and shellfish, 1.09 percent until the first Emergency Board hearing of 1993 and 1.25 percent, thereafter.

(k) Signature of the individual completing the report.

(4) The monthly report and all landing fees due shall be sent to the Department on or before the 20th of each month for the preceding calendar month. Landing fees are delinquent if not received or postmarked within 20 days after the end of the calendar month. A penalty charge of \$5 or five percent of the landing fees due, whichever is larger, shall be assessed along with a one percent per month interest charge on any delinquent landing fee payments.

Stat. Auth.: ORS 506.119 & 508.530

Stats. Implemented: ORS 506.129, 508.535 & 508.550

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0140; FWC 48-1978, f. & ef. 9-27-78, Renumbered from 635-036-0585; FWC 17-1981(Temp), f. & ef. 5-22-81; FWC 25-1981(Temp), f. 7-8-81, ef. 7-15-81; FWC 27-1981, f. & ef. 8-14-81; FWC 1-1986, f. & ef. 1-10-86; FWC 4-1987, f. & ef. 2-6-87; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-92; FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 5-1993, f. 1-22-93, cert. ef. 1-25-93; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 118-2005(Temp), f. & cert. ef. 10-10-05 thru 12-31-05; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2008(Temp), f. & cert. ef. 7-10-08 thru 12-31-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; DFW 73-2009(Temp), f. 6-24-09, cert. ef. 6-25-09 thru 12-21-09

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**Rule Caption:** Additional Opportunity for Personal Use Harvest of Pacific Lamprey at Willamette Falls Allowed.

**Adm. Order No.:** DFW 74-2009(Temp)

**Filed with Sec. of State:** 6-25-2009

**Certified to be Effective:** 6-30-09 thru 7-2-09

**Notice Publication Date:**

**Rules Amended:** 635-017-0090

**Subject:** This amended rule allows for three additional days for personal use harvest of Pacific lamprey by individuals with the required permit. The season modifications provide opportunity for harvest of lamprey that may become stranded due to the scheduled installation of water flow devices at Willamette Falls.

**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; except personal use harvest is permitted on June 30 through July 2, 2009 from 7:00 a.m. to 6:00 p.m. daily;

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(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 March 1, 2009, regulations for Chinook in the Willamette River downstream of Willamette Falls (including Multnomah Channel and the lower Clackamas River downstream of Highway 99 Bridge) have been modified as follows:

(a) Retention of adipose fin-clipped Chinook allowed seven days per week from Sunday, March 1 through Sunday, March 15, 2009; and three days per week (Thursdays through Saturdays) from March 19 through April 30, 2009. Retention of Chinook is prohibited from May 1 through August 15, 2009.

(b) Daily bag limit will be two adult adipose fin-clipped salmonids per day, only one of which may be a Chinook. All other permanent regulations remain in effect, including open for adipose fin-clipped steelhead entire year.

[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

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**Rule Caption:** Cumulative Trip Limits for Greenling and Cabezon Reduced Effective July 1, 2009.

**Adm. Order No.:** DFW 75-2009(Temp)

**Filed with Sec. of State:** 6-26-2009

**Certified to be Effective:** 7-1-09 thru 12-28-09

**Notice Publication Date:**

**Rules Amended:** 635-004-0033

**Subject:** This amended rule reduces the cumulative trip limit for greenling and Cabezon in the commercial fishery for black and blue rockfish with a nearshore endorsement. Cumulative trip limits are reduced from 250 to 150 pounds for greenling species and from 2500 to 1250 pounds for Cabezon.

**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) Treefish;
- (m) Black Rockfish;
- (n) Blue Rockfish;
- (o) Cabezon;
- (p) Canary Rockfish;
- (q) Greenling;
- (r) Tiger Rockfish;
- (s) Vermilion Rockfish;
- (t) Widow Rockfish;
- (u) Yelloweye Rockfish;
- (v) Yellowtail Rockfish;
- (w) Darkblotched Rockfish;
- (x) Pacific Ocean Perch;
- (y) Longspine Thornyhead;
- (z) Shortspine Thornyhead;
- (aa) Arrowtooth Flounder;
- (bb) Dover Sole;
- (cc) Petrale Sole;
- (dd) Rex Sole;
- (ee) Other Flatfish;
- (ff) Lingcod;
- (gg) Sablefish;
- (hh) Pacific Whiting.

(2) For the purpose of this rule, "Other nearshore rockfish" means: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serriceps*).

(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); 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) 1200 pounds in period 5; and



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- (e) 1000 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 periods 4, 5, and 6.
  - (d) 450 pounds of greenling species in period 1.
  - (e) 250 pounds of greenling species in periods 2 and 3.
  - (f) 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. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 82-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 12-31-05; DFW 86-2005(Temp), f. & cert. ef. 8-3-05 thru 12-31-05; DFW 119-2005(Temp), f. 10-10-05, cert. ef. 10-11-05 thru 12-31-05; DFW 135-2005(Temp), f. 11-30-05, cert. ef. 12-1-05 thru 12-31-05; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 50-2006(Temp), f. 6-28-06, cert. ef. 7-1-06 thru 12-27-06; DFW 83-2006(Temp), f. 8-10-06, cert. ef. 8-11-06 thru 2-6-07; DFW 108-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; DFW 133-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 83-2007(Temp), f. 8-31-07, cert. ef. 9-1-07 thru 12-31-07; DFW 120-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 128-2007, f. 12-13-07, cert. ef. 1-1-08; 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. 2-26-09, cert. ef. 3-1-09 thru 8-27-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 75-2009(Temp), f. 6-26-09, cert. ef. 7-1-09 thru 12-28-09

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**Rule Caption:** Columbia River Treaty Tribal Summer Salmon Gill Net Fishery Continues.

**Adm. Order No.:** DFW 76-2009(Temp)

**Filed with Sec. of State:** 6-26-2009

**Certified to be Effective:** 6-30-09 thru 7-31-09

**Notice Publication Date:**

**Rules Amended:** 635-041-0076

**Rules Suspended:** 635-041-0076(T)

**Subject:** This amended rule allows the sales of fish caught in the Columbia River summer Treaty Indian gill net fishery which begins at 6:00 p.m., Tuesday, June 30, 2009. Allowable sales include Chinook, coho and sockeye salmon, steelhead, walleye, carp, yellow perch, catfish, bass and shad. White sturgeon may not be sold but may be kept for subsistence. One 60 hour (2.5 days) fishing period was adopted. Revisions are consistent with action taken by the Columbia River Compact agencies of Oregon and Washington on June 25, 2009.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-041-0076

### Summer 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. Wednesday, May 27, 2009 until further notice.

(a) Allowable sales include Chinook, 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). Sturgeon may not be retained in the Yakama fishery below Bonneville. 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) Sturgeon may not be sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools may be kept for subsistence use. White sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence use.

(d) Closed areas, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(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, beginning 6:00 a.m. Tuesday, June 30 through 6:00 p.m. Thursday, July 2, 2009 (60 hours).

(a) No minimum mesh size restriction is in effect.

(b) Allowable sales include Chinook, coho, steelhead, sockeye, walleye, carp, yellow perch, catfish, bass and shad.

(c) Sturgeon may not be sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools may be kept for subsistence use. White sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence use.

(d) Closed areas, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(3) 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.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; DFW 80-2008(Temp), f. & cert. ef. 7-10-08 thru 8-31-08; DFW 87-2008(Temp), f. & cert. ef. 7-25-08 thru 8-31-08; DFW 94-2008(Temp), f. & cert. ef. 8-14-08 thru 9-30-08; Administrative correction 10-21-08; DFW 50-2009(Temp), f. 5-14-09, cert. ef. 5-16-09 thru 7-31-09; DFW 56-2009(Temp), f. 5-26-09, cert. ef. 5-27-09 thru 7-31-09; DFW 71-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 7-31-09; DFW 76-2009(Temp), f. 6-26-09, cert. ef. 6-30-09 thru 7-31-09

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**Rule Caption:** Modifications to Southwest Zone Sport Chinook Salmon Regulations for the Rogue River.

**Adm. Order No.:** DFW 77-2009(Temp)

**Filed with Sec. of State:** 6-29-2009

**Certified to be Effective:** 7-1-09 thru 7-31-09

**Notice Publication Date:**

**Rules Amended:** 635-016-0090

**Rules Suspended:** 635-016-0090(T)

**Subject:** This amended rule allows maximized spawning escapement of naturally-produced adult spring Chinook, while continuing to allow opportunities for harvest of hatchery-produced spring Chinook and naturally-produced jack chinook.

**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) Rogue River mainstem upstream to Hog Creek boat landing:

(a) From 12:01 a.m. June 1 thru 11:59 p.m. July 10, 2009 only adult adipose fin-clipped Chinook salmon may be retained. Non adipose 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.

(b) From 12:01 a.m. July 11 thru 11:59 p.m. July 31, 2009, 2 adult salmon or steelhead may be retained per day, 20 per year, of which only 10 may be 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 July 11 and December 31, 2009. Five jacks may be retained per day, 2 daily jack limits allowed in possession.

(3) Rogue River mainstem from Hog Creek boat landing upstream to Gold Ray Dam: From 12:01 a.m. June 1 thru 11:59 p.m. July 31, 2009 only adult adipose fin-clipped Chinook salmon may be retained. Non adipose fin-clipped jacks may be retained. Catch limits and other restrictions listed

# ADMINISTRATIVE RULES

in the 2009 Oregon Sport Fishing Regulations for the Southwest Zone remain in effect.

(4) Rogue River mainstem from Gold Ray Dam to Dodge Bridge: From 12:01 a.m. July 1 thru 11:59 p.m. August 31, 2009 only adult adipose fin-clipped Chinook salmon may be retained. Non adipose 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.

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

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 4-12-02 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

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**Rule Caption:** Directed Sardine Fishery Allocations Reduced Effective July 1, 2009.

**Adm. Order No.:** DFW 78-2009(Temp)

**Filed with Sec. of State:** 6-30-2009

**Certified to be Effective:** 7-1-09 thru 12-28-09

**Notice Publication Date:**

**Rules Amended:** 635-004-0017

**Subject:** This amended rule reduces the directed sardine fishery allocations for the second and third periods by 750 metric tons and 450 metric tons respectively to conform with changes made to federal rules published in the Federal Register Vol. 74, No. 124 June 30, 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.

[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

**Rule Caption:** Sport Chinook Fishery Closes on the Imnaha River. **Adm. Order No.:** DFW 79-2009(Temp)

**Filed with Sec. of State:** 6-30-2009

**Certified to be Effective:** 7-5-09 thru 9-1-09

**Notice Publication Date:**

**Rules Amended:** 635-021-0090

**Rules Suspended:** 635-021-0090(T)

**Subject:** This amended rule closes the Imnaha River to the recreational harvest of adipose fin-clipped adult and jack Chinook salmon effective at 11:59 p.m. Saturday, July 5, 2009 when the allowable wild Chinook impacts in this fishery are expected to have been reached.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

**635-021-0090**

**Inclusions and Modifications**

(1) The 2009 Oregon Sport Fishing Regulations provide requirements for the Southeast 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) The Powder River upstream from Hughes Lane Bridge near Baker City to Mason Dam is open to angling for spring Chinook salmon from May 30 to September 1, 2009. The spring Chinook bag limit is 2 per day.

(3) The Imnaha River from the mouth to Summit Creek Bridge (River Mile 45) is open to angling for adipose fin-clipped adult Chinook salmon from June 13 to July 5, 2009.

(a) The daily bag limit is two adipose fin-clipped adult Chinook and five adipose fin-clipped jacks; 2 daily limits in possession (it is illegal to continue fishing for jack Chinook once the adult bag limit is met).

(b) All other statewide salmon gear restrictions provided in the 2009 Oregon Sport Fishing Regulations apply.

(4) The Wallowa River from a deadline at the lower end of Minam State Park upstream to the confluence with the Lostine River is open to angling for adipose fin-clipped adult Chinook salmon from June 13 to July 12, 2009.

(a) The daily bag limit is two adipose fin-clipped adult Chinook and five adipose fin-clipped jacks; 2 daily limits in possession (it is illegal to continue fishing for jack Chinook once the adult bag limit is met).

(b) All other statewide salmon gear restrictions provided in the 2009 Oregon Sport Fishing Regulations apply.

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

Stat. Auth.: ORS 183.325, 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; 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 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07 thru 9-30-07; DFW 62-2007(Temp), f. 7-31-07, cert. ef. 8-1-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 51-2008(Temp), f. 5-16-08, cert. ef. 5-31-08 thru 9-1-08; DFW 74-2008(Temp), f. 7-3-08, cert. ef. 7-4-08 thru 9-1-08; DFW 77-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 53-2009(Temp), f. 5-18-09, cert. ef. 5-30-09 thru 9-1-09; DFW 62-2009(Temp), f. 6-2-09, cert. ef. 6-13-09 thru 9-1-09; DFW 79-2009(Temp), f. 6-30-09, cert. ef. 7-5-09 thru 9-1-09

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**Rule Caption:** Recreational Spring Chinook Fishery Closes In the Snake River Below Hells Canyon Dam.

**Adm. Order No.:** DFW 80-2009(Temp)

**Filed with Sec. of State:** 6-30-2009

**Certified to be Effective:** 7-1-09 thru 7-17-09

**Notice Publication Date:**

**Rules Amended:** 635-023-0134

**Rules Suspended:** 635-023-0134(T)

**Subject:** Amend rule to closes the recreational spring Chinook salmon fishery on the Snake River in the area from the Dug Bar Boat Ramp upstream to the deadline below Hells Canyon Dam effective



# ADMINISTRATIVE RULES

at 11:59 p.m. on July 2, 2009 to coincide with the state of Idaho's closure of this fishery.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 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 Oregon Sport Fishing Regulations, the following conditions apply:

(a) The Snake River from Dug Bar boat ramp upstream to the deadline below Hell's Canyon Dam is open seven (7) days per week, effective Saturday, May 30, 2009 through 11:59 p.m. Thursday, July 2, 2009.

(b) Daily bag limit is two (2) adult adipose fin-clipped spring Chinook salmon per day. Two adipose fin-clipped jack Chinook salmon may be retained in addition to the adult bag limit. Anglers must cease fishing once the daily adult bag limit is attained.

(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

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**Rule Caption:** Inseason Actions Implemented by the federal Government for Commercial Groundfish Fisheries.

**Adm. Order No.:** DFW 81-2009(Temp)

**Filed with Sec. of State:** 7-2-2009

**Certified to be Effective:** 7-2-09 thru 12-28-09

**Notice Publication Date:**

**Rules Amended:** 635-004-0019

**Rules Suspended:** 635-004-0019(T)

**Subject:** Amended rule adopts in-season actions implemented by the federal government on July 1, 2009 for commercial groundfish fisheries, including changes to cumulative trip limits for RCA boundaries.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-004-0019

### Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart G, West Coast Groundfish Fisheries**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G**, provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the **Code of Federal Regulations**.

(3) Notwithstanding the regulations as defined in OAR 635-004-0018, the National Oceanic and Atmospheric Administration (NOAA), by means of National Marine Fisheries Service (NMFS) Northwest Fishery Science Center Public Notice NMFS-SEA-09-04, July 2, 2009, announced inseason management measures effective July 1, 2009, including, but not limited to, changes to cumulative trip limits and RCA boundaries.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), f. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05; DFW 68-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 12-27-05; DFW 114-2005(Temp), f. 9-30-05, cert. ef. 10-1-05 thru 12-31-05; DFW 125-2005(Temp), f. & cert. ef. 10-19-05 thru 12-31-05; DFW 134-2005(Temp), f. & cert. ef. 11-30-05 thru 12-31-05; DFW 147-2005(Temp), f. 12-28-05, cert. ef. 1-1-06 thru 6-28-06; DFW 8-2006(Temp), f. 2-28-06, cert. ef. 3-1-06 thru 8-25-06; DFW 25-2006(Temp), f. 4-28-06, cert. ef. 5-1-06 thru 10-27-06; DFW 55-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; DFW 110-2006(Temp), f. 9-29-06, cert. ef. 10-1-06 thru 12-31-06; Administrative Correction 1-16-07; DFW 29-2007(Temp), f. & cert. ef. 5-1-07 thru 10-27-07; DFW 58-2007(Temp), f. 7-18-07, cert. ef. 8-1-07 thru 12-31-07; DFW 106-2007(Temp), f. 10-5-07, cert. ef. 10-6-07 thru 12-31-07; DFW 123-2007(Temp), f. 11-26-07, cert. ef. 11-28-07 thru 12-31-07; DFW 126-2007(Temp), f. & cert. ef. 12-11-07 thru 12-31-07; DFW 41-2008(Temp), f. 4-23-08, cert. ef. 5-1-08 thru 10-27-08; DFW 88-2008(Temp), f. & cert. ef. 8-1-08 thru 12-31-08; DFW 146-2008(Temp), f. & cert. ef. 12-4-08 thru 12-31-08; DFW 1-2009(Temp), f. & cert. ef. 1-5-09 thru 5-1-09; DFW 2009(Temp), f. & cert. ef. 3-18-09 thru 5-1-09; DFW 41-2009(Temp), f. 4-29-09, cert. ef. 5-

1-09 thru 10-27-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 81-2009(Temp), f. & cert. ef. 7-2-09 thru 12-28-09

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**Rule Caption:** Columbia River Treaty Tribal Summer Salmon Gill Net Fishery Extended.

**Adm. Order No.:** DFW 82-2009(Temp)

**Filed with Sec. of State:** 7-6-2009

**Certified to be Effective:** 7-8-09 thru 7-31-09

**Notice Publication Date:**

**Rules Amended:** 635-041-0076

**Rules Suspended:** 635-041-0076(T)

**Subject:** This amended rule allows the sales of fish caught in the Columbia River summer Treaty Indian gill net fishery adopted for 6:00 a.m. Wednesday, July 8, through 6:00 p.m. Saturday, July 11, 2009 (84 hours). Allowable sales include Chinook, coho and sockeye salmon; steelhead, walleye, carp, yellow perch, catfish, bass and shad. White sturgeon may not be sold but may be kept for subsistence. Revision is consistent with action taken by the Columbia River Compact agencies of Oregon and Washington on July 6, 2009.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-041-0076

### Summer 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. Wednesday, May 27, 2009 until further notice.

(a) Allowable sales include Chinook, 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). Sturgeon may not be retained in the Yakama fishery below Bonneville. 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) Sturgeon may not be sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools may be kept for subsistence use. White sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence use.

(d) Closed areas, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(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, beginning 6:00 a.m. Wednesday, July 8 through 6:00 p.m. Saturday, July 11, 2009 (84 hours).

(a) No minimum mesh size restriction is in effect.

(b) Allowable sales include Chinook, coho, steelhead, sockeye, walleye, carp, yellow perch, catfish, bass and shad.

(c) Sturgeon may not be sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools may be kept for subsistence use. White sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence use.

(d) Closed areas, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(3) 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.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; DFW 80-2008(Temp), f. & cert. ef. 7-10-08 thru 8-31-08; DFW 87-2008(Temp), f. & cert. ef. 7-25-08 thru 8-31-08; DFW 94-2008(Temp), f. & cert. ef. 8-14-08 thru 9-30-08; Administrative correction 10-21-08; DFW 50-2009(Temp), f. 5-14-09, cert. ef. 5-16-09 thru 7-31-09; DFW 56-2009(Temp), f. 5-26-09, cert. ef. 5-27-09 thru 7-31-09; DFW 71-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 7-31-09; DFW 76-2009(Temp), f. 6-26-09, cert. ef. 6-30-09 thru 7-31-09; DFW 82-2009(Temp), f. 7-6-09, cert. ef. 7-8-09 thru 7-31-09



# ADMINISTRATIVE RULES

**Rule Caption:** Columbia River Sport Sturgeon Fishery Re-opens Below Wauna Powerlines.

**Adm. Order No.:** DFW 83-2009(Temp)

**Filed with Sec. of State:** 7-8-2009

**Certified to be Effective:** 7-9-09 thru 12-31-09

**Notice Publication Date:**

**Rules Amended:** 635-023-0095

**Rules Suspended:** 635-023-0095(T)

**Subject:** Amend rule to allow retention of white sturgeon in the Columbia River and tributaries from the Wauna Powerlines downstream to the mouth at Buoy 10, including Youngs Bay from Friday, July 10 through Sunday, July 12 (3 days) and from Friday, July 17 through Sunday, July 19 (3 days). Revisions are consistent with Joint State Action taken by the states of Oregon and Washington on July 7, 2009.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-023-0095 Sturgeon Season

(1) The 2009 Oregon Sport Fishing Regulations provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the 2009 Oregon Sport Fishing Regulations.

(2) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of white sturgeon with a fork length of 38–54 inches, three days per week, Thursdays through Saturdays, during the following periods:

- (a) January 1 through July 31; and
- (b) October 1 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through September 30.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

- (a) January 1 through April 30;
- (b) May 9 through June 28;
- (c) July 2 through July 5;
- (d) July 10 through July 12; and
- (e) July 17 through July 19.

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 8, June 29 through July 1, July 6 through July 9, July 13 through July 16, and July 20 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon with a fork length of 38–54 inches may be retained.

(7) During the fishing period as identified in subsection (4)(b) of this rule, only white sturgeon with a fork length of 41–54 inches may be retained.

(8) During the fishing period as identified in subsection (4)(c) of this rule, only white sturgeon with a fork length of 41–54 inches may be retained.

(9) The Columbia River and tributaries from John Day Dam upstream to McNary Dam (John Day Reservoir) is closed to the retention of sturgeon effective 12:01 a.m. Monday, April 13, 2009.

(10) The Columbia River and tributaries from The Dalles Dam upstream to John Day Dam (The Dalles Reservoir) are closed to the retention of sturgeon effective 12:01 a.m. Sunday, April 19, 2009.

(11) The Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam (Bonneville Reservoir) is closed to the retention of sturgeon effective 12:01 a.m. Saturday, June 6, 2009.

(12) Angling for sturgeon is prohibited from Marker 85 upstream to Bonneville Dam, from Highway 395 Bridge upstream to McNary Dam, and from the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(13) Retention of green sturgeon is prohibited all year in all areas.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef.

1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert. ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09

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**Rule Caption:** Extension of Columbia River Treaty Tribal Summer Salmon Commercial Gill Net Fishery.

**Adm. Order No.:** DFW 84-2009(Temp)

**Filed with Sec. of State:** 7-13-2009

**Certified to be Effective:** 7-15-09 thru 7-31-09

**Notice Publication Date:**

**Rules Amended:** 635-041-0076

**Rules Suspended:** 635-041-0076(T)

**Subject:** This amended rule allows the sales of fish caught in the Columbia River summer Treaty Indian gill net fishery adopted for 6:00 a.m. Wednesday, July 15, through 6:00 p.m. Friday, July 17, 2009 (60 hours). Allowable sales include Chinook, coho and sockeye salmon; steelhead, walleye, carp, yellow perch, catfish, bass and shad. White sturgeon may not be sold but may be kept for subsistence. Revisions are consistent with action taken by the Columbia River Compact agencies of Oregon and Washington on July 13, 2009.

**Rules Coordinator:** Therese Kucera—(503) 947-6033

## 635-041-0076

### Summer 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. Wednesday, May 27, 2009 until further notice.

(a) Allowable sales include Chinook, 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). Sturgeon may not be retained in the Yakama fishery below Bonneville. 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) Sturgeon may not be sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools may be kept for subsistence use. White sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence use.

(d) Closed areas, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(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, beginning 6:00 a.m. Wednesday, July 15 through 6:00 p.m. Friday, July 17, 2009 (60 hours).

(a) No minimum mesh size restriction is in effect.

(b) Allowable sales include Chinook, coho, steelhead, sockeye, walleye, carp, yellow perch, catfish, bass and shad.

(c) Sturgeon may not be sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools may be kept for subsistence use. White sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence use.

(d) Closed areas, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(3) 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.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006(Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006(Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006(Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006(Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006(Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007(Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007(Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007(Temp), f. & cert. ef. 7-

# ADMINISTRATIVE RULES

6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008(Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008(Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; DFW 80-2008(Temp), f. & cert. ef. 7-10-08 thru 8-31-08; DFW 87-2008(Temp), f. & cert. ef. 7-25-08 thru 8-31-08; DFW 94-2008(Temp), f. & cert. ef. 8-14-08 thru 9-30-08; Administrative correction 10-21-08; DFW 50-2009(Temp), f. 5-14-09, cert. ef. 5-16-09 thru 7-31-09; DFW 56-2009(Temp), f. 5-26-09, cert. ef. 5-27-09 thru 7-31-09; DFW 71-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 7-31-09; DFW 76-2009(Temp), f. 6-26-09, cert. ef. 6-30-09 thru 7-31-09; DFW 82-2009, f. 7-6-09, cert. ef. 7-8-09 thru 7-31-09; DFW 84-2009(Temp), f. 7-13-09, cert. ef. 7-15-09 thru 7-31-09

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**Department of Human Services,  
Addictions and Mental Health Division:  
Mental Health Services  
Chapter 309**

**Rule Caption:** Revises rules to specifically include certain individuals, Psychiatric Nurse Practitioners, Final Orders & HIV Testing.  
**Adm. Order No.:** MHS 3-2009

**Filed with Sec. of State:** 6-26-2009

**Certified to be Effective:** 6-26-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 309-114-0005, 309-114-0010, 309-114-0020, 309-114-0025

**Rules Repealed:** 309-114-0005(T), 309-114-0010(T), 309-114-0020(T)

**Subject:** The Addictions & Mental Health Division is proposing to permanently revise rules in OAR 309-114 to: include consideration of the potential risks of an individual's history of violence and its relationship to mental health treatment when determining if the state institution has "good cause" to involuntarily administer "significant procedures;" expand the role of Psychiatric Nurse Practitioners; allow issuance of final orders in contested case hearings & include HIV testing in the definition of "Significant Procedures."

**Rules Coordinator:** Richard Luthe—(503) 947-1186

## 309-114-0005

### Definitions

As used in these rules:

(1) "Certified Law Student" means an eligible law student certified by the Oregon State Bar to appear in court or in an administrative proceeding and is supervised by an attorney licensed by the Oregon State Bar.

(2) "Chief Medical Officer" means the physician designated by the superintendent of each state institution pursuant to ORS 179.360(1)(f) who is responsible for the administration of medical treatment at each state institution.

(3) "Division," as used in these rules means these Divisions of the Department of Human Services:

(a) Addictions and Mental Health Division (AMH) when referring to "patients;" and

(b) The Seniors and People with Disabilities Division (SPD) when referring to "residents."

(4) "Guardian" means a legal guardian who is a person appointed by a court of law to act as guardian of a minor or a legally incapacitated person.

(5) "Legally Incapacitated" means having been found by a court of law under ORS 426.295 to be unable, without assistance, to properly manage or take care of one's personal affairs.

(6) "Material Risk." A risk is material if it may have a substantial adverse effect on the patient's or resident's psychological or physical health, or both. Tardive dyskinesia is a material risk of neuroleptic medication. Other risks include, but are not limited to, raised blood pressure, onset of diabetes, and metabolic changes.

(7) "Medication Educator" means a Qualified Mental Health Professional (QMHP) or Qualified Mental Retardation Professional who provides information about the proposed significant procedures to patients and residents.

(8) "Patient" means a person who is receiving care and treatment in a state institution for the mentally ill.

(9) "Person Committed to the Division" or "Person" means a patient or resident committed under ORS 161.327, 161.370, 179.478, 426.130, or 427.215, or certified by the State Training Center Review Board under ORS 427.020.

(10) "Psychiatric Nurse Practitioner," as used in these rules, means a registered nurse with prescription authority who independently provides health care to clients with mental and emotional needs or disorders.

(11) "Qualified Mental Health Professional" (QMHP) means any person meeting the following minimum qualifications as documented by the state institution:

(a) Graduate degree in psychology;

(b) Bachelor's or graduate degree in nursing and licensed by the State of Oregon;

(c) Graduate degree in social work or counseling;

(d) Graduate degree in a behavioral science field;

(e) Graduate degree in recreational art, or music therapy;

(f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; or

(g) Bachelor's or graduate degree in a relevant area.

(12) "Qualified Mental Retardation Professional" means a person who meets the professional requirements under 42 CFR 483.430.

(13) "Resident" means a person who is receiving care, treatment, and training in a state institution for the mentally retarded.

(14) "Representative" is an individual allowed to represent a party or the agency in an administrative hearing under Oregon law.

(15) "Routine Medical Procedure" means a procedure customarily administered by facility medical staff under circumstances involving little or no risk of causing injury to a patient or resident, including, but not limited to physical examinations, blood draws, influenza vaccinations, tuberculosis (TB) testing, and hygiene.

(16) "Significant Procedure" means a diagnostic or treatment modality, and all significant procedures of a similar class, that pose a material risk of substantial pain or harm to the patient or resident such as, but not limited to, psychotropic medication and electro-convulsive therapy. Significant procedures do not include routine medical procedures. For purposes of these rules, "Human immunodeficiency virus" (HIV) testing shall be considered a "Significant Procedure."

(17) "Significant Procedures of a Similar Class" means a diagnostic or treatment modality that presents substantially similar material risks as the significant procedure listed on the treating physician's or psychiatric nurse practitioner's informed consent form and is generally considered in current clinical practice to be a substitute treatment or belong to the same class of medications as the listed significant procedure. Significant procedures of a similar class do not need to be specifically listed on the treating physician's or psychiatric nurse practitioner's form.

(18) "State Institution" or "Institution" means all Oregon State Hospital campuses, Blue Mountain Recovery Center and Eastern Oregon Training Center.

(19) "Superintendent" means the executive head of the state institution listed in section (18) of this rule, or the superintendent's designee.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; MHS 2-2009(Temp), f. & cert. ef. 4-2-09 thru 7-22-09; MHS 3-2009, f. & cert. ef. 6-26-09

## 309-114-0010

### General Policy on Obtaining Informed Consent to Treatment and Training

(1) Basic Rule. Patients or residents, or parents or guardians of minors, or guardians on behalf of legally incapacitated patients or residents, may refuse any significant procedure and may withdraw at any time consent previously given to a significant procedure. Any refusal or withdrawal or withholding of consent shall be documented in the patient's or resident's record.

(a) Personnel of a state institution shall not administer a significant procedure to a patient or resident unless written informed consent is obtained from or on behalf of the patient or resident in the manner prescribed in these rules, except as follows:

(A) Administration of significant procedures to legally incapacitated patients or residents as provided in section (6) of this rule;

(B) Administration of significant procedures without informed consent in emergencies under OAR 309-114-0015; or

(C) Involuntary administration of significant procedures with good cause to persons committed to the Division under OAR 309-114-0020.

(b) In no case may personnel of a state institution for the mentally retarded administer a procedure using aversive stimuli to a resident without the consent of a parent or legal guardian.

(2) Capacity of the patient or resident: In order to consent to, or refuse, withhold, or withdraw consent to significant procedures, the patient or resident must have the capacity to make a decision concerning acceptance or rejection of a significant procedure, as follows:

(a) Unless adjudicated legally incapacitated for all purposes or for the specific purpose of making treatment decisions, a patient or resident shall be presumed competent to consent to, or refuse, withhold, or withdraw consent to significant procedures. A person committed to the Division may be deemed unable to consent to or refuse, withhold, or withdraw consent to a

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significant procedure only if the person currently demonstrates an inability to reasonably comprehend and weigh the risks and benefits of the proposed procedure, alternative procedures, or no treatment at all including, but not limited to, all applicable factors listed in (3)(a) of this rule. The patient's or resident's current inability to provide informed consent is to be documented in the patient's or resident's record and supported by the patient's or resident's statements or behavior; and may be evidenced in the treating physician's or psychiatric nurse practitioner's informed consent form, the evaluation form by the independent examining physician, review by disposition boards in the case of a resident, and forms approving or disapproving the procedure by the superintendent or chief medical officer;

(b) A person committed to the Division shall not be deemed unable to consent to or refuse, withhold, or withdraw consent to a significant procedure merely by reason of one or more of the following facts:

(A) The person has been involuntarily committed to the Division;

(B) The person has been diagnosed as mentally ill or mentally retarded;

(C) The person has disagreed or now disagrees with the treating physician's or psychiatric nurse practitioner's diagnosis;

(D) The person has disagreed or now disagrees with the treating physician's or psychiatric nurse practitioner's recommendation regarding treatment.

(c) If a court has determined that a patient or resident is legally incapacitated, then consent shall be sought from the legal guardian.

(3) Procedures for Obtaining Informed Consent and Information to be Given: The person from whom informed consent to a significant procedure is sought shall be given information, orally and in writing, the substance of which is to be found on the treating physician's or psychiatric nurse practitioner's informed consent form. In the case of medication, there shall be attached a preprinted information sheet on the risks and benefits of the medication listed on the treating physician's or psychiatric nurse practitioner's form. All written materials under this rule will be provided in English. However, if the institution has reason to believe a patient or resident has limited English language proficiency or the patient or resident requests it, then the institution will make reasonable accommodations to provide the patient or resident with meaningful access to the information, such as providing the patient or resident with copies of the materials in the patient or resident's native language if the materials are readily available in that language or providing the opportunity to have an interpreter orally translate written materials into the patient or resident's native language. Specific information about significant procedures of a similar class will not be provided to or discussed with the patient or resident.

(a) The information shall describe:

(A) The nature and seriousness of the patient's or resident's mental illness or condition;

(B) The purpose of the significant procedures listed on the treating physician's or psychiatric nurse practitioner's form, the intended outcome and the risks and benefits of the procedures;

(C) Any alternatives, particularly alternatives offering less material risks to the proposed significant procedure that are reasonably available and reasonably comparable in effectiveness;

(D) If the proposed significant procedure is medication, facility medical staff shall give the name, dosage range, and frequency of administration of the medication listed on the treating physician's or psychiatric nurse practitioner's form, and shall explain the material risks of the medication at that dosage range.

(E) The side effects of the intended medication or electro-convulsive therapy;

(F) The predicted medical, psychiatric, social, or legal consequences of not accepting the significant procedure or any comparable procedure, including any potential risk the patient or resident represents to the health and safety of the patient or resident, or others, which may include, but is not limited to, a consideration of the patient's or resident's history of violence and its relationship to mental health treatment if he or she does not receive the significant procedure;

(G) That consent may be refused, withheld or withdrawn at any time; and

(H) Any additional information concerning the proposed significant procedure requested by the patient or resident.

(b) A medication educator shall assist by providing information to the patient or resident that explains the proposed significant procedure, as described in subsection (3)(a) of this rule;

(c) The treating physician or psychiatric nurse practitioner intending to administer a significant procedure shall document in the patient's or resident's chart that the information required in subsection (3)(a) of this rule was explained and that the patient, resident, parent or guardian of a minor or guardian of a legally incapacitated patient or resident explicitly consented, refused, withheld or withdrew consent. The treating physician or psychiatric nurse practitioner may document this by completing the informed consent form and make it part of the patient's or resident's record.

(4) When discussing the significant procedure with the treating physician or psychiatric nurse practitioner and the medication educator, the patient or resident may request additional information about the significant procedure pursuant to OAR 309-114-0010(3)(a)(H) and present additional information relevant to making his or her decision.

(5) Voluntary Consent: Consent to a proposed significant procedure must be given voluntarily, free of any duress or coercion. Subject to the provisions of OAR 309-114-0020, the decision to refuse, withhold or withdraw consent previously given shall not result in the denial of any other benefit, privilege, or service solely on the basis of refusing, withholding or withdrawing consent. A voluntary patient or resident may be discharged from the institution if offered procedures are refused.

(6) Obtaining Consent with Respect to Legally Incapacitated Patients and Residents: A state institution may not administer a significant procedure to a legally incapacitated patient or resident without the consent of the guardian, or, in the case of a minor, the parent or guardian, except in the case of an emergency under OAR 309-114-0015 or where the institution has good cause to involuntarily administer a significant procedure under 309-114-0020. In order to prove good cause, the institution must prove 309-114-0020(1)(b) and (1)(c) in reference to the guardian and 309-114-0020(1)(b) and (1)(c) in reference to the patient or resident.

(7) Reports of Progress: A patient or resident, the parents or guardian of a minor patient or resident, or the guardian of a legally incapacitated patient or resident shall, upon request, be informed of the progress of the patient or resident during administration of the significant procedure.

(8) These rules will be effective as of December 1, 2007 on all new orders for administration of significant procedures without informed consent. This includes new orders written after expiration of the previous order. This rule will be effective for existing, unexpired orders as of January 1, 2008, on a phased-in schedule that will accommodate as many new hearings as is practicable to schedule each week.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; MHS 3-2009, f. & cert. ef. 6-26-09

## 309-114-0020

### Involuntary Administration of Significant Procedures to Persons Committed to the Division with Good Cause

(1) Good cause: Good cause exists to administer a significant procedure to a person committed to the Division without informed consent if in the opinion of the treating physician or psychiatric nurse practitioner after consultation with the treatment team the following factors are satisfied:

(a) Pursuant to OAR 309-114-0010(2), the person is deemed unable to consent to, refuse, withhold or withdraw consent to the significant procedure. This determination must be documented in the treating physician's or psychiatric nurse practitioner's informed consent form and the independent examining physician's evaluation form, and include the specific questions asked and answers given regarding the patient's or resident's ability to weigh the risks and benefits of the proposed treatment, alternative treatment, and no treatment, including but not limited to all relevant factors listed in 309-114-0010(3)(a).

(b) The proposed significant procedure will likely restore, or prevent deterioration of, the person's mental or physical health; alleviate extreme suffering; or save or extend the person's life. This factor is established conclusively for purposes of a hearing under OAR 309-114-0025 by introducing into evidence the treating physician's or psychiatric nurse practitioner's informed consent form and the independent examining physician's evaluation form, unless this factor is affirmatively raised as an issue by the patient or resident or his or her representative at the hearing.

(c) The proposed significant procedure is the most appropriate treatment for the person's condition according to current clinical practice, and all other less intrusive procedures have been considered and all criteria and information set forth in OAR 309-114-0010(3)(a) were considered. This factor is established conclusively for purposes of a hearing under 309-114-0025 by introducing into evidence the treating physician's or psychiatric nurse practitioner's informed consent form and the independent examining physician's evaluation form, unless this factor is affirmatively raised as an issue by the patient or resident or his or her representative at the hearing.

(d) The institution made a conscientious effort to obtain informed consent from the patient or resident. This factor is established conclusively for purposes of a hearing under OAR 309-114-0025 by introducing into evidence the treating physician's or psychiatric nurse practitioner's informed consent form and the medication educator's form or progress note, unless this factor is affirmatively raised as an issue by the patient or resident or his or her representative at the hearing. If the institution has reason to believe a patient or resident has limited English language proficiency or the patient requests it, then the institution will make reasonable accommodations to provide the patient or resident with meaningful access



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to the informed consent process, such as providing the patient or the resident with the opportunity to have an interpreter orally translate written materials into the patient's or resident's native language and provide translation during the treating physician's or psychiatric nurse practitioner's attempts to obtain informed consent and the medication educator's attempt to provide information about the significant procedure. A "conscientious effort" to obtain informed consent means the following:

(A) The patient's or resident's treating physician or psychiatric nurse practitioner made at least two good faith attempts to obtain informed consent by attempting to explain the procedure to the patient or resident and documenting those efforts in the patient's or resident's record; and

(B) The medication educator made at least one good faith attempt to provide the information required in OAR 309-114-0010(3)(a), and explain and discuss the proposed procedure with the patient or resident.

(2) Independent Review: Prior to granting approval for the administration of a significant procedure for good cause to a person committed to the Division, the superintendent or chief medical officer of a state institution for the mentally ill shall obtain consultation and approval from an independent examining physician. The superintendent or chief medical officer shall maintain a list of independent examining physicians and shall seek consultation and approval from independent examining physicians selected on a rotating basis from the list. The independent examining physician shall not be an employee of the Division, shall be a board-eligible psychiatrist, shall have been subjected to review by the medical staff executive committee as to qualifications to make such an examination, shall have been provided with a copy of administration rules OAR 309-114-0000 through 309-114-0030, and shall have participated in a training program regarding these rules, their meaning and application.

(3) Prior to granting approval for the administration of a significant procedure for good cause, the superintendent or chief medical officer of a state institution for the mentally retarded shall refer the matter for review to a disposition board convened for such purpose. The disposition board shall have five members: two employees from the state institution not directly involved in the treatment of the resident and three public members. Members of the disposition board shall be provided a copy of administrative rules OAR 309-114-0000 through 309-114-0030 and shall be part of a training program regarding their meaning and application.

(4) The superintendent or chief medical officer shall provide to a patient or resident to whom a significant procedure is proposed to be administered written advance notice of the intent to seek consultation and approval of an independent examining physician or review by a disposition board for the purpose of administering the procedure without the patient's or resident's consent.

(5) The physician selected to conduct the independent consultation or the disposition board shall:

(a) Review the person's medical chart, including the records of efforts made to obtain the person's informed consent, personally examine the person, or, in the case of the disposition board, interview the resident;

(b) Discuss the matter with the person to determine the extent of the need for the procedure and the nature of the person's refusal, withholding, or withdrawal or inability to consent to the significant procedure. This determination must be documented in the patient's or resident's records as well as the supporting evidence in the form of the specific questions asked and answers given regarding the patient's or resident's ability to weigh the risks and benefits of the proposed treatment, alternative treatment, and no treatment;

(c) Consider additional information, if any, presented prior to or at the time of examination or interview as may be requested by the person or anyone on behalf of the person;

(d) Make a determination whether the factors required under these rules exist for the particular person or that one or more factors are not present, and complete a report of his or her findings, which provides their approval or disapproval of the proposed significant procedure. The written report must be provided to:

(A) The superintendent or chief medical officer; and

(B) The person to whom a significant procedure is proposed to be administered, with a copy being made part of the person's record.

(6) Superintendent's Determination:

(a) The superintendent or chief medical officer shall approve or disapprove of the administration of the significant procedure to a person committed to the Division based on good cause, provided that if the examining physician, psychiatric nurse practitioner or disposition board found that one or more of the factors required by section (1) of this rule were not present or otherwise disapproved of the procedure, the superintendent or chief medical officer shall not approve the significant procedure and it shall not be performed;

(b) Approval of the significant procedure shall be only for as long as no substantial increase in risk is encountered in administering the significant procedure or significant procedure of a similar class during the term of a person's commitment but in no case longer than 180 days. Disapproval

shall be only for as long as no substantial change occurs in the person's condition during the term of commitment but in no case longer than 180 days;

(c) Written notice of the superintendent's or chief medical officer's determination shall be provided to the person and made part of the person's record. This notice must be delivered to the patient or resident, and fully explained by facility medical staff. This notice must include a clear statement of the decision to treat without informed consent, specific basis for the decision, state what evidence was relied on to make the decision, and include a clear notice of the opportunity to ask for a contested case hearing with an administrative law judge if the patient or resident disagrees with the decision. Attached must be a form with a simple procedure to request a hearing. The patient or resident indicating in writing or verbally to any staff member a desire to challenge the institution's decision will be sufficient to request a contested case hearing pursuant to OAR 309-114-0025. The patient or resident shall have 48 hours to request a contested case hearing after receiving this notice. If the patient or resident does not request a hearing within the 48 hour period or the patient or resident subsequently withdraws his initial hearing request and is not already receiving the significant procedure, the institution may involuntarily administer the significant procedure. A patient or resident retains the right to request an initial hearing on the decision to administer a significant procedure without informed consent at any time.

(d) If the patient or resident withdraws his initial request for hearing or refuses to attend the initial hearing without good cause, the administrative law judge will issue a dismissal order pursuant to OAR 137-003-0672(3). A dismissal order will allow the institution to immediately administer the significant procedure without informed consent as if the patient or resident had never requested a hearing. If a dismissal order is issued, the patient or resident may request a second hearing. If the patient or resident withdraws his second request for hearing or refuses to attend the second hearing without good cause, the hearing will occur as scheduled with the institution presenting a prima facie case pursuant to ORS 183.417(4) and the administrative law judge will issue a proposed order by default. The institution will then issue a final order by default.

(e) Records of all reports by independent examining physicians or disposition boards and of the determinations of the superintendent or chief medical officer under this rule shall be maintained by the superintendent or chief medical officer in a separate file and shall be summarized each year. Such summaries shall show:

(A) Each type of proposed significant procedure for which consultation with an independent examining physician or review by a disposition board was sought;

(B) The number of times consultation or review was sought from a particular independent examining physician or disposition board for each type of proposed significant procedure;

(C) The number of times each independent examining physician or disposition board approved and disapproved each type of proposed significant procedure; and

(D) The number of times the superintendent or chief medical officer approved and disapproved each type of proposed significant procedure;

(E) Such summaries shall be public records and shall be made available to the public during reasonable business hours in accordance with ORS Chapter 192.

(7) When treatment is being administered without informed consent, the ward physician or psychiatric nurse practitioner will write a progress note addressing any changes in patient's or resident's capacity to give informed consent every 60 days.

(8) At any time that a patient's or resident's condition changes so that there appears to his or her treating physician or psychiatric nurse practitioner to be a substantial improvement in the patient's or resident's capacity to consent to or refuse treatment, a formal re assessment of the patient's or resident's capacity to consent shall occur, as described in OAR 309 114 0010 and 309-114-0020. No order to administer treatment without informed consent in non-emergency situations shall be valid for longer than 180 days, or the duration of the commitment, whichever is shorter, without re-establishing the need for the order by following the procedures described in 309-114-0010 and 309-114-0020.

(9) When a patient or resident is transferred to a state institution from a community hospital or another state institution where he or she was already being treated with a significant procedure without informed consent, the receiving institution must apply OAR 309 114 0000 through 309-114-0030 no later than 7 days after the date of admission to the new institution. A state institution can honor an existing order for involuntary administration of a significant procedure without informed consent if procedures such as those outlined in 309 114 0010 through 309-114-0030 have already been applied and all necessary documentation is in the patient's or resident's file.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-880, cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS

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2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; MHS 3-2009, f. & cert. ef. 6-26-09

## 309-114-0025

### Contested Case Hearing

(1) Patient's or Resident's Rights: A patient or resident has the right to contest the hospital's determination that it has good cause to involuntarily administer a significant procedure without informed consent pursuant to OAR 309-114-0020(6)(c). If the patient or resident is a minor or legally incapacitated, the parents or guardian has the right to contest the hospital's determination that it has good cause to involuntarily administer a significant procedure without informed consent pursuant to 309-114-0020(6)(c).

(a) Instructions and a simple method of requesting such a hearing shall be provided to every patient or resident when he or she receives notice that the institution intends to administer a significant procedure without informed consent. The patient or resident indicating in writing or verbally to any staff member a desire to challenge the institution's decision will be sufficient to request a contested case hearing.

(b) A patient or resident's verbal or written request for a hearing implies consent to the release of his or her records and protected health information to his or her representative, the institution's representative, and the Office of Administrative Hearings for the purpose of preparing for and conducting the contested case hearing.

(c) After filing a request for an administrative hearing, an attorney or certified law student will be appointed by the Division to represent any patient or resident who requests one. The patient or resident has the right to be represented at the hearing by a representative appointed and paid by the state. The patient or resident also has the right to be represented at the hearing by an attorney or certified law student of his or her choice and at his or her own expense.

(d) If a patient or resident requests a contested case hearing and is not already receiving the significant procedure pursuant to a valid physician's or psychiatric nurse practitioner's order the patient or resident has the right to not receive the significant procedure prior to and during the hearing. If the patient or resident is already receiving the significant procedure pursuant to a valid physician's or psychiatric nurse practitioner's order, the institution may continue to administer the significant procedure to the patient or resident until the final order is issued.

(2) Contested Case Hearing: The administrative hearing will conform to the requirements set forth in ORS 183.413 through 183.500, and the Attorney General's Model Rules at OAR 137-003-0501 and the following:

(a) The hearing must be held within 14 days of the date of the patient's or resident's request, unless the patient or resident or his or her representative or the state institution's representative requests a delay for good cause or the patient or resident or his or her representative and the state institution's representative agree to a postponement. Good cause includes, but is not limited to, the following circumstances: the patient's or resident's ward is quarantined at the time of the hearing, additional time is required to access necessary and relevant records not in the possession of the state institution, or titration of the patient's or resident's medication is necessary to allow minimally adequate communication by the patient or resident with his or her representative for purposes of the hearing.

(b) These hearings are closed to all non-participants, except personnel from the institution or the Attorney General's Office, personnel from Disability Rights Oregon, personnel from the Office of Administrative Hearings, or members of the patient's or resident's family. Any exceptions to this policy must be agreed to in advance by the institution's representative and the patient or resident or their representative. The institution may exclude non-participants, otherwise allowed to attend these hearings, who are disruptive or represent a safety concern.

(c) In lieu of discovery, the patient or resident or his or her representative will be provided with the treating physician's or psychiatric nurse practitioner's form, independent examining physician's evaluation form, the superintendent's or chief medical officer's form approving or disapproving of the administration of the significant procedure, and the preprinted information regarding the risks and benefits of the proposed significant procedures. The patient or resident or his or her representative may also review the patient's or resident's chart and consult with the patient's or resident's treating physician or psychiatric nurse practitioner.

(d) The following procedures are not available in these contested case hearings: summary determination procedures as defined in OAR 137-003-580, pre-hearing motions as defined in 137-003-0630, and pre-determination review procedures in 137-003-0640.

(e) A final order must be issued by the administrative law judge within two days, excluding weekends and holidays, after the hearing, except when the administrative law judge determines that there is good cause to delay the final order. All final orders must be issued within 3 days of the close of the hearing or the record, whichever is later, excluding weekends and holidays. A final order is effective immediately upon being signed or as otherwise provided in the order.

(f) If after the hearing, the administrative law judge determines that there is an issue not raised by a party or the agency that impacts the outcome of the case, the administrative law judge must grant a continuance for good cause and inform the institution's representative and the patient or resident or his or her representative so that they may present additional arguments and evidence on that issue.

(g) The administrative law judge must determine whether to affirm or reverse the state institution's decision that it has good cause to involuntarily administer a significant procedure without informed consent from the patient or resident as defined by the factors in OAR 309-114-0020(1) with regards to the significant procedures listed on the treating physician's or psychiatric nurse practitioner's informed consent form.

(h) A final order affirming or reversing the institution's decision to involuntarily administer a significant procedure to the patient or resident without informed consent includes all significant procedures listed on the treating physician's or psychiatric nurse practitioner's informed consent form and all unlisted significant procedures of a similar class.

(i) A final order approving the involuntary administration of the significant procedure without informed consent shall be reexamined if the treating physician or psychiatric nurse practitioner determines that there is a substantial increase in the risk to the patient or resident in administering the significant procedure during the term of a person's commitment, but in no case longer than 180 days. Approval of the significant procedure may also be reexamined pursuant to OAR 309-114-0020(8) if the treating physician or psychiatric nurse practitioner determines that there is substantial improvement in the patient's or resident's capacity.

(j) A final order disapproving the involuntary administration of the significant procedure without informed consent lasts for no longer than 180 days. If a substantial change in the patient's or resident's condition occurs during this time, the institution may re-evaluate the patient or resident using the entire OAR 309-114-0020 process, and must additionally document and explain what substantial change in the person's capacity has occurred since the administrative law judge decision was issued.

(k) If the final order reverses the institution's decision to involuntarily administer a significant procedure and the patient or resident is already receiving the significant procedure, then the hospital may continue to administer the significant procedure to the extent it is necessary to develop and implement a titration plan to safely discontinue the significant procedure according to current clinical practice.

(l) If the patient or resident withdraws his initial request for hearing or refuses to attend the initial hearing without good cause, the administrative law judge will issue a dismissal order pursuant to OAR 137-003-0672(3). A dismissal order will allow the institution to immediately administer the significant procedure without informed consent as if the patient or resident had never requested a hearing. If a dismissal order is issued, the patient or resident may request a second hearing. If the patient or resident withdraws his second request for hearing or refuses to attend the second hearing without good cause, the hearing will occur as scheduled with the institution presenting a prima facie case pursuant to ORS 183.417(4) and the administrative law judge will issue a final order by default. The final order by default will be issued in a manner consistent with the time frames and process outlined in OAR 309-114-0025(2).

(m) Any administrative law judge who will preside over a hearing regarding involuntary administration of a significant procedure without informed consent must complete agency approved training unique to administration of psychiatric treatment without consent. This training shall be developed by the Division in consultation with Disability Rights Oregon.

(n) Subject to the approval of the Attorney General, an agency officer or employee is authorized to appear, but not make legal argument, on behalf of the agency in contested case hearings involving the involuntary administration of a significant procedure to a patient or resident.

(A) For purposes of this rule, the term "legal argument" is used as defined in ORS 183.452 and OAR 137-003-0545.

(B) When an agency officer or employee represents the agency, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 3-2009, f. & cert. ef. 6-26-09

# ADMINISTRATIVE RULES

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

**Rule Caption:** MMIS Emergent Alternative Communication Process and Procedures.

**Adm. Order No.:** DHSD 4-2009

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-10-09

**Notice Publication Date:** 6-1-2009

**Rules Adopted:** 407-120-0400

**Rules Repealed:** 407-120-0400(T)

**Subject:** The Department-wide provider rules (OAR 407-120-0300 to 407-120-0380) govern provider enrollment and claiming using the Medicaid Management Information System (MMIS). The Department is permanently adopt the temporary rule, OAR 407-120-0400, in concert with the permanent adoption of the Division of Medical Assistance Program's rule, OAR 410-120-0027, to continue to ensure that Oregon Health Plan clients will be able to receive consistent and uninterrupted service and that providers are assured their correct and appropriate reimbursement at times that necessitate exceptions to normal, on-going communications. The adoption of this rule will repeal the current temporary rule that expires July 10, 2009.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

### 407-120-0400

#### MMIS Replacement Communication Plan

(1) The purpose of this rule is to describe the Department's plan for communicating instructions and guidance related to the Department's implementation of the replacement MMIS that began on December 9, 2008. System issues are anticipated to be identified for a period of time during and after implementation. This rule is adopted to be effective retroactively to December 9, 2008 for the purpose of providing continuity of all MMIS communication efforts throughout the transition implementation process and regular operations following the transition. By adopting this communication plan in rule, the Department seeks to assure that eligible Department clients receive all necessary and appropriate services, and that Department providers and PHPs are correctly reimbursed for covered services provided to eligible clients.

(2) To the extent necessary to accomplish the purposes of this rule, the Department shall provide guidance and instructions related to MMIS for providers and PHPs using its web site and MMIS provider announcements.

(a) In cases of limitations or system errors in the replacement MMIS, the Department shall provide update information and important action required in concert with, or in place of, normal established procedures.

(b) In other cases, the Department shall provide instructions and guidance about the use of revised or improved functionality that is available through the replacement MMIS, such as the use of the web portal.

(3) Providers and PHPs must follow all applicable instructions given on the Department's web page and any provider announcements for the dates specifically noted in the communications, or if a date is not specified, until further instructions are provided. Department web site information and links to specific topics may be accessed at: [http://www.oregon.gov/DHS/healthplan/tools\\_prov/main.shtml](http://www.oregon.gov/DHS/healthplan/tools_prov/main.shtml).

(4) This rule does not amend existing rules or contracts that require providers or PHPs to confirm eligibility, respond to requests for prior authorization, submit claims or encounter data, or comply with any other rule or contract that imposes obligations on a provider or PHP as a condition of receiving reimbursement for services. This rule is intended to provide assurance to providers and PHPs that the MMIS-related processes for meeting those obligations are being addressed by the Department by providing guidance and instruction related to the provider's or PHP's interface with MMIS processes, and by identifying the resources providers and PHPs may use to obtain information during this time of transition to the replacement MMIS and during regular MMIS operations.

(5) The Department shall work with providers and PHPs by providing instructions and guidance to assure that service delivery and reimbursement disruptions related to transition to the replacement MMIS are minimized. Providers and PHPs must appropriately document all eligibility, services, authorization, claims, and payment information during the transition time, and their efforts to comply with instructions and guidance provided by the Department, so that reimbursement may be correctly provided.

(6) Providers and PHPs must immediately communicate to the Department any issues they encounter that are not addressed in the Department's instructions or guidance in seeking eligibility information or activities related to reimbursement for services through MMIS, errors dis-

covered in the correct amount of any reimbursement received for those services, or in applying the instruction or guidance to resolve an issue.

(7) After the transition period is complete, the Department shall continue to implement this communication plan as long as necessary during regular MMIS operations in order to assist providers and PHPs with technical and system requirements of the replacement MMIS.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DHSD 1-2009(Temp), f. & cert. ef. 1-12-09 thru 7-10-09; DHSD 4-2009, f. 7-1-09, cert. ef. 7-10-09

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**Rule Caption:** Amending Privacy Rules Governing the Collection, Use and Disclosure of Protected Information.

**Adm. Order No.:** DHSD 5-2009

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 6-1-2009

**Rules Ren. & Amend:** 410-014-0000 to 407-014-0000, 410-014-0010 to 407-014-0010, 410-014-0020 to 407-014-0020, 410-014-0030 to 407-014-0030, 410-014-0040 to 407-014-0040, 410-014-0050 to 407-014-0050, 410-014-0060 to 407-014-0060, 410-014-0070 to 407-014-0070

**Subject:** These rules were originally adopted in 2005 in compliance with federal HIPAA Privacy Rules, 45 CFR parts 160 and 164. The rules are being moved to the Department-wide rule chapter and amended to provide clarification and guidance for Department staff and contracted partners and to reduce redundancy. The amendments do not affect current privacy practices of the Department.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

### 407-014-0000

#### Definitions

The following definitions apply to OAR 407-014-0000 to 407-014-0070:

(1) "Administrative Hearing" means an oral proceeding before an administrative law judge in a contested case hearing.

(2) "Authorization" means permission from an individual or his or her personal representative giving the Department of Human Services (Department) authorization to obtain, release or use information about the individual from third parties for specified purposes or to disclose information to a third party specified by the individual.

(3) "Business Associate" means an individual or entity performing any function or activity on behalf of the Department involving the use or disclosure of protected health information (PHI) and is not a member of the Department's workforce.

(a) "Function or activity" includes but is not limited to program administration, claims processing or administration, data analysis, utilization review, quality assurance, billing, legal, actuarial, accounting, consulting, data processing, management, administrative, accreditation, financial services, and similar services for which the Department may contract, if access to PHI is involved.

(b) Business associates do not include licensees or providers unless the licensee or provider also performs some function or activity on behalf of the Department.

(4) "Client" means an individual who requests or receives services from the Department. This includes but is not limited to applicants for or recipients of public assistance, minors and adults receiving protective services, Oregon Health Plan members or enrollees, individuals who apply for or are admitted to a state training center or a state hospital or who are committed to the custody of the Department, children in the custody of the Department receiving services on a voluntary basis, and children committed to the custody of the Department.

(5) "Client Information" means personal information relating to a client that the Department may maintain in one or more locations and in various forms, reports, or documents, or stored or transmitted by electronic media.

(6) "Collect" or "Collection" means the assembling of personal information through interviews, forms, reports, or other information sources.

(7) "Contract" means a written agreement between the Department and a person or entity setting forth the rights and obligations of the parties including but not limited to contracts, licenses, agreements, interagency agreements, and intergovernmental agreements.

(8) "Correctional Institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by contract with the federal government, a state, or an Indian tribe for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons



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held in lawful custody. "Other persons held in lawful custody" include juvenile offenders, adjudicated delinquents, aliens detained awaiting deportation, witnesses, or others awaiting charges or trial.

(9) "Corrective Action" means an action that a Department business associate must take to remedy a breach or violation of the business associate's obligations under the business associate's contractual requirement, including but not limited to reasonable steps that must be taken to cure the breach or end the violation.

(10) "Covered Entity" means health plans, health care clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction that is subject to federal Health Insurance Portability and Accountability Act (HIPAA) requirements, as those terms are defined and used in the HIPAA regulations, 45 CFR parts 160 and 164.

(11) "De-identified Data" means client information from which the Department or other entity has deleted, redacted, or blocked identifiers so the remaining information cannot reasonably be used to identify an individual.

(12) "Department" means the Department of Human Services.

(13) "Department Workforce" means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for the Department, is under the direction and control of the Department, whether or not they are paid by the Department.

(14) "Disclose" means the release, transfer, relay, provision of access to, or conveying of client information to any individual or entity outside the Department.

(15) "Health Care" means care, services, or supplies related to the health of an individual. Health care includes but is not limited to preventive, diagnostic, therapeutic, rehabilitative, maintenance, palliative care, counseling services, assessment, or procedures with respect to the physical or mental condition, or functional status of an individual, or that affects the structure or function of the body and the sale or dispensing of a drug, device, equipment, or other prescribed item.

(16) "Health Care Operations" means any activities of the Department to the extent that the activities are related to health care, Medicaid, or any other health care related programs, services, or activities administered by the Department and includes:

(a) Conducting quality assessment and improvement activities, including income evaluation and development of clinical guidelines;

(b) Population-based activities related to improving health or reducing health care costs, protocol development, case management and care coordination, contacting health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(c) Reviewing the competence of qualifications of health care professionals, evaluating practitioner, provider, and health plan performance; and conducting training programs in which students and trainees in areas of health care learn under supervision to practice or improve their skills, accreditation, certification, licensing, or credentialing activities;

(d) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract for Medicaid or health care related services;

(e) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs, and disclosure to the Medicaid Fraud Unit pursuant to 43 CFR part 455.21;

(f) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the Department, including administration, development, or improvement of methods of payments or health care coverage; and

(g) Business management and general administrative activities of the Department, including but not limited to:

(A) Management activities relating to implementation of and compliance with the requirements of HIPAA;

(B) Customer service, including providing data analysis;

(C) Resolution of internal grievances, including administrative hearings and the resolution of disputes from patients or enrollees regarding the quality of care and eligibility for services; and

(D) Creating de-identified data or a limited data set.

(17) "Health Oversight Agency" means an agency or authority of the federal government, a state, territory, political subdivision of a state or territory, Indian tribe, or a person or entity acting under a grant of authority from or by contract with the public agency, including employees or agents of the public agency or its contractors or grantees that is authorized by law to oversee the health care system or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. When performing these functions, the Department acts as a health oversight agency for the purposes of these rules.

(18) "HIPAA" means the Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d et seq, and the federal regulations adopted to implement the Act.

(19) "Individual" means the person who is the subject of information collected, used, or disclosed by the Department.

(20) "Individually Identifying Information" means any single item or compilation of information or data that indicates or reveals the identity of an individual, either specifically (such as the individual's name or social security number), or from which the individual's identity can be reasonably ascertained.

(21) "Information" means personal information relating to an individual, a participant, or a Department client.

(22) "Inmate" means a person incarcerated in or otherwise confined in a correctional institution. An individual is no longer an inmate when released on parole, probation, supervised release, or is otherwise no longer in custody.

(23) "Institutional Review Board (IRB)" means a specially constituted review body established or designated by an entity in accordance with 45 CFR part 46 to protect the welfare of human subjects recruited to participate in biomedical or behavioral research. The IRB must be registered with the Office for Human Research Protection.

(24) "Law Enforcement Official" means an officer or employee of any agency or authority of the federal government, a state, territory, political subdivision of a state or territory, or Indian tribe who is empowered by law to:

(a) Investigate and conduct an official inquiry into a potential violation of law; or

(b) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

(25) "Licensee" means a person or entity that applies for or receives a license, certificate, registration, or similar authority from the Department to perform or conduct a service, activity, or function.

(26) "Minimum Necessary" means the least amount of information, when using or disclosing confidential client information, that is needed to accomplish the intended purpose of the use, disclosure, or request.

(27) "Participant" means individual's participating in Department population-based services, programs, and activities that serve the general population, but who do not receive program benefits or direct services received by a client. Examples of participants include but are not limited to an individual whose birth certificate is recorded with Department of Vital Statistics, the subjects of public health studies, immunization or cancer registries, newborn screening, and other public health services, and individuals who contact Department hotlines or the ombudsman for general public information services.

(28) "Payment" means any activities undertaken by the Department related to a client to whom health care is provided in order to:

(a) Obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the Medicaid program or other publicly funded health care services; and

(b) Obtain or provide reimbursement for the provision of health care.

(c) Payment activities include:

(A) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost sharing amounts, and adjudication of health benefit or health care claims;

(B) Risk adjusting amounts due which are based on enrollee health status and demographic characteristics;

(C) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, and related health care data processing;

(D) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(E) Utilization review activities, including pre-certification and pre-authorization of services, concurrent and retrospective review of services; and

(F) Disclosure to consumer reporting agencies relating to collection of premiums or reimbursement including name and address, date of birth, payment history, account number, and name and address of the health care provider or health plan.

(29) "Personal Representative" means a person who has authority to act on behalf of an individual in making decisions related to health care.

(30) "Protected Health Information (PHI)" means any individually identifiable health information, whether oral or recorded in any form or medium, that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual. Any data transmitted or maintained in any other form or medium by covered entities, including paper records, fax docu-

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ments, all oral communications, or any other form, such as screen prints of eligibility information, printed e-mails containing identified individual's health information, claim or billing information, or hard copy birth or death certificates. PHI does not include school records that are subject to the Family Educational Rights and Privacy Act and employment records held in the Department's role as an employer.

(31) "Protected Information" means any participant or client information that the Department may have in its records or files that must be safeguarded pursuant to Department policy. This includes but is not limited to individually identifying information.

(32) "Provider" means a person or entity that may seek reimbursement from the Department as a provider of services to Department clients pursuant to a contract. For purposes of these rules, reimbursement may be requested on the basis of claims or encounters or other means of requesting payment.

(33) "Psychotherapy Notes" mean notes recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversations during a private counseling session, or group, joint, or family counseling session, when the notes are separated from the rest of the individual's record. Psychotherapy notes do not include medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of diagnosis, functional status, treatment plan, symptoms, prognosis, or progress to date.

(34) "Public Health Agency" means a public agency, including the Department, or a person or entity acting under a grant of authority from or by contract with the Department or public agency that performs or conducts one or more of the following essential functions that characterize public health programs, services, or activities:

- (a) Monitor health status to identify community health problems;
- (b) Diagnose and investigate health problems and health hazards in the community;
- (A) Inform, educate, and empower people about health issues;
- (B) Mobilize community partnerships to identify and solve health problems;
- (C) Develop policies and plans that support individual and community health efforts;
- (D) Enforce laws and regulations that protect health and ensure safety;
- (E) Direct individuals to needed personal health services and assure the provision of health care when otherwise unavailable;
- (F) Ensure a competent public health and personal health care workforce;
- (G) Evaluate the effectiveness, accessibility, and quality of personal and population-based health services; and
- (H) Perform research for new insights and innovative solutions to health problems.

(35) "Public Health Authority" means an agency or authority of the federal government, a state, territory, political subdivision of a state or territory, Indian tribe, or a person or entity acting under a grant of authority from or by contract with the public agency, including the employees or agents of the public agency, or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate. When performing functions as a public health agency, the Department acts as a public health authority for purposes of these rules.

(36) "Re-disclosure" means the disclosure of information to a person, a Department program, a Department subcontracted entity, or other entity or person other than what was originally authorized.

(37) "Research" means systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalized knowledge.

(38) "Required by Law" means a duty or responsibility that federal or state law specifies that a person or entity must perform or exercise. Required by law includes but is not limited to court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or rules that require the production of information, including statutes or rules that require such information if payment is sought under a government program providing public benefits.

(39) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one health care provider to another.

(40) "Use" means the sharing of individual information within a Department program or the sharing of individual information between program staff and administrative staff that support or oversee the program.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0000 by DHS 5-2009, f. & cert. ef. 7-1-09

## 407-014-0010

### Purpose

(1) The purpose of these rules (OAR 407-014-000 to 407-014-0070) is to govern the collection, use, and disclosure of protected information by the Department about individuals and to explain the rights and specific actions that individuals may take or request to be taken regarding the uses and disclosures of their protected information. These rules also set forth Department requirements governing the use and disclosure of PHI for purposes of HIPAA, 42 USC 1320-d through 1320d-8, Pub L 104-191, sec. 262 and 264, and the implementing HIPAA privacy rules, 45 CFR parts 160 and 164.

(2) Except as provided in section (1) of this rule, state and federal statutes, rules, and policies that govern the administration of Department programs, services, and activities continue to govern the use and disclosure of protected information in those Department programs, services, and activities.

(3) In the event that it is not possible to comply with the requirements of both sections (1) and (2) of this rule, the Department shall act in accordance with whichever federal or state law imposes a stricter requirement regarding the privacy or safeguarding of information and which provides the greater protection or access to the individual who is the subject of the information, unless one of the following applies:

(a) Public health. Nothing in these rules shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, birth, or death; public health surveillance; or public health investigation or intervention.

(b) Child abuse. Nothing in these rules shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of child abuse.

(c) State regulatory reporting. Nothing in these rules shall be construed to limit the ability of the State of Oregon or the Department to require a health plan to report, or to provide access to information for management audits, financial audits, program monitoring, facility licensure or certification, or individual licensure or certification.

(4) The Department may collect, maintain, use, transmit, share, and disclose information about any individual to the extent authorized by law to administer Department programs, services, and activities.

(5) The Department may use and disclose information about licensees or providers consistent with federal and state laws and regulations. Information regarding the qualifications of licensees and providers are public records.

(a) When the Department obtains information about individuals that relates to determining payment responsibility when a provider submits a request for payment to the Department, the Department shall safeguard the information consistent with federal and state laws and regulations and Department policies.

(b) The Department may review the performance of licensees and providers in the conduct of their health oversight activities and shall safeguard information obtained about individuals obtained during those activities in accordance with federal and state laws and regulations and Department policies.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0010 by DHS 5-2009, f. & cert. ef. 7-1-09

## 407-014-0020

### Uses and Disclosures of Client or Participant Protected Information

(1) Uses and disclosures with individual authorization. The Department must obtain a completed and signed authorization for release of information from the individual, or the individual's personal representative, before obtaining or using protected information about an individual from a third party or disclosing protected information about the individual to a third party.

(a) Uses and disclosures must be consistent with what the individual has approved on the signed authorization form approved by the Department.

(b) An individual may revoke an authorization at any time. The revocation must be in writing and signed by the individual, except that substance abuse treatment patients may orally revoke an authorization to disclose information obtained from substance abuse treatment programs. No revocation shall apply to information already released while the authorization was valid and in effect.

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(2) Uses and disclosures without authorization. The Department may use and disclose information without written authorization in the following circumstances:

(a) The Department may disclose information to individuals who have requested disclosure to themselves of their information, if the individual has the right to access the information under OAR 407-014-0030(6).

(b) If the law requires or permits the disclosure, and the use and disclosure complies with, and is limited to, the relevant requirements of the relevant law.

(c) For treatment, payment, and health care operations the Department may disclose the following information:

(A) Activities involving the current treatment of an individual, for the Department or health care provider;

(B) Payment activities, for the Department, covered entity, or health care provider;

(C) Protected health information for the purpose of health care operations; and

(D) Substance abuse treatment information, if the recipient has a Qualified Service Organization Agreement with the Department.

(d) Psychotherapy notes. The Department may only use and disclose psychotherapy notes in the following circumstances:

(A) In the Department's supervised counseling training programs;

(B) In connection with oversight of the originator of the psychotherapy notes; or

(C) To defend the Department in a legal action or other proceeding brought by the individual.

(e) Public health activities.

(A) The Department may disclose an individual's protected information to appropriate entities or persons for governmental public health activities and for other purposes including but not limited to:

(i) A governmental public health authority that is authorized by law to collect or receive protected information for the purpose of preventing or controlling disease, injury, or disability. This includes but is not limited to reporting disease, injury, and vital events such as birth or death; and the conducting of public health surveillance, investigations, and interventions;

(ii) An official of a foreign government agency that is acting in collaboration with a governmental public health authority;

(iii) A governmental public health authority, or other government authority that is authorized by law to receive reports of child abuse or neglect;

(iv) A person subject to the jurisdiction of the federal Food and Drug Administration (FDA), regarding an FDA-regulated product or activity for which that person is responsible for activities related to the quality, safety, or effectiveness of an FDA-regulated product or activity; or

(v) A person who may have been exposed to a communicable disease, or may be at risk of contracting or spreading a disease or condition, if the Department or other public health authority is authorized to notify the person as necessary in conducting a public health intervention or investigation.

(B) Where state or federal law prohibits or restricts use and disclosure of information obtained or maintained for public health purposes, the Department shall deny the use and disclosure.

(f) Child abuse reporting and investigation. If the Department has reasonable cause to believe that a child is a victim of abuse or neglect, the Department may disclose protected information to appropriate governmental authorities authorized by law to receive reports of child abuse or neglect (including reporting to the Department protective services staff if appropriate). If the Department receives information as the child protective services agency, the Department may use and disclose the information consistent with its legal authority and in compliance with any applicable state and federal regulations.

(g) Adult abuse reporting and investigation. If the Department has reasonable cause to believe that a vulnerable adult is a victim of abuse or neglect, the Department may disclose information, as required by law, to a government authority or regulatory agency authorized by law to receive reports of abuse or neglect including but not limited to a social service or protective services agency (which may include the Department) authorized by law to receive such reports. Vulnerable adults are adults age 65 or older and persons with disabilities. If the Department receives information as the social services or protective services agency, the Department may use and disclose the information.

(h) Health oversight activities. The Department may disclose information without authorization for health oversight activities, including audits; civil, criminal, or administrative investigations, prosecutions, licensing or disciplinary actions; Medicaid fraud; or other necessary oversight activities.

(i) Administrative and court hearings, grievances, investigations, and appeals.

(A) The Department may use or disclose information for an investigation, administrative or court hearing, grievance, or appeal about an individual's eligibility or right to receive Department benefits or services.

(B) If the Department has obtained information in performing its duties as a health oversight agency, public health authority, protective service entity, or public benefit program, the Department may use or disclose that information in an administrative or court hearing consistent with the other privacy requirements applicable to that program, service, or activity.

(j) Court orders. The Department may disclose information for judicial or administrative proceedings in response to a court order, subpoena, discovery request, or other legal process. If a court orders the Department to conduct a mental examination pursuant to ORS 161.315, 161.365, 161.370, or 419B.352, or orders the Department to provide any other report or evaluation to the court, the examination, report, or evaluation shall be deemed to be required by law for purposes of HIPAA.

(k) Law enforcement purposes. For limited law enforcement purposes, the Department may report certain injuries or wounds; provide information to identify or locate a suspect, victim, or witness; alert law enforcement of a death as a result of criminal conduct; and provide information which constitutes evidence of criminal conduct on Department premises.

(A) The Department may provide client information to a law enforcement officer in any of the following situations:

(i) The law enforcement officer is involved in carrying out any investigation, criminal, or civil proceedings connected with administering the program from which the information is sought;

(ii) A Department employee may disclose information from personal knowledge that does not come from the client's interaction with the Department;

(iii) The disclosure is authorized by statute or administrative rule;

(iv) The information informs law enforcement of a death as a result of criminal conduct;

(v) The information constitutes evidence of criminal conduct on Department premises; or

(vi) The disclosure is necessary to protect the client or others, and the client poses a threat to his or her safety or to the safety of others.

(B) Except as provided in section (2)(k)(C) of this rule, the Department may give a client's current address, Social Security number, and photo to a law enforcement officer if the law enforcement officer makes the request in the course of official duty, supplies the client's name, and states that the client:

(i) Is a fugitive felon or is violating parole, probation, or post-prison supervision;

(ii) For all public assistance programs, has information that is necessary for the officer to conduct official duties, and the location or apprehension of the client is within the officer's official duties; or

(iii) For clients only in the Food Stamp program, has information that is necessary to conduct an official investigation of a fugitive felon or person violating parole, probation, or post-prison supervision.

(C) If domestic violence has been identified in the household, the Department may not release information about a victim of domestic violence unless a member of the household is either wanted as a fugitive felon or is violating parole, probation, or post-prison supervision.

(D) For purposes of this subsection, a fugitive felon is a person fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony.

(E) For purposes of this section, a law enforcement officer is an employee of the Oregon State Police, a county sheriff's department, or a municipal police department, whose official duties include arrest authority.

(I) Use and disclosure of information about deceased individuals.

(A) The Department may disclose individual information to a coroner or medical examiner for the purpose of identifying a deceased individual, determining cause of death, or other duties authorized by law.

(B) The Department may disclose individual information to funeral directors as needed to carry out their duties regarding the decedent. The Department may also disclose individual information prior to, and in anticipation of, the death.

(m) Organ or tissue donation. The Department may disclose individual information to organ procurement organizations or other entities engaged in procuring, banking, or transplanting cadaver organs, eyes, or tissue for the purpose of facilitating transplantation.

(n) Research. The Department may disclose individual information without authorization for research purposes, as specified in OAR 407-014-0060.

(o) Threat to health or safety. To avert a serious threat to health or safety the Department may disclose individual information if:

(A) The Department believes in good faith that the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) The report is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(p) National security and intelligence. The Department may disclose information to authorized federal officials for lawful intelligence, counter-intelligence, and other national security activities.



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(q) Correctional institutions and law enforcement custody situations. The Department may disclose information to a correctional institution or a law enforcement official having lawful custody of an inmate or other person, for the limited purpose of providing health care or ensuring the health or safety of the person or other inmates.

(r) Emergency treatment. In case of an emergency, the Department may disclose individual information to the extent needed to provide emergency treatment.

(s) Government entities providing public benefits. The Department may disclose eligibility and other information to governmental entities administering a government program providing public benefits.

(3) Authorization not required if opportunity to object given. The Department may use and disclose an individual's information without authorization if the Department informs the individual in advance and gives the individual an opportunity to either agree or refuse or restrict the use and disclosure.

(a) These disclosures are limited to disclosure of information to a family member, other relative, close personal friend of the individual, or any other person named by the individual, subject to the following limitations:

(A) The Department may disclose only the protected information that directly relates to the person's involvement with the individual's care or payment for care.

(B) The Department may use and disclose protected information for notifying, identifying, or locating a family member, personal representative, or other person responsible for care of the individual, regarding the individual's location, general condition, or death. For individuals who had resided at one time at the state training center, OAR 411-320-0090(6) addresses family reconnection.

(C) If the individual is present for, or available prior to, a use and disclosure, the Department may disclose the protected information if the Department:

(i) Obtains the individual's agreement;

(ii) Provides the individual an opportunity to object to the disclosure, and the individual does not object; or

(iii) Reasonably infers from the circumstances that the individual does not object to the disclosure.

(D) If the individual is not present, or the opportunity to object to the use and disclosure cannot practicably be provided due to the individual's incapacity or an emergency situation, the Department may disclose the information if, using professional judgment, the Department determines that the use and disclosure is in the individual's best interests.

(b) Exception. For individuals referred to or receiving substance abuse treatment, mental health, or vocational rehabilitation services, the Department shall not use or disclose information without written authorization, unless disclosure is otherwise permitted under 42 CFR part 2 or ORS 179.505.

(c) Personal representative. The Department must treat a personal representative as the individual for purposes of these rules, except that:

(A) A personal representative must be authorized under state law to act on behalf of the individual with respect to use and disclosure of information. The Department may require a personal representative to provide a copy of the documentation authorizing the person to act on behalf of the individual.

(B) The Department may elect not to treat a person as a personal representative of an individual if:

(i) The Department has a reasonable belief that the individual has been or may be subjected to domestic violence, abuse, or neglect by the person;

(ii) The Department, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

(4) Redisclosure. The Department must inform the individual that information held by the Department and authorized by the individual for disclosure may be subject to redisclosure and no longer protected by these rules.

(5) Specific written authorization. If the use or disclosure of information requires an authorization, the authorization must specify that the Department may use or disclose vocational rehabilitation records, alcohol and drug records, HIV/AIDS records, genetics information, and mental health or developmental disability records held by publicly funded providers.

(a) Pursuant to federal regulations at 42 CFR part 2 and 34 CFR 361.38, the Department may not make further disclosure of vocational rehabilitation and alcohol and drug rehabilitation information without the specific written authorization of the individual to whom it pertains.

(b) Pursuant to ORS 433.045 and OAR 333-012-0270, the Department may not make further disclosure of individual information pertaining to HIV/AIDS.

(c) Pursuant to ORS 192.531 to 192.549, the Department may not make further disclosure pertaining to genetic information.

(6) Verification of person or entity requesting information. The Department may not disclose information about an individual without first verifying the identity of the person or entity requesting the information, unless the Department workforce member fulfilling the request already knows the person or has already verified identity.

(7) Whistleblowers. The Department may disclose an individual's protected health information under the HIPAA privacy rules under the following circumstances:

(a) The Department workforce member or business associate believes in good faith that the Department has engaged in conduct that is unlawful or that otherwise violates professional standards or Department policy, or that the care, services, or conditions provided by the Department could endanger Department staff, individuals in Department care, or the public; and

(b) The disclosure is to a government oversight agency or public health authority, or an attorney of a Department workforce member or business associate retained for the purpose of determining the legal options of the workforce member or business associate with regard to the conduct alleged under section (7)(a) above; and

(c) Nothing in this rule is intended to interfere with ORS 659A.200 to 659A.224 describing the circumstances applicable to disclosures by Department workforce or business associates.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010, 433.045

Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0020 by DHS 5-2009, f. & cert. ef. 7-1-09

### 407-014-0030

#### Client Privacy Rights

(1) Rights of clients to access their information. Clients may access, inspect, and obtain a copy of information on their own cases in Department files or records, consistent with federal and state law.

(a) A client may request access by completing the Access to Records Request form.

(b) Clients may request access to their own information that is kept by the Department by using a personal identifier such as the client's name or Department case number.

(c) If the Department maintains information in a record that includes information about other people, the client may see information only about himself or herself.

(d) If a person identified in the file is a minor child of the client, and the client is authorized under Oregon law to have access to the minor's information or to act on behalf of the minor for making decisions about the minor's care, the client may obtain information about the minor.

(e) If the requestor of information is recognized under Oregon law as a the client's guardian or custodian and is authorized under Oregon law to have access to the client's information or to act on behalf of the client for making decisions about the client's services or care, the Department shall release information to the requestor.

(f) For individuals with disabilities or mental illnesses, the named system in ORS 192.517, to protect and advocate the rights of individuals with developmental disabilities under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6041 et seq.) and the rights of individuals with mental illness under the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.), shall have access to all records defined in ORS 192.515.

(g) The Department may deny a client's access to their own PHI if federal law prohibits the disclosure. Clients may access, inspect, and obtain a copy of health information on their own case in Department files or records except for the following:

(A) Psychotherapy notes;

(B) Information compiled in reasonable anticipation of, or for use in civil, criminal, or administrative proceedings;

(C) Information that is subject to the federal Clinical Labs Improvement Amendments of 1988, or exempt pursuant to 42 CFR 493.3(a)(2);

(D) Information that the Department believes, in good faith, can cause harm to the client, participant, or to any other person; and

(E) Documents protected by attorney work-product privilege.

(h) The Department may deny a client access to information that was obtained under a promise of confidentiality from a person other than a health care provider to the extent that access would reveal the source of the information.

(i) The Department may deny a client access to information, if the Department gives the client a right to have the denial reviewed when:

(A) A licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that the information requested may endanger the life or physical safety of the client or another person;

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(B) The information makes reference to another person, and a licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that the information requested may cause substantial harm to the client or to another person; or

(C) The request for access is made by the client's personal representative, and a licensed health care professional (for health information) or other designated staff (for other information) has determined, in the exercise of professional judgment, that allowing the personal representative access to the information may cause substantial harm to the client or to another person.

(j) If the Department denies access under section (1)(i) of this rule, the client may have the decision reviewed by a licensed health care professional (for health information) or other designated staff (for other information) not directly involved in making the original denial decision.

(A) The Department must promptly refer a client's request for review to the designated reviewer.

(B) The reviewer must determine, within the 30 or 60-day time limits stated in section (1)(k)(A) and (B) of this rule, whether to approve or deny the client's request for access.

(C) Based on the reviewer's decision, the Department shall:

(i) Promptly notify the client in writing of the reviewer's determination; and

(ii) If approved, take action to carry out the reviewer's determination.

(k) The Department must act on a client's request for access no later than 30 days after receiving the request, except as provided in this section and in the case of written accounts under ORS 179.505, which must be disclosed within five days.

(A) In cases where the information is not maintained or accessible to the Department on-site, and does not fall under ORS 179.505, the Department must act on the client's request no later than 60 days after receiving the request.

(B) If the Department is unable to act within the 30 or 60-day limits, the Department may extend this time period a maximum of 30 additional days, subject to the following:

(i) The Department must notify the client in writing of the reasons for the delay and the date by which the Department shall act on the request.

(ii) The Department shall use only one 30-day extension.

(l) If the Department grants the client's request, in whole or in part, the Department must inform the client of the access decision and provide the requested access.

(A) If the Department maintains the same information in more than one format or at more than one location, the Department may provide the requested information once.

(B) The Department must provide the requested information in a form or format requested by the client, if readily producible in that form or format. If not readily producible, the Department shall provide the information in a readable hard-copy format or other format as agreed to by the Department and the client.

(C) The Department may provide the client with a summary of the requested information, in lieu of providing access, or may provide an explanation of the information if access has been provided, if:

(i) The client agrees in advance; and

(ii) The client agrees in advance to pay any fees the Department may impose, under section (1)(L)(E) of this rule.

(D) The Department shall arrange with the client for providing the requested access in a time, place, and manner convenient for the client and the Department.

(E) If a client, or legal guardian or custodian, requests a copy, written summary, or explanation of the requested information, the Department may impose a reasonable cost-based fee, limited to the following:

(i) Copying the requested information, including the costs of supplies and the labor of copying;

(ii) Postage; and

(iii) Staff time for preparing an explanation or summary of the requested information.

(m) If the Department denies access, in whole or in part, to the requested information, the Department must:

(A) Give the client access to any other requested client information, after excluding the information to which access is denied; and

(B) Provide the client with a timely written denial. The denial must:

(i) Be provided within the time limits specified in section (1)(k)(A) and (B) of this rule;

(ii) State the basis of the denial in plain language;

(iii) If the Department denies access under section (1)(i) of this rule, explain the client's review rights as specified in section (1)(j) of this rule, including an explanation of how the client may exercise these rights; and

(iv) Provide a description of how the client may file a complaint with the Department, and if the information is PHI, with the United States

Department of Health and Human Services (DHHS), Office for Civil Rights, pursuant to section (7) of this rule.

(n) If the Department does not maintain the requested information, in whole or in part, and knows where the information is maintained (such as by a medical provider, insurer, other public agency, private business, or other non-Department entity), the Department must inform the client where to direct the request for access.

(2) Department Notice of Privacy Practices. The Department shall send clients notice about the Department's privacy practices as follows:

(a) The Department shall make available to each client a notice of Department privacy practices that describes the duty of the Department to maintain the privacy of PHI and include a description that clearly informs the client of the types of uses and disclosures the Department is permitted or required to make;

(b) The Department shall provide all clients in direct care settings a notice of Department privacy practices and shall request the client's signature on an acknowledgement of receipt form;

(c) If the Department revises its privacy practices, the Department shall make the revised notice available to all clients;

(d) The Department shall post a copy of the Department's Notice of Privacy Practices for public viewing at each Department worksite and on the Department website; and

(e) The Department shall give a paper copy of the Department's Notice of Privacy Practices to any individual upon request.

(3) Right to request restrictions on uses or disclosures. Clients may request restrictions on the use or disclosure of their information.

(a) The Department may deny the client's request or limit its agreement to a request.

(A) The Department may not agree to restrict uses or disclosures of information if the restriction would adversely affect the quality of the client's care or services.

(B) The Department shall not agree to restrict uses or disclosures of information that would limit or prevent the Department from making or obtaining payment for services.

(b) The Department may not deny a client's request to restrict the sharing of records of alcohol and drug treatment or records relating to vocational rehabilitation services with another Department program.

(c) The Department shall document the client's request, and the reasons for granting or denying the request, in the client's Department case file.

(d) If the client needs emergency treatment and the restricted protected information is needed to provide the treatment, the Department may use or disclose the restricted protected information to a provider, for the limited purpose of providing treatment. However, once the emergency situation subsides the Department shall ask the provider not to redisclose the information.

(e) The Department may terminate its agreement to a restriction if:

(A) The client agrees to or requests the termination in writing;

(B) The client orally requests or agrees to the termination, and the Department documents the oral request or agreement in the client's Department case file; or

(C) With or without the client's agreement, the Department informs the client that the Department is terminating its agreement to the restriction. Information created or received while the restriction was in place shall remain subject to the restriction.

(4) Rights of clients to request to receive information from the Department by alternative means or at alternative locations. The Department must accommodate reasonable requests by clients to receive communications from the Department by alternative means, such as by mail, e-mail, fax, or telephone, and at an alternative location.

(a) The client must specify the preferred alternative means or location.

(b) The client may submit the request for alternative means or locations either orally or in writing.

(A) If the client makes a request in-person, the Department shall document the request and ask for the client's signature.

(B) If the client makes a request by telephone or electronically, the Department shall document the request and verify the identity of the client.

(c) The Department may terminate its agreement to an alternative location or method of communication if:

(A) The client agrees to or requests termination of the alternative location or method of communication in writing or orally. The Department shall document the oral agreement or request in the client's Department case file; or

(B) The Department informs the client that the Department is terminating its agreement to the alternative location or method of communication because the alternative location or method of communication is not effective. The Department may terminate its agreement to communicate at the alternative location or by the alternate method if:

(i) The Department is unable to contact the client at the location or by the method requested; or

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- (ii) The client fails to respond to payment requests, if applicable.
- (5) Right of clients to request amendment of their information. Clients may request that the Department amend information about themselves in Department files.
- (a) For all amendment requests, the Department shall have the client complete the approved Department form.
- (b) The Department may deny the request or limit its agreement to amend.
- (c) The Department must act on the client's request no later than 60 days after receiving the request. If the Department is unable to act within 60 days, the Department may extend this time limit by a maximum of 30 additional days, subject to the following:
- (A) The Department must notify the client in writing, within 60 days of receiving the request, of the reasons for the delay and the date by which the Department shall act on the request; and
- (B) The Department shall use only one 30-day extension.
- (d) The program's medical director, a licensed health care professional designated by the program administrator, or a Department staff person involved in the client's case must review the request and any related documentation prior to making a decision to amend a health or medical record.
- (e) A staff person designated by the Department shall review the request and any related documentation prior to making a decision to amend any information that is not a health or medical record.
- (f) If the Department grants the request, in whole or in part, the Department shall:
- (A) Make the appropriate amendment to the information or records, and document the amendment in the client's Department file or record;
- (B) Provide notice to the client that the amendment has been granted, pursuant to the time limits under section (5)(c) of this rule;
- (C) Obtain the client's agreement to notify other relevant persons or entities with whom the Department has shared or needs to share the amended information; and
- (D) Inform and provide the amendment within a reasonable time to:
- (i) Persons named by the client who have received the information and who need the amendment; and
- (ii) Persons, including business associates of the Department, that the Department knows have the information that are the subject of the amendment and who may have relied, or could foreseeably rely, on the information to the client's detriment.
- (g) The Department may deny the client's request for amendment if:
- (A) The Department finds the information to be accurate and complete;
- (B) The information was not created by the Department;
- (C) The information is not part of Department records; or
- (D) The information would not be available for inspection or access by the client, pursuant to section (1)(g) and (h) of this rule.
- (h) If the Department denies the amendment request, in whole or in part, the Department must provide the client with a written denial. The denial must:
- (A) Be sent within the time limits specified in section (5)(c) of this rule;
- (B) State the basis for the denial, in plain language; and
- (C) Explain the client's right to submit a written statement disagreeing with the denial and how to file the statement. If the client files a statement:
- (i) The Department shall enter the written statement into the client's Department case file;
- (ii) The Department may also enter a Department written rebuttal of the client's written statement into the client's Department case file. The Department shall send a copy of any written rebuttal to the client;
- (iii) The Department shall include a copy of the statement and any Department written rebuttal with any future disclosures of the relevant information;
- (iv) If a client does not submit a written statement of disagreement, the client may ask that if the Department makes any further disclosures of the relevant information that the Department shall also include a copy of the client's original request for amendment and a copy of the Department written denial; and
- (v) The Department shall provide information on how the client may file a complaint with the Department and, if the information is PHI, with DHHS, Office for Civil Rights.
- (6) Rights of clients to request an accounting of disclosures of PHI. Clients may receive an accounting of disclosures of PHI that the Department has made for any period of time, not to exceed six years, preceding the request date for the accounting.
- (a) For all requests for an accounting of disclosures, the client shall complete the authorized Department form (DHS 2096, "Request for Accounting of Disclosures of Health Records").
- (b) The right to an accounting of disclosures does not apply when the request is:
- (A) Authorized by the client;
- (B) Made prior to April 14, 2003;
- (C) Made to carry out treatment, payment, or health care operations;
- (D) Made to the client;
- (E) Made to persons involved in the client's care;
- (F) Made as part of a limited data set in accordance with OAR 407-014-0070;
- (G) Made for national security or intelligence purposes; or
- (H) Made to correctional institutions or law enforcement officials having lawful custody of an inmate.
- (c) For each disclosure, the accounting must include:
- (A) The date of the disclosure;
- (B) The name and address, if known, of the person or entity who received the disclosed information;
- (C) A brief description of the information disclosed; and
- (D) A brief statement of the purpose of the disclosure that reasonably informs the client of the basis for the disclosure, or, in lieu of a statement, a copy of the client's written request for a disclosure, if any.
- (d) If, during the time period covered by the accounting, the Department has made multiple disclosures to the same person or entity for the same purpose, the Department may provide the required information for only the first disclosure. The Department need not list the same identical information for each subsequent disclosure to the same person or entity if the Department adds the following information:
- (A) The frequency or number of disclosures made to the same person or entity; and
- (B) The date of the most recent disclosure during the time period for which the accounting is requested.
- (e) The Department must act on the client's request for an accounting no later than 60 days after receiving the request. If the Department is unable to act within 60 days, the Department may extend this time limit by a maximum of 30 additional days, subject to the following:
- (A) The Department must notify the client in writing, within 60 days of receiving the request, of the reasons for the delay and the date by which the Department shall act on the request; and
- (B) The Department shall use only one 30-day extension.
- (f) The Department shall provide the first requested accounting in any 12-month period without charge. The Department may charge the client a reasonable cost-based fee for each additional accounting requested by the client within the 12-month period following the first request, if the Department:
- (A) Informs the client of the fee before proceeding with any additional request; and
- (B) Allows the client an opportunity to withdraw or modify the request in order to avoid or reduce the fee.
- (g) The Department shall document the information required to be included in an accounting of disclosures, as specified in section (6)(c) of this rule, and retain a copy of the written accounting provided to the client.
- (h) The Department shall temporarily suspend a client's right to receive an accounting of disclosures that the Department has made to a health oversight agency or to a law enforcement official, for a length of time specified by the agency or official, if the agency or official provides a written or oral statement to the Department that the accounting would be reasonably likely to impede their activities. If the agency or official makes an oral request, the Department shall:
- (A) Document the oral request, including the identity of the agency or official making the request.
- (B) Temporarily suspend the client's request to an accounting of disclosures; and
- (C) Limit the temporary suspension to no longer than 30 days from the date of the oral request, unless the agency or official submits a written request specifying a longer time period.
- (7) Filing a complaint. Clients may file a complaint with the Department or, if the information is PHI, with DHHS, Office for Civil Rights.
- (a) Upon request, the Department shall give clients the name and address of the specific person or office of where to submit complaints to DHHS.
- (b) The Department shall not intimidate, threaten, coerce, discriminate against, or take any other form of retaliatory action against any individual filing a complaint or inquiring about how to file a complaint.
- (c) The Department may not require clients to waive their rights to file a complaint as a condition of providing treatment, payment, enrollment in a health plan, or eligibility for benefits.
- (d) The Department shall designate staff to review and determine action on complaints filed with the Department.
- (e) The Department shall document, in the client's Department case file all complaints, the findings from reviewing each complaint, and the Department's actions resulting from the complaint. For each complaint the documentation shall include a description of corrective action that the



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Department has taken, if any are necessary, or why corrective action is not needed.

Stat. Auth.: ORS 409.050  
Stats. Implemented: ORS 409.010  
Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0030 by DHSD 5-2009, f. & cert. ef. 7-1-09

## 407-014-0040

### Minimum Necessary Standards

(1) The Department shall limit the use and disclosure of protected information to that which is reasonably necessary to accomplish the intended purpose of the use or disclosure which is referred to in these rules as the minimum necessary standard.

(2) This minimum necessary standard is not intended to impede the essential Department activities of treatment, payment, health care operations, or service delivery.

(3) The minimum necessary standard applies:

(a) When using protected information within the Department;

(b) When disclosing protected information to a third party in response to a request; or

(c) When requesting protected information from another covered entity.

(4) The minimum necessary standard does not apply to:

(a) Disclosures to or requests by a health care provider for treatment;

(b) Disclosures made to the individual, including disclosures made in response to a request for access or an accounting;

(c) Disclosures made with a valid authorization;

(d) Disclosures made to DHHS for the purposes of compliance and enforcement of federal regulations under 45 CFR part 160 and required for compliance with 45 CFR part 164.; or

(e) Uses and disclosures required by law;

(5) When requesting protected information about an individual from another entity, the Department shall limit requests to those that are reasonably necessary to accomplish the purposes for which the request is made. The Department shall not request a person's entire medical record unless the Department can specifically justify the need for the entire medical record.

Stat. Auth.: ORS 409.050  
Stats. Implemented: 409.010  
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## 407-014-0050

### Business Associate

(1) The Department may disclose an individual's PHI to a business associate, and may allow a business associate to create or receive an individual's PHI on behalf of the Department if the Department and the business associate first enter into a contract that complies with applicable federal and state law. In some limited circumstances, the Department may determine that the Department is a business associate of a covered entity. A business associate relationship with the Department requires additional contractual disclosure and privacy provisions that must be incorporated into the contract pursuant to 45 CFR part 164.504 (e)(1)

(2) A contract with a business associate must comply with OAR 125-055-0100 to 125-055-0130 and the qualified service organization requirements in 42 CFR part 2.11.

Stat. Auth.: ORS 409.050  
Stats. Implemented: 409.010  
Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0050 by DHSD 5-2009, f. & cert. ef. 7-1-09

## 407-014-0060

### Uses and Disclosures of Protected Information for Research Purposes

The Department may use and disclose an individual's information for research purposes as specified in this rule.

(1) All research disclosures are subject to applicable requirements of federal and state laws and rules including but not limited to 45 CFR part 46 and 21 CFR part 50.0 to 50.56, relating to the protection of human research subjects.

(2) The Department may use and disclose de-identified information or a limited data set for research purposes, pursuant to OAR 407-014-0070.

(3) The Department may use and disclose information regarding an individual for research purposes with the specific written authorization of the individual. The authorization must meet all requirements in OAR 407-014-0030, and may indicate an expiration date with terms such as "end of research study" or similar language. An authorization for use and disclosure for a research study may be combined with other types of written authorization for the same research study. If research includes treatment, the researcher may require an authorization for use and disclosure for the research as a provision of providing research related treatment.

(4) Notwithstanding section (3) of this rule, the Department may use and disclose an individual's information for research purposes without the

individual's written authorization, regardless of the source of funding for the research, provided that:

(a) The Department obtains documentation that a waiver of an individual's authorization for release of information requirements has been approved by an IRB registered with the Office for Human Research Protection. Documentation required of an IRB when granting approval of a waiver of an individual's authorization for release of information must include all criteria specified in 45 CFR part 164.512(i)(2).

(b) A researcher may request access to individual information maintained by the Department in preparation for research or to facilitate the development of a research protocol in anticipation of research. The Department may determine whether to permit such use or disclosure, without individual authorization or use of an IRB, pursuant to 45 CFR part 164.512(i)(1)(ii).

(c) A researcher may request access to individual information maintained by the Department about deceased individuals. The Department may determine whether to permit such use or disclosure of information about decedents, without individual authorization or use of an IRB, pursuant to 45 CFR part 164.512(i)(1)(iii).

(5) The Department, as a public health authority, may obtain and use individual information without authorization for the purpose of preventing injury or controlling disease and for the conduct of public health surveillance, investigations, and interventions. The Department may also collect, use, or disclose information, without individual authorization, to the extent that the collection, use, or disclosure is required by law. When the Department uses information to conduct studies as a public health authority, no additional individual authorization is required nor does this rule require an IRB or privacy board waiver of authorization based on the HIPAA privacy rules.

(6) The Department may use and disclose information without individual authorization for studies and data analysis conducted for the Department's own quality assurance purposes or to comply with reporting requirements applicable to federal or state funding requirements in accordance with the definition of "Health Care Operations" in 45 CFR part 164.501.

Stat. Auth.: ORS 409.050  
Stats. Implemented: ORS 409.010  
Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0060 by DHSD 5-2009, f. & cert. ef. 7-1-09

## 407-014-0070

### De-identification of Client Information and Use of Limited Data Sets under Data Use Agreements

(1) The Department may use and disclose information as appropriate for the work of the Department, without further restriction, if the Department or another entity has taken steps to de-identify the information pursuant to 45 CFR part 164.514(a) and (b).

(2) The Department may assign a code or other means of record identification to allow the Department to re-identify the de-identified information provided that:

(a) The code or other means of record identification is not derived from or related to information about the individual and cannot otherwise be translated to identify the individual; and,

(b) The Department does not use or disclose the code or other means of record identification for any other purpose, and does not disclose the mechanism for re-identification.

(3) The Department may use and disclose a limited data set if the Department enters into a data use agreement with an entity requesting or providing the Department with a limited data set subject to the requirements of 45 CFR part 164.514(e).

(a) The Department may use and disclose a limited data set only for the purposes of research, public health, or health care operations. The Department may use limited data set for its own activities or operations if the Department has obtained a limited data set that is subject to a data use agreement.

(b) If the Department knows of a pattern of activity or practice of a limited data set recipient that constitutes a material breach or violation of a data use agreement, the Department shall take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful, the Department shall discontinue disclosure of information to the recipient and report the problem to the Secretary of DHHS.

Stat. Auth.: ORS 409.050  
Stats. Implemented: ORS 409.010  
Hist.: OMAP 26-2003, f. 3-31-03 cert. ef. 4-1-03; Renumbered from 410-014-0070 by DHSD 5-2009, f. & cert. ef. 7-1-09

# ADMINISTRATIVE RULES

**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 6-2009(Temp)

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09 thru 12-28-09

**Notice Publication Date:**

**Rules Adopted:** 413-010-0505, 413-010-0510, 413-010-0515, 413-010-0520, 413-010-0525, 413-010-0530, 413-010-0535, 413-090-0021, 413-090-0135, 413-130-0045

**Rules Amended:** 413-010-0500, 413-020-0200, 413-020-0210, 413-020-0230, 413-020-0233, 413-020-0236, 413-020-0240, 413-020-0245, 413-020-0255, 413-040-0005, 413-040-0006, 413-040-0010, 413-040-0011, 413-040-0013, 413-040-0016, 413-040-0024, 413-070-0620, 413-070-0625, 413-070-0630, 413-070-0640, 413-080-0000, 413-080-0010, 413-080-0020, 413-080-0030, 413-080-0040, 413-080-0050, 413-080-0055, 413-080-0059, 413-080-0063, 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, 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, 413-130-0120, 413-130-0125, 413-130-0130

**Rules Suspended:** 413-090-0160, 413-090-0170, 413-090-0180, 413-090-0190, 413-090-0200, 413-130-0127

**Subject:** These rules about payments to foster parents, relative caregivers, and guardians eligible to receive assistance, and 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 set the requirements and responsibilities for the Department and foster parents, relative caregivers, guardians, and adoptive parents of an eligible child around assistance payments, payment structure, eligibility requirements for enhanced supervision and personal care services payments, guardianship and adoption assistance payments, and the availability of a contested case hearings process for the client initiated review of a denial, reduction, or termination of these payments on behalf of an eligible child. 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 a federal audit, to clarify the use of Title XIX personal care services payments, to comply with federal changes in guardianship assistance payments, to comply with federal requirements addressing limitations for reducing adoption assistance 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 413-010-0500 about contested case hearings in programs administered under Chapter 413 of the Oregon Administrative Rules is being amended and OAR 413-010-0505 about contested case hearing requests by clients, OAR 413-010-0510 about the notice provided to clients when benefits are denied, reduced, or terminated, OAR 413-010-0515 about the continuation of benefits, OAR 413-010-0520 about pre-hearing informal conferences, OAR 413-010-0525 about the burden of proof in contested case hearings, OAR 413-010-0530 about withdrawals and dismissals of hearing requests, and OAR 413-010-0535 about proposed and final orders for contested case hearings in programs administered under Chapter 413 of the Oregon Administrative Rules are being adopted to explain the contested case hearings process for the client initiated review of a denial, reduction, or termination of a payment on behalf of an eligible child.

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 413-020-0233 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 413-020-0245 about also is being amended to explain the Department's responsibilities when monitoring a child or young adult's enhanced supervision needs.

OAR 413-040-0005, 413-040-0006, 413-040-0010, 413-040-0011, 413-040-0013, 413-040-0016, and 413-040-0024 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 a definition of term CANS (Child and Adolescent Strength and Needs) screening. 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 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 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.

OAR 413-070-0620, 413-070-0625, 413-070-0630, and 413-070-0640 about the Department's rules for assessing a child or young adult's needs, identifying the appropriate placement, and assessing 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 state the definitions for CANS (Child and Adolescent Strength and Needs) screening, personal care services, and personal care services plan. 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 413-080-0000 about the purpose of the Department's shelter care rules (OAR 413-080-0000 to 413-080-0030) is being amended to state that the purpose of these rules is to describe the requirements and limitations for shelter care, enhanced shelter care, and professional shelter care. OAR 413-080-0010 about the definitions for these rules is being amended to state the definitions for BRS (Behavior Rehabilitation Service), certified family, child, Department, district manager, enhanced shelter care, foster parent, professional shelter care, relative caregiver, shelter care, and young adult. OAR 413-080-0020 about the eligibility requirements for shelter care is being amended to state when a child is eligible for shelter care and when a child or young adult is eligible for enhanced shelter care or Professional Shelter Care. OAR 413-080-0030 about the time limitations on a shelter care stay is being amended to state a child is eligible for shelter care for 20 days and a child or young adult is eligible for enhanced shelter care for up to 20 days.

OAR 413-080-0050 about the definitions used in the Department's rules about monitoring child safety, OAR 413-080-0059 about

## ADMINISTRATIVE RULES

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 413-080-0055 about in-home ongoing safety plans is being amended to update terminology.

OAR 413-090-0000 about the purpose of the Department's payment for family foster care, enhanced supervision, and residential treatment payments (OAR 413-090-0000 to 413-090-0130) is being amended to state accurately the purpose of these rules. OAR 413-090-0005 about the definitions used in these rules is being amended to state the definitions for child, CANS screening, dependent minor parent, director, eligible child, enhanced supervision, foster family group home, and precipitating event. OAR 413-090-0010 about the eligibility for payments for family foster care, shelter care, enhanced shelter care, enhanced supervision, and residential treatment 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, and when payment is prohibited. 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 enhanced supervision. 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 manager approval is required for payment for more than seven but less than 14 days, and that residential treatment payments may be made for no longer than 14 days when the child or young adult is absent. 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 for up to 120 days after an adoption application has been received from the adoptive family. OAR 413-090-0050 about out-of-state payment is being amended to clarify the rule.

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 413-090-0135 about provider eligibility to provide personal care services is 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 suspended to clarify the Department's policy for this program, include definitions used throughout the personal care services rules, OAR 413-090-0110 to 413-090-0210, reflect current Department terminology, and bring the personal care services program into compliance with federal requirements.

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 assistance 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 413-130-0120 about the right of adoption assistance clients a contested case hearing, 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 413-130-0127 about adjustments to adoption assistance payments is being suspended 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—(503) 945-6067

### 413-010-0500

#### Contested Case Hearings

(1) A claimant has the right to a contested case hearing under ORS 183 when the Department receives a timely and completed hearing request concerning the denial, reduction, or termination of payment of or for any of the following:

- (a) The foster care base rate.
- (b) Enhanced supervision.
- (c) Personal care services.
- (d) The cost of housing the child of a dependent minor.
- (e) Title IV-E adoption assistance (OAR 413-130-0120).
- (f) Denial of guardianship assistance.

(2) When a payment to a foster parent or relative caregiver is a benefit to a child placed in that home by the Department, the child is the claimant in the contested case. The foster parent or relative caregiver may act on behalf of that child under these rules (OAR 413-010-0500 to 413-010-0535), requesting a contested case hearing for the child.

(3) These rules describe the policies that apply to contested cases about the issues described in section (1) of this rule.

(a) OAR 137-003-0501 to 137-003-0700 apply to these contested cases, except to the extent that rules in Chapter 413 are permitted to and provide otherwise.

(b) Rules in Chapter 461 do not apply to these contested cases unless a rule in Chapter 413 expressly refers to them.

(c) The method described in OAR 137-003-0520(10) is used in computing any period of time prescribed in these rules.

(d) These rules supercede any conflicting statements in Child Welfare Policy I-A.5.2.1, "Contested Case Hearings".

(4) The Department has authorized its employees to represent the Department in these contested cases.

(5) The Department may authorize an assistant attorney general to be its representative in these contested cases.

(6) These contested cases are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the consent of each party and the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 183.310 - 183.500

Hist.: SOSCF 32-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

### 413-010-0505

#### Hearing Requests

For a contested case covered by these rules (OAR 413-010-0500 to 413-010-0535):

(1) A request for a hearing is complete when the Department's Administrative Hearing Request form is completed and signed by the claimant or the claimant's representative and is received by the Department.

(2) To be timely, a completed hearing request must be received by the Department not later than 30 days following the mailing date of the notice.

(3) In the event a request for a hearing is not timely, OAR 137-003-0528 applies.



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(4) In the event there is no right to a contested case hearing on an issue, the Department may enter an order accordingly. The Department may refer a hearing request to the Office of Administrative Hearings for a decision on the question of whether there is a right to a contested case hearing.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005  
Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-010-0510

### Notice

When the Department denies, reduces, or terminates a payment covered by subsections (1)(a) to (1)(f) of OAR 413-010-0500:

(1) The Department issues a written notice that:

(a) Specifies the date the notice is mailed.

(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 each reason for the action.

(d) Informs the client of the extent to which the client has a right to a hearing.

(e) Specifies the method and deadline for requesting a hearing.

(f) Informs the client of the right to representation, including legal counsel.

(g) Cites the Oregon Administrative Rules that support the action.

(2) If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or 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, 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 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.

(3) A notice provided under this rule also must state the client's right, if any, to receive continuing benefits.

(4) Department notices indicate that the Department designates its file, including materials added by the claimant, as the record upon default. The Department's notice becomes a final order if:

(a) The claimant does not request a timely hearing; or

(b) A hearing request is dismissed because the claimant withdraws it or misses the hearing.

(5) When the Department terminates or reduces benefits or services under subsections (1)(a) to (1)(f) of OAR 413-010-0500, the Department must send the notice:

(a) At least 10 calendar days in advance of the effective date, except as provided in subsection (b) of this section.

(b) At least 30 days before the effective date of the action when the Department changes a benefit standard that results in the reduction, suspension or closure of a grant of public assistance; or at least 10 working days before the effective date of the action when the Department has fewer than 60 days before the effective date to implement a proposed change to a benefit standard that results in the reduction, suspension or closure of a grant of public assistance.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005  
Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-010-0515

### Continuation of Benefits

(1) When the Department terminates or reduces benefits or services under subsections (1)(a) to (1)(f) of OAR 413-010-0500, a claimant may receive continuing benefits while the contested case is pending to the extent provided in this rule until a final order in the case.

(2) To be entitled to continuing benefits, the claimant must indicate that the claimant wants continuing benefits on the hearing request form received by the Department.

(3) To the extent the Department's action is sustained by the hearing decision, a dismissal of the hearing request, or the withdrawal of a hearing request by the claimant, the Department may institute recovery procedures to recoup the cost of any continuing benefits to the extent they were furnished solely by reason of this rule.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005  
Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-010-0520

### Informal Conference

(1) The Department representative and the claimant or claimant's representative may have an informal conference to discuss any of the matters listed in OAR 137-003-0575(4). The informal conference also may be used to:

(a) Provide an opportunity for the Department and the claimant to settle the matter;

(b) Ensure the claimant understands the reason for the action that is the subject of the hearing request;

(c) Give the claimant an opportunity to review the documents that are the basis for that action;

(d) Inform the claimant of the rules that serve as the basis for the contested action;

(e) Give the claimant and the Department the chance to correct any misunderstanding of the facts;

(f) Determine if the claimant wishes to have any witness subpoenas issued; and

(g) Give the Department an opportunity to review its action.

(2) The claimant may, at any time prior to the hearing date, request an additional conference with the Department representative.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005  
Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-010-0525

### Burden of Proof

In any contested case covered by these rules (OAR 413-010-0500 to 413-010-0535), the claimant has the burden of proof.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005  
Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-010-0530

### Withdrawals and Dismissals

(1) Withdrawals.

(a) A claimant or claimant's representative may withdraw a request for a hearing orally or in writing at any time before a final order has been issued on the contested case.

(b) Following a withdrawal under subsection (a) of this section, the Department or the Office of Administrative Hearings sends an order confirming the withdrawal of a hearing request to the claimant's last known address. The claimant may cancel the withdrawal in writing if received by the Department representative up to the tenth work day following the date such an order is sent.

(c) At any time before a final order is served, the Department may provide to the claimant the relief sought and withdraw any pending referral from the Office of Administrative Hearings.

(2) A hearing request is dismissed by order when the claimant or the claimant's representative does not appear at the time and place specified for the hearing.

(a) The dismissal by order is effective on the date the order is issued.

(b) The Department may reconsider and cancel the dismissal under OAR 137-003-0675 on request of the claimant on a timely showing that the claimant was unable to attend the hearing and unable to request a postponement for reasons beyond claimant's reasonable control. The Department may refer the reconsideration decision to the Office of Administrative Hearings.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005  
Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-010-0535

### Proposed and Final Orders

(1) When the Department refers a contested case under these rules (OAR 413-010-0500 to 413-010-0535) to the Office of Administrative Hearings, the Department indicates on the referral whether the Department is authorizing a proposed order, a proposed and final order (OAR 137-003-0645(4)), or a final order.

(2) When the Department authorizes either a proposed order or a proposed and final order:

(a) The claimant may file written exceptions and argument to be considered by the Assistant Director for Children, Adults, and Families Division or the Assistant Director's designee. The exceptions and argument must reach the Assistant Director not later than the tenth day after service of the proposed order.

(b) If the claimant does not submit timely written exceptions or argument following a proposed and final order, the proposed and final order becomes a final order unless the Department has issued a revised order or notice of reconsideration not later than the tenth day after service of the proposed and final order.

(3) A request by a claimant for reconsideration or rehearing must be filed with the person who signed the final order within the time limits of OAR 137-003-0675.

(4) A final order is issued or the case otherwise resolved no later than 90 days following the receipt of the request for a hearing. Delay due to a postponement or continuance granted at the claimant's request are not counted in computing this time limit.

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(5) A final order is effective immediately upon being signed or as otherwise provided in the order.

(6) A party dissatisfied with a final order may appeal directly to the Oregon Court of Appeals by filing a petition for review within 60 days of the service of the final order, pursuant to ORS Chapter 183.

(7) The Department reserves the right to withdraw any final order issued by the Office of Administrative Hearings at any time permitted by law.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 183.411 - 183.685, 411.095, 418.005  
Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 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) Monitor the enhanced supervision needs of a child or young adult in substitute care with a relative caregiver or foster parent;

(2) Identify when a relative caregiver or foster parent is having difficulty managing the enhanced supervision needs of a child or young adult;

(3) Describe the responsibilities of the relative caregiver or foster parent and the Department in an emergency when a child or young adult's behavior places the child or young adult or others in imminent risk of harm, and physical restraint is used; and

(4) Provide training and support services to relative caregivers or foster parents who are having difficulty managing the enhanced 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

## 413-020-0210

### Definitions

The following definitions apply to OAR 413-020-0200 to 413-020-0255:

(1) "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.

(2) "Child" means a person under 18 years of age.

(3) "CANS screening" means the Child and Adolescent Strength and Needs screening, a process of integrating information on a child or young adult's strengths and needs, designed to support case planning, service planning, and supervision needs of a child or young adult.

(4) "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.

(5) "Incident report" means a written description of an event that affects a child or young adult in the care or custody of the Department (CF 0985).

(6) "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.

(7) "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 (CF 0984).

(8) "Precipitating event" means an observed, ongoing change in a child or young adult's behavior or condition.

(9) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(10) "Supervision plan" means a documented set of strategies that is developed to assist a relative caregiver or foster parent to proactively manage a child or young adult's enhanced supervision needs (CF 0994).

(11) "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

## 413-020-0230

### Monitoring Supervision

(1) The caseworker of the child or young adult must monitor a child or young adult's enhanced supervision needs by:

(a) Routinely sharing with the relative caregiver or foster parent the information known to the Department regarding the child or young adult's enhanced supervision needs and the relationship of the enhanced supervision needs to the child or young adult's mental and physical condition;

(b) Reviewing the enhanced supervision provided by each relative caregiver or foster parent in the ongoing care of the child or young adult during 30 day contacts; and

(c) Assessing whether additional support is needed to meet a child or young adult's enhanced supervision needs.

(2) The caseworker must document the contacts with the relative caregiver or foster parent in the Department's electronic data system.

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

## 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 (CF 0994) 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.

(4) When, after completing the actions required by OAR 413-020-0230(1), the caseworker determines that the relative caregiver or foster parent is unable or unwilling to maintain conditions in the home that provide safety and well-being for the child or young adult, the caseworker must complete the actions described in Child Welfare Policy I-B.1, "Monitoring Child Safety", OAR 413-080-0059(2)(b)(A) to (C).

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

## 413-020-0236

### Developing a Supervision Plan

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:

(1) Advise the relative caregiver or foster parent to continue to implement the enhanced supervision actions documented on the current CANS screening results;

(2) Gather information from all available resources regarding the child or young adult's enhanced supervision needs.

(3) Meet with the relative caregiver or foster parent to develop a supervision plan which includes:

(a) The supervision actions or activities provided by the relative caregiver or foster parent 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 that the Department will provide to support the relative caregiver or foster parent in addressing the needs of the child as identified in the CANS screening and maintaining the child or young adult in the current substitute care placement.

(c) A plan for regular communication between those monitoring the child or young adult's enhanced supervision needs (the relative caregiver or foster parent, the caseworker, and others) regarding the effect of the enhanced supervision and supervision plan on the child or young adult's challenging behavior; and

(d) A timeline for review of the supervision plan, which is at least every 90 days.

(4) The caseworker's supervisor must approve the supervision plan.

(5) A supervision plan that includes the planned use of physical restraint must:

(a) Focus on the intervention strategies designed to modify a child or young adult's behavior and designed to minimize the need for planned physical restraint;

(b) Use planned physical restraint only as an emergency measure in response to imminent danger to self or others, when no alternate actions are sufficient to stop a child or young adult's challenging behavior; and

(c) Be approved by the Child Welfare program manager.

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(6) A supervision plan may include the use of planned physical restraint only when the following conditions have been met.

(a) The relative caregiver or foster parent has completed training requirements described in OAR 413-020-0255;

(b) The relative caregiver or foster parent must agree to document the circumstances of each physical restraint in writing in a Physical Restraint Incident Report (CF 984) as soon as reasonably possible after the incident; and

(c) The relative caregiver or foster parent must agree to orally report the circumstances of each physical restraint to the caseworker or the caseworker's supervisor within one working day and submit the written documentation (required in subsection (b) of this section) of the circumstances of the physical restraint within 48 hours.

(7) The caseworker must provide a copy of the signed supervision plan for the relative caregiver or foster parent, and file a copy in the child's case file.

(8) The caseworker must document a summary of the supervision plan in the Department's electronic data system in the child or young adult's case notes and in the relative caregiver or foster parent's 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

## 413-020-0240

### Use of Physical Restraint in an Emergency

(1) In an emergency situation, only if the behavior of a child or young adult places the child or young adult or others in imminent risk of harm, and only if good judgment indicates that a physical restraint (see OAR 413-020-0210) can safely be implemented, the relative caregiver or foster parent should do so whether or not the relative caregiver or foster parent has attended Behavior Crisis Management Training, whether or not the child or young adult has a supervision plan.

(a) Physical restraint should be implemented with the least force necessary to prevent the risk of harm to self or others and should end as soon as the risk of harm no longer exists.

(b) When the emergency situation results in any injury to the child or young adult, the relative caregiver or foster parent must immediately notify the Department's emergency 24-hour contact.

(2) Any time an unplanned physical restraint is used, the relative caregiver or foster parent must:

(a) Document the circumstances of the physical restraint in writing on a Physical Restraint Incident Report (CF 0984) 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 working day; and

(c) Submit the written documentation of the circumstances of each physical restraint to the caseworker within 48 hours.

(3) In an emergency, 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 cannot safely be implemented, the relative caregiver or foster parent should call the local law enforcement agency to request intervention. The relative caregiver or foster parent 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 an Incident Report (CF 0985) and submit written documentation to the caseworker within 48 hours.

(4) Mechanical restraint or seclusion of children or young adults 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's body as a means of controlling his or her physical activities in order to protect the child or other persons from injury. Mechanical restraint does not apply to movement restrictions stemming from physical medicine, 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 alone in a specifically designed room from which the child 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

## 413-020-0245

### Responsibilities in Monitoring a Child or Young Adult's Enhanced Supervision Needs

The caseworker must:

(1) Monitor the enhanced supervision needs of the child or young adult during face-to-face contact.

(2) When it is determined that additional support is needed in the home, consult with the certifier or the certifier's supervisor to determine if available resources or training will provide the additional support; or the relative caregiver or foster parent may need.

(3) When there is a current supervision plan:

(a) Review the supervision plan within the timeline described in OAR 413-020-0236(3)(d);

(b) Assess the effectiveness of the relative caregiver or foster parent's enhanced supervision; and

(c) End or revise the supervision plan as follows:

(A) End the supervision plan when the plan successfully has reduced or eliminated the need for enhanced supervision; or

(B) Revise the supervision plan when additional strategies are needed to provide effective enhanced supervision. Any revised supervision plan that includes the use of planned physical restraint (see OAR 413-020-0210) must be approved by the Child Welfare program manager.

(4) When a precipitating event indicates a need for a CANS re-screening, submit a completed CANS referral.

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

## 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 relative caregivers and foster parents. The training curriculum focuses on strengthening a relative caregiver or foster parent's behavior-management skills and instructs the relative caregiver or foster parent in specific actions when supervision requires planned physical restraint (see OAR 413-020-0210). When additional training is needed for a relative caregiver or foster parent, the certifier must refer him or her to available training resources.

(2) When a supervision plan includes the planned use of physical restraint to manage a child or young adult's supervision needs, the caseworker must consult with the certifier to confirm the relative caregiver or foster parent has completed Behavior Crisis Management Training prior to the use of physical restraint as an enhanced supervision strategy.

(3) Child Welfare may approve comparable behavior and crisis management training obtained by a relative caregiver or foster parent for a specific child or young adult when the relative caregiver or foster parent has completed crisis behavior management training selected by a school district and used in the school, or approved by the Addictions and Mental Health Division and used in a Children's Intensive Mental Health Treatment Services program. A Foster Care Coordinator or designee must approve comparable crisis behavior management training courses.

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

## 413-040-0005

### Definitions

The following definitions apply to OAR 413-040-0000 to 413-040-0032:

(1) "Action agreement" means a written document between the Department and a parent or legal guardian that identifies one or more of the services or activities provided by the Department or other community partners, in which the parent or legal guardian will participate to achieve an expected outcome.

(2) "CANS screening" means the Child and Adolescent Strength and Needs screening, a process of integrating information on a child or young adult's strengths and needs, designed to support case planning, service planning, and supervision needs of a child or young adult.

(3) "Child" means a person under 18 years of age.

(4) "Case plan" means a written goal oriented, time limited individualized plan for the child and the child's family, developed by the Department and the parents or legal guardians, to achieve the child's safety, permanency, and well-being.

(5) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The concurrent permanent plan is developed simultaneously with the plan to return the child to the parents or legal guardians.

(6) "Conditions for return" mean a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.

(7) "Department" means the Department of Human Services, Child Welfare.



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(8) "Expected outcome" means an observable, sustained change in a parent or legal guardian's behavior, condition, or circumstance that, when accomplished, will increase a parent or legal guardian's protective capacity and reduce or eliminate an identified safety threat, and which, when accomplished, will no longer require Child Welfare intervention to manage a child's safety. It is a desired end result and takes effort to achieve.

(9) "Expert evaluation" means a written assessment prepared by a professional with specialized knowledge of a particular subject matter such as physical health, psychological health, mental health, sexual deviancy, substance abuse, and domestic violence. The assessment provides information regarding an individual's functioning in the area of the professional's specialized knowledge, and when the expert is evaluating a parent or legal guardian, whether the individual's functioning impacts his or her protective capacity.

(10) "Family member" means any person related to the child by blood, marriage, or adoption, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, or great-grandparents. Family member also includes a child 12 years of age or older and a child younger than 12 years of age, when appropriate. In a case involving an Indian child under the Indian Child Welfare Act (ICWA), a "family member" is defined by the law or custom of the child's tribe.

(11) "Family plan" means a written document developed at the OFDM that includes family recommendations on planning for the child and may include a permanency plan, concurrent permanent plan, placement recommendations, or service recommendations. The family plan also includes expectations of the parents of the child and other family members; services the Department will provide; time lines for implementation of the plan; benefits of compliance with the plan; consequences of noncompliance with the plan; and a schedule of future meetings if appropriate. The family plan described in ORS 417.375(1) is incorporated into the case plan to the extent that it protects the child, builds on family strengths, and is focused on achieving permanency for the child within a reasonable time.

(12) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more safety threats to which the child is vulnerable and determined the parent or caregiver is unable or unwilling to protect the child. An ongoing safety plan can be in-home or out-of-home and is adjusted when necessary to provide the least intrusive interventions.

(13) "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.

(14) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(15) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(16) "Reunification" means placement with a parent or legal guardian.

(17) "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.

(18) "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 8-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; SCF 4-1997, f. 6-19-97, cert. ef. 6-28-97; SOSCF 15-1998, f. & cert. ef. 7-27-98; CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-040-0006

### Requirements for the Protective Capacity Assessment

(1) The Department uses the protective capacity assessment to engage the child's parents or legal guardians in a collaborative process to:

(a) Examine and understand the behaviors, conditions, or circumstances that made the child unsafe;

(b) Examine and understand how the behavioral, cognitive and emotional characteristics of the parents or legal guardians impact their ability to care for and keep the child safe;

(c) Determine the changes (expected outcomes) in the behaviors, conditions, or circumstances of the parents or legal guardians that will increase protective capacity and reduce or eliminate the identified safety threat; and

(d) Identify services or activities that are likely to achieve the expected outcomes.

(2) Whenever possible, the Department and the parents or legal guardians come to agreement on expected outcomes and the actions, services, and activities that will achieve the expected outcomes.

(3) The caseworker must:

(a) Complete the following activities within five days of receipt of the case from the CPS worker:

(A) Review the child welfare case history, case documentation, and the actions and decisions of the most recent CPS assessment.

(B) Review the ongoing safety plan by contacting all participants in the safety plan to determine whether the ongoing safety plan assures the safety of the child.

(C) Document the review of the ongoing safety plan in the Department's electronic data system.

(b) Complete the following activities:

(A) Conduct reasonable inquiries for the purpose of identifying individuals who may contribute to the caseworker's understanding of the protective capacity of the parents or legal guardians and the safety of the child. Such individuals may include parents or legal guardians, grandparents, extended family, an Indian child's tribe, and any other family members, persons with significant attachments to the child, other professionals, substitute caregivers, neighbors, and friends of the family. Reasonable inquiries mean, as defined in ORS 417.371(4)(b), efforts that include reviewing the case file for relevant information, contacting the parents or guardians, and contacting additional sources of information for the purpose of ascertaining the whereabouts of family members, if necessary.

(B) Gather information from these individuals through individual interviews or meetings for the purpose of identifying and understanding the needs, concerns, strengths, and limitations associated with the protective capacity of parents or legal guardians and assessing the impact on the child's safety.

(C) Evaluate the relationship between:

(i) The existing protective capacities of parents or legal guardians that contribute to child safety;

(ii) The diminished protective capacities of parents or legal guardians that must change for the parents or legal guardians to care for and keep the child safe; and

(iii) The parents' or legal guardians' readiness to change.

(D) Whenever possible, collaboratively identify with the parents or legal guardians:

(i) Other family members, persons with significant attachments to the child, community members, and members of an Indian child's tribe who will contribute to and actively participate in the ongoing safety plan or enhancing the protective capacity of the parents or legal guardians; and

(ii) Actions and services that will reduce or eliminate identified safety threats or enhance the protective capacity of the parents or legal guardians.

(E) Inform the parents or legal guardians of the Department's actions and decisions regarding identified safety threats, protective capacity, and the ongoing safety plan.

(F) Enter the findings of the protective capacity assessment, the information obtained by conducting the activities required in paragraphs (A) to (D) of this subsection, in the Department's electronic data system.

(4) The caseworker must include the findings of the protective capacity assessment in the case plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-040-0010

### Requirements for the Case Plan

(1) The caseworker must analyze the information gathered during the protective capacity assessment to develop a case plan. The case plan must include all of the following information:

(a) Family composition, which includes the identifying information of each child, each young adult, and each parent or legal guardian.

(b) Safety threats identified in the CPS assessment as described in OAR 413-015-0420(1)(f)(A)(i) and (ii).

(c) The ongoing safety plan as described in OAR 413-015-0450 and recorded in FACIS.

(d) The findings of the protective capacity assessment.

(e) Expected outcomes and actions that each parent or legal guardian is taking to achieve them.

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(f) Services (if applicable) to the child or young adult that include:

(A) The identified needs and services provided to any child or young adult placed in substitute care, including the results of the CANS screening, and the reasons the substitute care placement is the least restrictive placement to meet the child's identified needs;

(B) The child or young adult's health information, which documents the child's routine and specialized medical, dental, and mental health services, including the CF 310H;

(C) The child or young adult's education services, the school or educational placement history of the child or young adult, high school credits earned for a child over 14 years of age or a young adult, and any special educational needs including the CF 310E; and

(D) Services to transition the child or young adult to independent living in all cases when the child is 16 years or older, and if provided to the child who is 14 or 15 years old.

(g) Services the Department will provide including:

(A) Case oversight and routine contact with the parents or legal guardians and the child or young adult;

(B) Appropriate and timely referrals to services and service providers suitable to address identified safety threats or strengthen parental protective capacity;

(C) Appropriate and timely referrals to services and service providers suitable to address the needs of the child or young adult as identified through the CANS screening; and

(D) Timely preparation of reports to the court or other service providers.

(h) The date that the progress of the parents or legal guardians in achieving expected outcomes will be reviewed. The case plan must be reviewed with the parents or legal guardians every 90 days; however, the caseworker and parents or legal guardians may agree on a review date at any time within the 90-day period.

(i) When the child or young adult is in substitute care, the case plan must also include:

(A) Current placement information including:

(i) The location of the child or young adult and the substitute caregiver of the child or young adult, except when doing so would jeopardize the safety of the child, young adult, or the substitute caregiver, or the substitute caregiver will not authorize release of the address; and

(ii) Documentation that shows that the child or young adult is receiving safe and appropriate care in the least restrictive environment able to provide safety and well-being for the child or young adult.

(B) The child or young adult's record of visits with his or her parents and siblings (CF 310V).

(C) The permanency plan.

(D) The conditions for return.

(E) The concurrent permanent plan, which is the alternate permanent plan when the child or young adult is in substitute care and the progress the Department has made in implementing the concurrent permanent plan.

(2) As applicable, the caseworker must also include in the case plan:

(a) The goals and activities required for an Indian child under the Indian Child Welfare Act (see Child Welfare Policy I-E.2.1, "Placement of Indian Children", OAR 413-010-0100 to 413-010-0260) or for a refugee child under the Refugee Act (see Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380 and see ORS 418.925 to 418.945).

(b) Recommendations of expert evaluations requested by the Department whenever the recommendations may impact parental protective capacities or treatment services for the child or young adult. If the recommendations are not included in the case plan, the rationale must be documented in FACIS.

(c) Diligent efforts to place with relatives and with siblings who are also in substitute care, sibling connections, and the Department's efforts to keep siblings together.

(d) Orders of the court.

(3) The persons involved with the Department in the development of the case plan include the parents or legal guardians, unless their participation threatens or places other participants at risk; and may include the child, young adult, adoptive parents, an Indian custodian when applicable, other relatives, persons with significant attachments to the child, the substitute caregiver, and other professionals when appropriate.

(4) The case plan must include the signature of the caseworker and each parent or legal guardian, unless the Department is unable to obtain the signature of the parent or legal guardian as described in subsection (6)(a) or (6)(b) of this rule.

(5) Approval and distribution of the case plan.

(a) The Child Welfare supervisor must approve and sign the case plan.

(b) The caseworker must give a copy of the case plan to the parents or legal guardians of the child or young adult, and the Indian child's tribe when applicable, as soon as possible but no later than seven working days

after the case plan is approved by the supervisor, except when doing so would provide information that places another person at risk.

(6) Exceptions and exemptions to the required case plan.

(a) A court may authorize an exception to the involvement of the parents or legal guardians when it determines that reasonable efforts, or active efforts in an ICWA case, to return the child home are not required, as described in Child Welfare Policy I-E.3.6, "Achieving Permanency", OAR 413-070-0515.

(b) When the Department has custody of a child or young adult in substitute care and is unable to obtain the signature of a parent or legal guardian, the caseworker must prepare and send a letter of expectations and a copy of the case plan to the parent or legal guardian within seven working days after the supervisor has approved and signed the case plan. A letter of expectations means an individualized written statement for the family of the child or young adult that identifies family behaviors, conditions, or circumstances that resulted in an unsafe child; the expected outcomes of improved parental capacity; and what the Department expects each parent or legal guardian will do to achieve safety, permanency, and well-being of the child or young adult in the parental home.

(c) A case plan as described in sections (1) to (5) of this rule is not required if a family, child, or young adult is eligible for Family Support Services as described in Child Welfare Policy I-B.2.3.1, "Family Support Services", OAR 413-030-0000 to 413-030-0030.

(7) Timeline for case plan development. The caseworker must develop the case plan within 60 days of a child's removal from home or within 60 days of the completion of the CPS assessment, in cases where the child remains in the home of a parent or legal guardian.

[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; SCF 8-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; SCF 4-1997, f. 6-19-97, cert. ef. 6-28-97; SOSCF 15-1998, f. & cert. ef. 7-27-98; SOSCF 4-2000(Temp), f. & cert. ef. 1-31-00 thru 7-28-00; SOSCF 19-2000, f. & cert. ef. 8-8-00; CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-040-0011

### Requirements of Action Agreements

(1) The Department develops time-limited Action Agreements in conjunction with the case plan. If sufficient resources are available, the Action Agreement must use culturally appropriate services and service providers whose interventions are focused on the achievement by the parents or legal guardians of the expected outcomes identified in the case plan.

(2) The caseworker must ensure the Action Agreement includes all of the following:

(a) A minimum of one of the expected outcomes in the case plan.

(b) The specific activities or services required to achieve the expected outcome.

(c) Participants and responsibilities.

(d) Anticipated start and completion dates.

(e) Identification of an order of the court that relates to the expected outcome or specified activities or services.

(f) Method of measuring progress.

(g) Timeline for review.

(3) A caseworker may develop sequential Action Agreements with a parent or legal guardian, and each Action Agreement must include the information required in section (2) of this rule.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-040-0013

### Requirements for Monitoring the Case Plan

(1) The caseworker must:

(a) Make reasonable efforts to:

(A) Reduce the stay of a child or young adult in substitute care; and

(B) Reunify the child or young adult with the parents or legal guardians.

(b) Monitor the case plan; and

(c) Terminate Department intervention services in a timely manner.

(2) The caseworker is responsible for all of the following actions:

(a) Regular 30-day, face-to-face contact and communication with each parent or legal guardian about progress toward achieving the expected outcomes related to enhanced protective capacity.

(b) Regular 30-day, face-to-face contact with the child, young adult, and, when applicable, the individual providing substitute care, to monitor the safety of the child or young adult.

(c) Monitoring the services provided through the case plan through contact with each service provider a minimum of once every 90 days.

(d) Monitoring the ongoing safety plan.

(e) Monitoring action agreements.

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(f) Monitoring the visitation and contact plan when a child or young adult is in substitute care.

(g) Monitoring the parent or legal guardian's progress toward meeting the conditions for return when a child or young adult is in substitute care.

(h) Monitoring the parent or legal guardian's progress toward meeting the expected outcomes of the case plan.

(i) Ensuring completion of the actions and activities that are the responsibility of the Department.

(j) Timely review of the progress the parent or legal guardian has made in reducing or eliminating identified safety threats and enhancing parental protective capacity.

(k) Timely response to the child or young adult's strengths and needs identified in the most recent CANS screening.

(l) Timely response to issues that may impact the safety of the child or young adult which become known to the caseworker.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-040-0016

### Requirements for Review of the Case Plan

(1) The case plan is reviewed a minimum of every 90 days. This review must take place in a face-to-face meeting with the parents or legal guardians, unless excluded under section (3) of this rule. The meeting may include the child, young adult, service providers, safety plan participants, substitute caregivers, attorneys, a child's CASA, persons with significant attachments to the child, and family members.

(2) During the case plan review, the caseworker assesses and determines the progress that has been made in achieving the expected outcomes of the case plan, and, when the child is in substitute care, the progress toward meeting the conditions of return.

(3) Exceptions to the face-to-face case plan review. If a parent or legal guardian is not available for the review, the caseworker must document the reason the parent or legal guardian was unavailable and the efforts that were made to involve the parent or legal guardian in the review.

(4) During a case plan review, the caseworker must consider input received from the child or young adult, the service providers, safety plan participants, substitute caregivers, attorneys, a child's CASA, persons with significant attachments to the child, and family members.

(5) Subsequent to the face-to-face meeting, the caseworker documents all of the following in the Department's electronic data system:

(a) The services provided and the progress of the parents or legal guardians in achieving expected outcomes or, when a child is in substitute care, meeting the conditions of return.

(b) Observations of improved parent or legal guardian protective capacity based on specific behaviors, conditions, or circumstances that have measurably changed.

(c) Input received from service providers, substitute caregivers, attorneys, the child's CASA, persons with significant attachments to the child, and family members.

(d) The reduction or elimination of the identified safety threats.

(e) The actions the Department has taken to develop and implement the concurrent permanent plan for the child or young adult in substitute care if a parent or legal guardian has not demonstrated progress in achieving the conditions for return in a timely manner including:

(A) A review of the child or young adult's education, health, and mental health services to ensure the needs of the child or young adult are being met;

(B) A review of other services provided to address the identified needs of the child or young adult, including needs identified through the CANS screening;

(C) An assessment of the need of the child or young adult for a safe and permanent home; and

(D) An assessment of the capacity of the substitute caregiver to meet the identified needs of the child or young adult as described in Child Welfare Policy I-E.3.1 "Placement Matching", OAR 413-070-0640.

(6) Within 30 days of receiving an expert evaluation requested by the Department, the caseworker must consider revising the case plan to include recommendations that will improve parent or legal guardian protective capacity related to the identified safety threats. If the recommendations are not included in the case plan, the rationale must be documented in the Department's electronic data system.

(7) The Child Welfare supervisor must review the caseworker's documentation of the case plan review, and document completion of the review in the Department's electronic data system every 90 days. The supervisor must review, approve, and sign the six-month case plan review submitted for required administrative review.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 8-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; SCF 4-1997, f. 6-19-97, cert. ef. 6-28-97; SOSCF 15-1998, f. & cert. ef. 7-27-98,

Renumbered from 413-040-0030; CWP 31-2003, f. & cert. ef. 10-1-03, Renumbered from 413-040-0045; Renumbered from 413-040-0063, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-040-0024

### Requirements for an In-home Ongoing Safety Plan Prior to Return and Next Day Contact

(1) When the caseworker determines the conditions for return have been achieved and identified safety threats can be managed when a child or young adult is returned to a parent or legal guardian (see OAR 413-040-0017), the caseworker must develop an in-home ongoing safety plan as described in OAR 413-015-0450. The caseworker's supervisor must:

(a) Approve the proposed in-home ongoing safety plan during the five working days prior to the return of a child or young adult to the home of a parent or legal guardian of the child or young adult, and must

(b) Document the approval in the Department's electronic data system.

(2) After a proposed in-home ongoing safety plan returning a child or young adult to the parent or legal guardian's home is approved by the caseworker's supervisor, the caseworker must complete all of the following activities:

(a) Visit the child or young adult, outside the presence of a parent or legal guardian, at least once during the five days prior to the return of the child or young adult to the home to confirm the readiness of and prepare the child or young adult for the return home.

(b) Visit the parent or legal guardian in the home of the parent or legal guardian, at least once during the five days prior to the return of the child or young adult to the home, to verify:

(A) The behaviors, conditions, and circumstances in the home are safe for the return of the child or young adult;

(B) Confirmation of all persons living in the household;

(C) The parent or legal guardian is ready for the return of the child or young adult;

(D) The parent or legal guardian is willing and able to participate in the ongoing safety plan; and

(E) The parent or legal guardian is willing and able to continue in case plan services.

(c) Confirm the in-home ongoing safety plan with the parent or legal guardian, and obtain the signature of the parent or legal guardian.

(d) Document the revised ongoing safety plan in the Department's electronic data system.

(3) After a proposed in-home ongoing safety plan returning a child or young adult to the parent or legal guardian's residential treatment facility, an alcohol and drug free housing program, or residential domestic violence program is approved by the caseworker's supervisor, the caseworker must complete all of the following activities:

(a) Visit the child or young adult, outside the presence of a parent or legal guardian, at least once during the five days prior to the return of the child or young adult to the home to confirm the readiness of and prepare the child or young adult for the return.

(b) Contact the parent or legal guardian at least once during the five days prior to the return of the child or young adult to the home, to verify:

(A) The parent or legal guardian is ready for the return of the child or young adult;

(B) The parent or legal guardian is willing and able to participate in the ongoing safety plan;

(C) The parent or legal guardian is willing and able to continue to participate in case plan services.

(c) Verify that the residential treatment facility, an alcohol and drug free housing program, or residential domestic violence program is a safe environment for the child or young adult.

(d) Confirm the in-home ongoing safety plan with the parent or legal guardian and obtain the signature of the parent or legal guardian.

(e) Document the revised ongoing safety plan in the Department's electronic data system.

(4) In the event a court orders the return of a child or young adult to a parent or legal guardian of the child or young adult before an in-home ongoing safety plan can be developed and approved (in accordance with the criteria in OAR 413-015-0450 and this rule):

(a) The caseworker must complete the activities described in this rule as soon as practicable, but not later than seven working days following the court order; and

(b) If the caseworker disagrees with the order of the court, the caseworker must immediately consult with his or her supervisor.

(5) The caseworker must visit the child or young adult in the residence of the parent or legal guardian the day following the return home of the child or young adult. The caseworker must:

(a) Confirm the safety of the child or young adult;

(b) Review the in-home ongoing safety plan; and

(c) Document observations and the conditions of the residence in FACIS within seven working days of the visit.



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Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-070-0620

### Definitions

The following definitions apply to OAR 413-070-0600 to 413-070-0645:

(1) "Caregiver relationship" means a relationship between a person and a child that has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age and the person had physical custody of the child or resided in the same household as the child; the person provided the child on a daily basis with the love, nurturing and other necessities required to meet the child's psychological and physical needs; and the child depended on the relationship to meet the child's needs. "Caregiver relationship" does not include a relationship between a child and a person who is an unrelated foster parent of the child unless the relationship continued for a period of at least six consecutive months.

(2) "Child" means a person under 18 years of age.

(3) "CANS screening" means the Child and Adolescent Strength and Needs screening, a process of integrating information on a child or young adult's strengths and needs, designed to support case planning, service planning, and supervision needs of a child or young adult.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(6) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(7) "Personal care services" means 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 to live safely in the most independent, least restrictive living situation.

(8) "Personal care services plan" means the written plan of care for a child or young adult that identifies:

(a) The determination that the individual is a qualified provider;

(b) The personal care services that will be provided; and

(c) The date when the provision of services will begin.

(9) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(10) "Relative Caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(11) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent; or

(b) Through the marriage of the children's or young adults' legal or biological parents.

(12) "Substitute care" means an out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(13) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(14) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419A.004 & 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-070-0625

### Identifying and Assessing the Child or Young Adult's Needs when Placement in Substitute Care is Required

(1) To determine a child or young adult's immediate needs when substitute care is required to manage safety, the caseworker must:

(a) Involve the child or young adult's parent or legal guardian in identifying substitute care placement resources whenever possible.

(b) Assess the ability of each potential substitute caregiver to provide safety for the child or young adult.

(c) Consider potential substitute care placements that meet the safety and well being needs of the child or young adult in the following order of preference:

(A) A relative of the child or young adult who can be certified by the Department;

(B) A person who has a caregiver relationship with the child or young adult and can be certified by the Department;

(C) An unrelated person to whom the child or young adult has significant attachment or who has significant attachment to the child or young adult, and can be certified by the Department; or

(D) A foster parent who is certified by the Department, or a provider who is certified through a licensed child-caring agency.

(d) If a child or young adult is placed in substitute care and has a sibling who is currently in or also needs substitute care, make diligent efforts to place siblings together.

(e) Identify which person has the closest existing personal relationship with the child or young adult if more than one person requests to have the child placed with them.

(f) Consider whether the substitute care placement --

(A) Has the ability to provide safety for the child or young adult and the siblings when consideration is being given to placing siblings together;

(B) Is willing to cooperate with any restrictions placed on contact between the child or young adult, and others;

(C) Has the ability to prevent anyone from influencing the child or young adult in regard to the allegations of the case;

(D) Has the ability to support the efforts of the Department to implement the permanent plan for the child or young adult; and

(E) Has the ability to meet the child or young adult's physical, emotional, and educational needs, including the child or young adult's need to continue in the same school or educational placement.

(g) Assure that the substitute care placement is the most home-like, least restrictive available to meet the child or young adult's needs.

(h) Assure that the race, color, or national origin of the child, young adult, or substitute care placement is not a consideration when assessing a substitute care placement.

(i) If the child is an Indian or Refugee child, follow OAR 413-070-0220 and 413-070-0320 regarding placement preferences.

(2) Within 30 days of the child's placement in substitute care, the caseworker must reconsider whether the substitute caregiver is able to meet the considerations in subsection (1)(f) of this rule and assess whether the substitute caregiver meets the following placement preferences:

(a) Is in close proximity to the child's parents or legal guardians;

(b) Is in close proximity to the child's community;

(c) Can keep siblings together; and

(d) Can support the child's culture and family identity.

(3) When the substitute care placement does not meet one or more of the placement considerations in subsection (1)(f) or section (2) of this rule, the caseworker must determine whether remaining in the substitute care placement is in the best interests of the child.

(a) If the caseworker determines that remaining in the current substitute care placement is in the best interests of the child, the child should remain in the placement.

(b) If the caseworker determines that remaining in the current substitute care placement is not in the best interests of the child, the caseworker must work with Department staff to secure another substitute care placement for the child.

(4) The caseworker must document the section (3) determination in the Department's electronic data system and explain the basis for the determination as it relates to the best interests of the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-070-0630

### Monitoring the Ongoing Substitute Care Placement Needs of the Child or Young Adult

(1) The caseworker must monitor the substitute care placement of the child or young adult and determine whether the foster parent, relative caregiver, or provider:

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(2) (a) Meets the placement considerations of OAR 413-070-0625(1) and

(b) Manages the child or young adult's supervision needs as identified in the CANS screening;

(c) Provides the child or young adult's personal care services as outlined in the personal care services plan; and

(d) Is an appropriate and safe substitute care placement if the child or young adult cannot safely return to the home of a parent or legal guardian within a reasonable period of time.

(2) The caseworker must assess the ongoing and permanency needs of the child or young adult:

(a) For physical and emotional safety;

(b) To preserve existing attachments to family;

(c) For continuity and familiarity;

(d) For appropriate educational, developmental, emotional, and physical support;

(e) For stability; and

(f) For maintaining his or her identity and cultural and religious heritage.

(3) During the required face-to-face contacts with the child or young adult, the caseworker must confirm that the substitute caregiver can maintain the safety and well-being of the child or young adult, as described in Child Welfare Policy I-B.1, "Monitoring Child Safety", OAR 413-080-0059(2)(a)(D)(i)-(xii) when the child or young adult is with a relative caregiver or foster home or OAR 413-080-0059(3)(a)(D)(i)-(xi) when the child or young adult is with a provider. In addition, the caseworker must:

(a) Develop and maintain a good working relationship with the child or young adult;

(b) Observe the child or young adult in an age-appropriate and comfortable setting;

(c) Gather updated information on the child or young adult's physical and mental health as well as educational, behavioral, and developmental progress;

(d) Share updated case plan or child-specific information with the child or young adult's foster parent, relative caregiver, or provider and with the child or young adult as appropriate; and

(e) Document the date, time, location, observations, and updated information in the Department's electronic data system.

(4) For purposes of this rule, "face-to-face" is an in-person interaction between individuals.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-070-0640

### Review of the Substitute Care Placement During Case Plan Review

(1) When the child or young adult is in substitute care at the time of each 90 day case plan review, the caseworker must include in the review written documentation of the extent to which the child or young adult's substitute care placement meets the child or young adult's ongoing need for safety, permanency, and well-being.

(a) To determine the extent to which the placement meets the child or young adult's needs for physical and emotional safety, the caseworker must determine whether the following conditions exist in the home.

(A) The substitute caregiver has the skill level or willingness to acquire the skills necessary to meet the physical, emotional and supervisory needs for each child or young adult in the placement;

(B) The substitute caregiver has the skill level to care for the age, number, and gender of the children or young adults currently in the placement;

(C) The behavioral characteristics of children or young adults currently in the placement are such that the child or young adult will be protected from further victimization and from harming self or others;

(D) The substitute caregiver has the ability to protect the child or young adult from inappropriate contact with those who may harm the child or young adult; and

(E) The physical layout of the home permits the substitute caregiver to safely supervise the children or young adults in the home.

(b) To determine the extent to which the placement meets the need of the child or young adult to preserve existing attachment to the family, the caseworker must consider whether:

(A) The family has expressed a preference in placement;

(B) The child or young adult has requested a particular placement;

(C) The relative caregiver, foster parent, or provider has demonstrated the ability

(i) To support the attachment of the child or young adult through visitation and other types of contact with the child's family;

(ii) To accommodate the placement of siblings in the substitute caregiver's home;

(iii) To accommodate regular contact between siblings when siblings cannot be placed together and regular contact is in the best interests of the child or young adult; and

(iv) To provide mutual care when both the child and parent require placement. As used in this rule, "mutual care" means the out-of-home placement of a parent and child together where one or both are in the legal custody of the Department.

(c) To determine the extent that the placement meets the need of the child or young adult for continuity and familiarity, the caseworker must consider:

(A) The extent of the child or young adult's pre-existing relationship with the relative caregiver, foster parent, or provider;

(B) The placement is appropriate to meet the permanency and well-being needs of the child because of its proximity to the child or young adult's neighborhood, school or educational placement, and parent or legal guardian; and

(C) Whether the relative caregiver, foster parent, or provider can provide a permanent home or facilitate transition to a permanent home for the child or young adult.

(d) To determine the extent that a particular placement meets the need of the child or young adult for appropriate educational, developmental, emotional, and physical support, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider demonstrates competency in meeting the child or young adult's specific and unique needs or is acquiring the skills necessary to meet the child or young adult's specific and unique needs;

(B) Whether the ability of the relative caregiver, foster parent, or provider to meet the child or young adult's specific and unique needs is influenced by the number and type of children in the placement; and

(C) Whether the ability and willingness of the relative caregiver, foster parent, or provider to assist, participate in, and act as an advocate for the child or young adult in his or her education and treatment plan is sufficient to meet the needs of the child or young adult.

(e) To determine the extent to which the placement meets the need of the child or young adult for stability, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider has expressed a desire to provide permanency for a particular child or young adult;

(B) Whether the ability of the relative caregiver, foster parent, or provider to provide support and to nurture the child or young adult is influenced by the number of children or young adults in placement;

(C) Whether the relative caregiver, foster parent, or provider is willing to provide care for the child or young adult as long as needed;

(D) Whether the capacity of the relative caregiver, foster parent, or provider to recognize the child or young adult's needs and build on the child or young adult's strengths is sufficient to meet the long-term placement needs of the child or young adult.

(f) To determine whether the placement can support the child or young adult's identity, development, and cultural and religious background, the caseworker must consider:

(A) Whether the relative caregiver, foster parent, or provider has the ability to appreciate, nurture, support, and reinforce the identity and cultural and religious background of the child or young adult;

(B) Whether the relative caregiver, foster parent, or provider has the ability to support the development of the individual child or young adult, and help the individual child or young adult with problems that the child or young adult may encounter. (Refer to Child Welfare Policies I-E.2, "Multiethnic Placements", OAR 413-070-0000 to 413-070-0033 and I-E.2.1, "Placement of Indian Children", 413-070-0100 to 413-070-0260);

(C) Whether the relative caregiver, foster parent, or provider has the ability to communicate effectively with the child or young adult; and

(D) Whether the child or young adult has adjusted to the placement.

(2) The caseworker must document the extent to which the child or young adult's relative caregiver, foster parent, or provider meets the child or young adult's need for safety and well-being:

(a) In the Department's electronic data system at the 90-day case plan review; or

(b) In the case plan (0333a), Child Description, Their Needs and Well Being section, at the six-month case plan review.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-080-0000

### Purpose

These rules, OAR 413-080-0000 to 413-080-0030, describe the requirements and limitations for shelter care, enhanced shelter care, and professional shelter care.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

# ADMINISTRATIVE RULES

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2003, f. & cert. ef. 1-7-03; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-080-0010

### Definition

(1) "BRS" means Behavior Rehabilitation Service, a Medicaid funded program that provides behavioral intervention, counseling, and skill building services in a professional, shelter, or residential (including therapeutic foster care formerly referred to as proctor care) placement setting.

(2) "Certified family" means an individual or individuals who hold a Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(3) "Child" means a person under 18 years of age.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "District Manager" means the manager of a Department service delivery area, a geographic region of one or more counties served by the Department.

(6) "Enhanced Shelter Care" means care provided to a child or young adult when placement in a Behavior Rehabilitation Service is no longer needed.

(7) "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.

(8) "Professional Shelter Care" means care provided to a child or young adult in a contracted Medicaid funded program providing behavioral intervention, counseling, and skill building services.

(9) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(10) "Shelter Care" means care provided to a child or young adult during the first 20 days of placement in substitute care.

(11) "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; CWP 8-2003, f. & cert. ef. 1-7-03; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-080-0020

### Eligibility for Shelter Care

(1) A child is eligible for shelter care during the first 20 days of placement in substitute care with a certified family after removal from the child's home.

(2) Effective September 1, 2009, a child or young adult is eligible for enhanced shelter care when placed with a certified family after a BRS placement.

(3) A child or young adult is eligible for Professional Shelter Care when:

(a) More intensive supervision, skilled behavior management, an assessment, and treatment planning is needed to determine the appropriate type of substitute care; or

(b) Emergency 24-hour family shelter care is not available or appropriate.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2003, f. & cert. ef. 1-7-03; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-080-0030

### Length of Stay Limits

(1) Shelter Care. A child is eligible for shelter care for 20 days.

(2) Enhanced Shelter Care. Effective September 1, 2009, a child or young adult is eligible for enhanced shelter care for up to 20 days.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 15-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 8-2003, f. & cert. ef. 1-7-03; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-080-0040

### Monitoring Child Safety

The purpose of these rules, OAR 413-080-0040 to 413-080-0067, is to describe the responsibilities of the Department in monitoring child and young adult safety and well-being.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-080-0050

### Definitions

The following definitions apply to OAR 413-080-0040 to 413-080-0067:

(1) "CANS screening" means the Child and Adolescent Strength and Needs screening, a process of integrating information on a child or young adult's strengths and needs, designed to support case planning, service planning, and supervision needs of a child or young adult.

(2) "Child" means a person under 18 years of age.

(3) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(4) "Contact" means any communication between a Child Welfare caseworker and a child, parent or legal guardian, foster parent or relative caregiver, provider, or other individual involved in a Child Welfare safety plan or case. Contact includes, but is not limited to, communication in person, by telephone, by video-conferencing, or in writing. Contact may occur, for instance, during a face-to-face visit; a treatment review meeting for a child, young adult, parent, or legal guardian; a court or Citizen Review Board hearing; or a family meeting.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Face-to-face" means an in-person interaction between individuals.

(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) "ICPC" means the Interstate Compact for the Placement of Children (see ORS 417.200).

(9) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more safety threats to which the child is vulnerable and determined the parent or caregiver is unable or unwilling to protect the child. An ongoing safety plan can be in-home or out-of-home and is adjusted when necessary to provide the least intrusive interventions.

(10) "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, 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.

(11) "Personal care services" means 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 to live safely in the most independent, least restrictive living situation.

(12) "Personal care services plan" means the written plan of care for a child or young adult that identifies:

(a) The determination that the individual is a qualified provider;

(b) The personal care services that will be provided; and

(c) The date when the provision of services will begin.

(13) "Placement support plan" means a documented set of actions or resources that is developed to assist a relative caregiver or foster parent to maintain conditions that provide safety and well-being for children or young adults in the home.

(14) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(15) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(16) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(17) "Screener" means a Child Welfare employee with training required to provide screening services.

(18) "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.

(19) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute



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care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-080-0055

### Monitoring Child Safety with an In-home Ongoing Safety Plan

(1) To manage an in-home ongoing safety plan and monitor the child's safety when the child is in the home of the parent or legal guardian, the assigned caseworker must contact the following individuals, as described below:

(a) The caseworker must have contact with the following individuals a minimum of once every 30 days:

(A) Face-to-face contact with the child;

(B) Face-to-face contact with the child's parents or legal guardians in the home of the parents or legal guardians; and

(C) Contact with each participant in the ongoing safety plan.

(b) The caseworker must also have face-to-face contact with the child and the child's parents or legal guardians within five working days of learning any of the following:

(A) A parent or legal guardian has violated a condition of the ongoing safety plan.

(B) A change in the protective capacity of a parent or legal guardian may negatively impact the ongoing safety plan.

(C) A change in the family circumstances may negatively impact the ongoing safety plan.

(D) A change in the composition of the household may negatively impact the ongoing safety plan.

(E) The caseworker is assigned a case that had been assigned to another caseworker (case transfer).

(2) To monitor the safety of the child, during each contact with a child, parent, or legal guardian required by section (1) of this rule, the caseworker must complete each of the following:

(a) Look for and assess any changes in the protective capacity of parents or legal guardians and changes in the ability or willingness of a parent or legal guardian to keep the child safe.

(b) Have a conversation with a verbal child or young adult.

(c) Assess whether the ongoing safety plan keeps the child safe by determining:

(A) Whether the home environment is stable enough for safety service providers to be in the home and be safe; and

(B) Whether the parent or legal guardian states that he or she is:

(i) Agreeable to the services in the ongoing safety plan;

(ii) Cooperating in services provided as prescribed by the ongoing safety plan;

(iii) Cooperating with all participants in the ongoing safety plan;

(iv) Participating in the actions and the time requirements of the ongoing safety plan; and

(v) Meeting the expectations detailed in the ongoing safety plan.

(d) Determine whether:

(A) The condition of the child is satisfactory; and

(B) Safety threats to the child are managed.

(e) Immediately notify his or her supervisor if he or she determines, during a contact with the child, parent, or legal guardian, that the in-home ongoing safety plan is insufficient to assure the safety of the child, to determine if any immediate protective action is necessary to assure the child's safety.

(3) Through contact with the participants in the ongoing safety plan, required by section (1) of this rule, the caseworker must determine whether:

(a) Participants in the ongoing safety plan are engaged and active in the safety activities;

(b) The parents or legal guardians are cooperating with the safety services prescribed by the ongoing safety plan;

(c) The safety service providers are engaged with the parents or legal guardians;

(d) The safety service providers can report that the specified intervention is effective;

(e) The participants and safety service providers agree that the level of intervention assures the ongoing safety of the child; and

(f) The services are the least intrusive available to assure the child's safety.

(4) Whenever a participant in the ongoing safety plan or a safety service provider reports information indicating that there is a new safety threat, the caseworker must determine whether the information has been reported to a screener. If the information has not been reported, the caseworker must:

(a) Immediately report the information to a screener; and

(b) Consult with his or her supervisor to determine whether an immediate protective action is required to assure the child's safety.

(5) The caseworker must determine whether:

(a) Behaviors, conditions, or circumstances within the family require an increase in the level of safety intervention; or

(b) A less intrusive ongoing safety plan can assure the safety of the child.

(6) The caseworker must revise the level of intervention of the in-home ongoing safety plan based on what is uniquely occurring within the family.

(a) The caseworker must reduce the level of intervention whenever:

(A) The improved protective capacity of the parent or legal guardian is sufficient to impact his or her ability to control safety threats as they are occurring within the family; and

(B) A safety threat can be managed with less intrusive actions or services.

(b) The caseworker must increase the level of intervention whenever:

(A) A parent or legal guardian is unable or unwilling to control the safety threats to the child as they are occurring within the family with the ongoing safety plan; or

(B) Any identified safety threat cannot be managed with the current ongoing safety plan.

(c) When the assessment of the behaviors, conditions, or circumstances occurring within the family results in a determination to revise the ongoing safety plan, the revised ongoing safety plan must comply with the criteria of OAR 413-015-0450(2)(d)(A)-(H).

(d) The revised ongoing safety plan must be approved by the caseworker's supervisor.

(7) The caseworker must document in the Department's electronic data system:

(a) The date, type, and location of each contact with the child, parents, or legal guardians;

(b) The date and type of each contact with each participant in the in-home ongoing safety plan;

(c) Observations and condition of the child during the home visit;

(d) Observations and condition of each parent or legal guardian during the home visit;

(e) Changes in the ability of each parent or legal guardian to parent and provide protective care;

(f) Observations or reports from ongoing safety plan participants and service providers;

(g) How the ongoing safety plan continues to manage the safety threats as they are occurring within the family, or any revised ongoing safety plan and the facts supporting that revision;

(h) How any revision in the ongoing safety plan is the most suitable, least intrusive action available; and

(i) Any immediate protective action if required to assure the safety of the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-080-0059

### Monitoring the Safety and Well-Being of the Child or Young Adult in Substitute Care

(1) To monitor the safety and well-being of the child or young adult in substitute care, the caseworker must make the following contacts:

(a) Face-to-face contact with the child or young adult every 30 days; and

(b) Contact with the relative caregiver, foster parent, or provider every 30 days; and

(c) Face-to-face contact with the relative caregiver, foster parent, or provider in the home or facility a minimum of once every 60 days. The face-to-face contact must include at least one of the certified or licensed adults who provide direct care for the child or young adult.

(2) Monitor and assess the child or young adult's safety and well-being in substitute care with a relative caregiver or foster parent.

(a) Within each 30-day period, the caseworker must complete all of the following activities:

(A) Have a conversation with a verbal child or young adult.

(B) Assess the child or young adult's progress in and adjustment to the placement.

(C) Ensure the child or young adult's supervision needs identified in the CANS screening are met.

(D) Ensure the child or young adult's personal care services needs as identified in the personal care services plan are met.

(E) Receive updates from the child or young adult and from the relative caregiver or foster parent.

(F) Assess the safety and well-being of the child or young adult in the home by determining whether each of the following conditions exists in the home:

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(i) The child or young adult is comfortable and the environment of the home is supportive and safe.

(ii) Adults in the home take an active role in caring for and supervising the child or young adult in the home.

(iii) Adult family members possess the physical, emotional, and cognitive capacity to sufficiently care for the child or young adult.

(iv) Family members and the child or young adult have formal and informal contact with others in the community.

(v) The child or young adult is accepted as part of the household.

(vi) The relative caregiver or foster family understands and is attentive to the vulnerability and need for protection of the child or young adult.

(vii) The relative caregiver or foster family is amenable to Department oversight and willing to partner with the Department.

(viii) When the child or young adult is placed with a relative caregiver, the child or young adult's parents and other family members understand the role of the relative caregiver in managing safety as a substitute care resource.

(ix) The child has a sufficiently positive relationship with the relative caregiver or foster family's own children who live in the home.

(x) The relative caregiver or foster family is caring for children matching the preferences and experience of the family.

(xi) The interactions between the child or young adult and other children placed in the home are sufficient to assure safety.

(xii) The present demands of the home do not exceed the ability of the relative caregiver or foster parent to provide safe and protective care.

(G) Document the date, time, location, and observations of the conditions that exist in the home in the Department's electronic data system.

(b) If one or more of the conditions described in paragraph (a)(F) of this section do not exist in the home, and the caseworker cannot confirm safety and well-being of the child or young adult in the home of the relative caregiver or foster parent, or the supervision needs identified through the CANS screening are not fully met the caseworker must:

(A) Assess child safety immediately and determine if there is a safety threat as described in OAR 413-015-0420(1)(f)(A)(i) and (ii).

(B) If a safety threat is identified, immediately:

(i) Consult with the caseworker's supervisor to determine any immediate protective action required to assure the child's safety or any action required to assure the safety of the young adult; and

(ii) Contact a CPS screener and report the identified safety threat to the child.

(C) Document the behaviors, conditions, or circumstances observed in the home and any immediate protective actions in the Department's electronic data system.

(c) When the child or young adult is currently safe in the home, but the conditions described in this rule; 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 the supervision needs identified through the CANS screening are not fully met, the caseworker must:

(A) Document date, time, location, and current behaviors, conditions, or circumstances observed in the home in the Department's electronic data system and notify the certifier or certifier's supervisor within one working day.

(B) The caseworker must have face-to-face contact with the relative caregiver or foster parent within the next 30 days and the visit must occur in the home. The caseworker must observe the behaviors, conditions, or circumstances of the foster parent or relative caregiver, the child, and other children in the home, and conditions in the home.

(i) When the caseworker can confirm that current conditions in the home provide safety and well-being for the child or young adult, the caseworker must:

(I) Document the date, time, location, and observations of the condition of the environment in the Department's electronic data system; and

(II) Notify the certifier of the improved behaviors, conditions, or circumstances in the home.

(ii) When the caseworker cannot confirm that current conditions in the home provide safety and well-being for the child or young adult, the caseworker must:

(I) Consult with the supervisor to determine whether to recommend to the certifier implementation of a Placement Support Plan to assist the relative caregiver or foster parent, or whether the child or young adult should no longer remain in the home because the conditions necessary to provide safety and well-being cannot be sustained in this home.

(II) Send written notification to the certifier of the behaviors, conditions, or circumstances in the home.

(III) Document the date, time, location, and the behaviors, conditions, or circumstances in the home in the Department's electronic data system.

(3) Monitoring and assessing safety when the child or young adult is in a provider placement.

(a) During each 30-day period, the caseworker must:

(A) Assess the progress in and adjustment to the placement of the child or young adult;

(B) Have a conversation with a verbal child or young adult;

(C) Receive updates from the child or young adult and from the provider;

(D) Assess the safety of the child or young adult in the home or facility by determining whether each of the following conditions exists:

(i) The child or young adult is comfortable and the environment is supportive and safe.

(ii) Adults take an active role in caring for and supervising the child or young adult.

(iii) Adults possess the physical, emotional, and cognitive capacity to sufficiently care for the child or young adult.

(iv) The child or young adult has formal and informal contact with others in the community.

(v) The child or young adult is accepted as part of the household or facility.

(vi) The provider understands and is attentive to the vulnerability and need for protection of the child or young adult.

(vii) The provider is amenable to Department oversight and willing to partner with the Department.

(viii) The child or young adult has a sufficiently positive relationship with other children in the home or facility of the provider.

(ix) The provider is caring for children matching the preferences and experience of the provider.

(x) The interactions between the child or young adult and other children placed in the home or facility is sufficient to assure safety.

(xi) The present demands of the home or facility do not exceed the ability of the provider to provide safe and protective care.

(E) Document the date, time, location, and observations of the condition of the environment in the Department's electronic data system.

(b) If one or more of the conditions described in paragraph (a)(D) of this section do not exist in the home or facility, and the caseworker cannot confirm safety and well-being of the child or young adult, the caseworker must:

(A) Assess child safety immediately and determine if there is a safety threat as described in OAR 413-015-0420(1)(f)(A)(i) and (ii).

(B) If a safety threat is identified, immediately:

(i) Consult with the caseworker's supervisor to determine any immediate protective action required to assure the child's safety or any action required to assure the safety of the young adult; and

(ii) Contact a CPS screener and report the identified safety threat to the child.

(C) Document the behaviors, conditions, or circumstances observed in the home or facility and any immediate actions in the Department's electronic data system.

(c) If the caseworker does not identify a safety threat but the conditions described in paragraph (a)(D) of this section are not fully met, the caseworker must complete the following activities:

(A) Contact the child-caring agency's management and the Department's Child Caring Agency Licensing Program to report the conditions in the home or facility and request additional supportive resources for the provider.

(B) Document the contact required in paragraph (A) of this subsection in the Department's electronic data system.

(C) Have face-to-face contact with the provider within the next 30 days in the home or facility of the provider, and:

(i) Observe the actions and behaviors of the provider, the child or young adult, and other children in the home or facility, and conditions in the home or facility.

(ii) Confirm that current conditions in the home or facility provide safety and well-being for the child or young adult.

(iii) Contact the child-caring agency's management and the Department's Child Caring Agency Licensing Program to confirm the conditions in the home or facility provide safety and well-being for the child or young adult.

(D) After the contact required in paragraph (C) of this subsection, when the caseworker cannot confirm that current conditions in the home or facility provide safety and well-being for the child or young adult, the caseworker must consult with the supervisor to determine:

(i) Whether an immediate protective action is required to assure the child's safety or any other action is required to assure the safety of the young adult; or

(ii) Whether consultation with the child-caring agency's management is necessary to determine what additional support is necessary to assure the safety of the child or young adult in the home or facility of the provider.

(E) After the actions required in paragraph (D) of this subsection, the caseworker or caseworker's supervisor must contact the Department's Child Caring Agency Licensing Program. The caseworker must report the

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date, time, location, observations of the conditions of the home or facility, and any actions taken by the caseworker during or after the visit.

(F) Document the date, time, location, observations of the condition of the home or facility, and any actions in the Department's electronic data system.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 10-2007(Temp), f. 5-14-07, cert. ef. 5-15-07 thru 11-9-07; CWP 18-2007, f. & cert. ef. 11-1-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-080-0063

### Additional Documentation Required when a Child or Young Adult is Placed in Oregon through ICPC

(1) When the child or young adult is placed in Oregon from another state, the caseworker must:

(a) Meet the requirement of monitoring the safety of the child or young adult's conditions and circumstances in substitute care, and

(b) Document and submit a report to Oregon's central office ICPC staff whenever conditions have not been met, and must include:

(A) Observations of the child or young adult and the relative caregiver, foster parent, or provider during the most recent contact; and

(B) Any actions taken by the caseworker to support the placement or ensure the safety and well-being of the child or young adult.

(2) The caseworker must submit a written report to Oregon's central office ICPC staff every 90 days. The report must include:

(a) Dates of all contacts in the previous 90-day period;

(b) Documentation of caseworker's observations of the child or young adult and relative caregiver, foster parent, or provider; and

(c) An analysis of the safety and well-being of the child in substitute care.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 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 placed with a substitute caregiver, including payment to:

(1) A foster parent or relative caregiver for:

(a) The foster care base rate;

(b) Effective September 1, 2009, the cost of enhanced supervision;

(c) The cost of housing the child of a dependent minor, unless the dependent minor parent receives benefits under a program administered by the Department of Human Services under Chapter 461 of the Oregon Administrative Rules; or

(d) The cost of family group home care.

(2) A provider of residential treatment services.

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. er. 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

## 413-090-0005

### Definitions

The following definitions apply to OAR 413-090-0000 to 413-090-0050:

(1) "Adoption assistance" means financial or medical assistance to adoptive families to assist them with costs associated with their adoptive child's needs. Financial benefits are funded by the Department's Adoption Assistance budget. Assistance can be in the form of cash, medical coverage, special payments, a combination of these, or "Agreement Only" as defined in OAR 413-130-0010(4).

(2) "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.

(3) "CAF" means the Children, Adults and Families Division of the Department of Human Services.

(4) "Child" means a person under 18 years of age.

(5) "CANS screening" means Child and Adolescent Needs and Strengths screening, the process of integrating information on a child or young adult's strengths and needs and is designed to support case planning, service planning, and the supervision needs of the child or young adult.

(6) "Department" means the Department of Human Services, Child Welfare.

(7) "Dependent minor parent" means a child or young adult in the legal custody of the Department who is the parent of a child.

(8) "Director" means the person serving as the Director of the Department of Human Services.

(9) "District" means a geographic area of one or more counties served by the Department and managed by a District Manager.

(10) "Eligible child" means a child or young adult in the legal or physical custody of the Department who is receiving a substitute care service.

(11) "Enhanced supervision" means the additional support, direction, regulation, and guidance provided to a child or young adult.

(12) "Foster family group home" means a certified foster parent who has contracted with the Department to provide substitute care services.

(13) "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.

(14) "Precipitating event" means an observed ongoing change in a child or young adult's behavior or condition.

(15) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(16) "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.

(17) "Sub-Acute Care" means psychiatric and mental health treatment under the direction of a psychiatrist provided as an alternative to hospitalization in a residential psychiatric treatment setting.

(18) "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. er. 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

## 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 and placed 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 Department provides payment of the base rate:

(A) Based upon the age of the child or young adult; and

(B) Subject to funds allocated through a budget approved by the Oregon legislature.

(c) The base rate includes the following categories:

(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 the child or young adult is attended to appropriate to his or her age and developmental level and to ensure safety;

(E) Personal incidentals — including personal care items, entertainment, reading materials, and miscellaneous items; and

(F) The cost of providing transportation — including local travel associated with expenditure for gas and oil, vehicle maintenance and repair, and 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.

(3) Enhanced Shelter Care. Effective September 1, 2009, 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 an enhanced supervision level of care has been determined.

(4) Enhanced supervision. Payment to a foster parent or relative caregiver for enhanced supervision responsibilities on behalf of an eligible child or young adult is based on the CANS screening to meet one of three levels of care at an amount determined by the Department.



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(5) The Department reimburses a foster family group home on behalf of an eligible child or young adult as provided in the signed contract.

(6) Effective September 1, 2009, the Department reimburses a foster parent or relative caregiver for room and board for the child of a dependent minor parent when the dependent minor parent does not receive other public assistance for the dependent minor parent's child or have other means of financial support.

(7) Residential Treatment. Payment by the Department to a residential treatment care provider on behalf of an eligible child or young adult is made as provided in the signed contract.

(8) Payments prohibited.

(a) Payment cannot be made for two simultaneous 24 hour substitute care services.

(b) Neither payment nor utilization credit may be given for simultaneous contracted treatment services, such as day treatment and residential treatment.

(c) The Department will not authorize payment for the care of a child or young adult in a home or facility supported by public funds and maintained only as a secure facility under the jurisdiction of a juvenile court.

(d) Any exception to this rule must be approved in writing by the Director, or if for a Target Planning Child, by the CAF Target Planning and Consultation Committee. Exceptions will be considered only when federal funds will not be claimed.

(9) A payment to a foster parent or relative caregiver certified by the Department is inalienable by any assignment or transfer and exempt from execution, levy, attachment, garnishment, and other legal process 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, 418.625 & 418.470

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 2-1999, f. & cert. ef. 3-5-99; SOSCF 20-1999, f. 9-15-99, cert. ef. 9-20-99; CWP 9-2003, f. & cert. ef. 1-7-03; CWP 20-2003(Temp), f. 1-31-03 thru 7-30-03; CWP 27-2003, f. & cert. ef. 7-31-03; CWP 34-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 7-2004, f. & cert. ef. 4-1-04; CWP 20-2006(Temp), f. & cert. ef. 10-13-06 thru 4-10-07; CWP 5-2007, f. 3-30-07, cert. ef. 4-1-07; CWP 28-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; 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

## 413-090-0021

### Periodic Review of Eligibility for Enhanced Supervision

The Department conducts a new CANS screening to determine a child or young adult's continued eligibility for enhanced supervision:

(1) Twelve months from the date of the original screening and each twelve month period thereafter; and

(2) When a precipitating event occurs and a new screening is approved by the Department.

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

## 413-090-0030

### Payment for Temporary Absences

(1) Family Foster Care:

(a) During a child or young adult's temporary absence, continued payment may be made to the foster parent or relative caregiver for no longer than 14 days, when:

(A) The plan is for the child or young adult to return to the care of the same foster parent, relative caregiver, or provider; and

(B) No other foster parent or relative caregiver is receiving a payment for the child or young adult during the period of the absence.

(b) The caseworker may authorize 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 is on runaway.

(c) The caseworker must obtain authorization from the District Manager or designee for payment for more than seven days but less than the maximum of fourteen days for a child or young adult's temporary absence from the home of the foster parent or relative caregiver.

(d) Hospitalization. The foster parent or relative caregiver continues to receive payment when 24-hour medical care is required 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.)

(2) Residential Treatment.

(a) A payment or utilization credit may be made to a contracted provider for no longer than 14 days when the child or young adult is on a home visit or planned visit to another provider in the following circumstances:

(A) The visit is part of planned activities identified in the BRS service plan of the child or young adult. Caseworkers will be aware of the inclusion of planned visits in the service plan due to their involvement in the

service planning process as outlined in Child Welfare Policy I-E.4.3, "Residential Services", OAR 413-080-0200 to 413-080-0270.

(B) The assigned caseworker is informed prior to the visit taking place.

(b) Although a child or young adult may be allowed more than four consecutive visit days or eight total days per month, Department workers may not authorize payment or utilization credit for more than four consecutive days or eight total visit days per month under any circumstances.

(c) Department workers may not authorize payment or utilization credit for days a child or young adult has runaway before physically entering a provider's facility or therapeutic foster home or for days after the child or young adult has physically left a provider's facility or a therapeutic foster home as discharged.

(d) Hospitalization. The provider will continue to receive payment when 24-hour medical care is required for a maximum of 14 days when the provider 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 base rate payment.)

(e) Planned Visits to Another Provider. It is the responsibility of the purchase-of-care provider to reimburse the resource that the child or young adult visits at a reasonable rate to be agreed upon by both parties. The Department does not authorize payments to two providers for a child or young adult at the same time.

[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

## 413-090-0040

### Payments During Adoptive Supervision

(1) The Department does not issue a family foster care base rate payment after a child is free for adoption and placed in a home designated by the Department's Adoption Program manager as the child's adoptive placement. 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.

(2) The Department provides a payment for a family foster care base rate and any enhanced supervision payment to foster parents who plan to adopt the child after a child's status changes from foster care placement to adoptive placement or from a "legal risk adoptive placement" to an "adoptive placement" for up to 120 days, as a reasonable period of time is allowed to determine adoption assistance eligibility after an application for adoption assistance has been received from the adoptive family.

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

## 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 their 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 due to circumstances beyond the control of the Department and the foster parent or relative caregiver.

(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

## 413-090-0100

### Purpose

The purpose of these rules, OAR 413-090-0100 to 413-090-0210, is to describe the requirements for eligibility and receipt of personal care services when a child or young adult is placed with a foster parent or relative caregiver by the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

# ADMINISTRATIVE RULES

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; 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

## 413-090-0110

### Definitions

The following definitions apply to OAR 413-090-0100 to 413-090-0210:

(1) "Child" means a person under 18 years of age.

(2) "Contract Registered Nurse" means a Registered Nurse (RN) who is a licensed registered nurse approved under a contract with the Department of Human Services to provide nursing assessment and consultation, and may provide teaching, delegation, or on-going nursing services as identified to certain children or young adults served by the Department.

(3) "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" (see OAR 851-047-0010) to provide in selected situations. In accordance with OAR 851-047-0000, 851-047-0010, and 851-047-0030, the delegation of a nursing task is a written authorization that includes an RN assessment of the specific eligible individual, evaluation of the ability of the "unlicensed person" to perform the specific task, teaching the task, and supervision and re-evaluation of the individual and the "unlicensed person" at regular intervals.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "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.

(6) "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.

(7) "Personal care services" means 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 to live safely in the most independent least restrictive living situation.

(8) "Personal care services plan" means the written plan of care for the child or young adult that identifies:

(a) The determination that the individual is a qualified provider;

(b) The personal care services that will be provided; and

(c) The date when the provision of services will begin.

(9) "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; and

(e) Is not the parent or step-parent of the child or young adult eligible for personal care services.

(10) "Registered nurse (RN)" means an individual licensed and registered to practice nursing.

(11) "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.

(12) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

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

## 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;

(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 nursing task delegated under OAR 413-090-0110(3).

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

## 413-090-0130

### Personal Care Services Eligibility

To receive personal care services, a child or young adult must:

(1) Be eligible to receive medical services funded through either the state general fund or Title XIX;

(2) Have no available resources from the natural support system of friends, neighbors, or other community resources including eligibility for Supplemental Security Income (SSI); and

(3) Have a documented, diagnosed physical or mental impairment and needs which can be met through provision of personal care services.

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

## 413-090-0135

### Provider Eligibility

To provide personal care services, 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 include delegated nursing tasks:

(a) Follow OAR 851-047-0030(2) and (3); and

(b) Leave procedural guidance, 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

## 413-090-0140

### Periodic Review of Personal Care Services Eligibility

The review of a child or young adult's eligibility for personal care services must occur annually from initial date of the personal care services plan, unless an earlier date for reassessment has been approved by the Personal Care RN Manager.

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

## 413-090-0150

### Payment Determination

(1) Payment for personal care services (see OAR 413-090-0120) is based on the personal care service assessment and the approved personal care services plan level at an amount determined by the Department.

(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.

# ADMINISTRATIVE RULES

(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

## 413-090-0160

### Costs Reimbursable by the Department

(1) The Department will reimburse a substitute caregiver for extraordinary services and supplies that are required on a daily, weekly, monthly or other continuing basis. The costs are separated into three areas: Costs which are reimbursable to the state under Title IV-E federal guidelines (CF 172A, Part A); costs paid with state general funds and TANF (CF 172A, Part B); and Title XIX federal guidelines (CF 172A, Part C).

(2) Supervision costs above standard maintenance costs may be paid by a combination of Title IV-E and TANF or Title XIX allowable costs.

(3) Supervision costs above standard maintenance costs include one or more of the following:

(a) Supervision Eligible for Title IV-E Funding (CF 172NPC, Part A). Supervision eligible for Title IV-E funding is only for behaviors or direct care needs that are beyond the normal requirements for a child or young adult of a similar age and the child or young adult does not have a documented diagnosis.

(b) Supervision Eligible for Title XIX (CF 172A, Part C). Supervision eligible for Title XIX is for behaviors or direct care needs that are beyond the normal requirements for a child or young adult of a similar age and the child has a documented diagnosis and an RN assessment and RN Care Plan has been completed.

(c) Relief Care is only for a child or young adult whose documented behavioral supervision needs exceed the normal requirements for a child or young adult of a similar age and additional supervision is necessary to maintain the child or young adult in the home.

(4) The narrative for any supervision costs must:

(a) Document the behaviors and direct care and supervision needs of the child or young adult that are beyond the normal requirements for a child or young adult of a similar age.

(b) Describe the interventions and services that the substitute caregiver must provide for each special need, including expected outcome which, if not achieved, would require placing the child or young adult in a higher level of care program.

(c) Describe the substitute caregiver's skill and experience which enable the substitute caregiver to provide appropriate care for the special needs and behaviors of the child or young adult.

(5) Reimbursement rate structure effective April 1, 2006. A rate structure was established to provide rate parity for similar type activities and equitable rates for similar types of special needs of children or young adults. An exception to policy may be granted through documentation and approval (OAR 413-090-0200).

(a) Hourly Rate for Supervision — \$4.60

(b) Transportation Cost - Per Mile — \$ .44

(c) Laundry — Per Additional Load — \$1.00

(d) Relief Care — Hourly Rate — \$4.60

(e) Program Educational Expenses Direct Cost Incurred — (Prior Approved)

(f) Diet Cost — Direct Cost Incurred — (Prior Approved)

[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 20-2003(Temp), f. 1-31-03 thru 7-30-03; CWP 28-2003, f. & cert. ef. 7-31-03; CWP 35-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 6-2004, 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; Suspended by CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-090-0170

### Costs Not Compensated by the Department

Direct costs not compensated are:

(1) Kindergarten.

(2) Day care.

(3) Clothing.

(4) Transportation to and from school unless the substitute caregiver provides transportation for a child who attends the school that the child attended prior to removal from the home of the parent or legal guardian.

(5) Special needs which may be paid for through Child Welfare Policy I-E.5.2, "Payments for Special and/or Extraordinary Needs", OAR 413-090-0300 to 413-090-0380.

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; Suspended by CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-090-0180

### Reimbursement Requirements

Requirements for Special Rate payment include:

(1) Billing. Billing for the service must be submitted on the Department's approved reimbursement form.

(2) Periods of Absence. The Department will not pay a substitute caregiver for services not provided. (See Child Welfare Policy I-E.5.1, OAR 413-090-0030.)

(3) Employer-Employee Relationship. There is not an employer-employee relationship between the Department and the substitute caregiver or the Department and the substitute caregiver's alternate caregiver authorized to receive reimbursement through the Special Rate Program.

(4) Special Rate or Personal Care Services Foster Care Authorization Form. A substitute caregiver may only be paid an amount above the standard foster care maintenance payment for services authorized on the Special Rate or Personal Care Services Foster Care Authorization form, CF 172A.

(5) Provider Contract. When a provider is under contract with a licensed child caring agency to serve a child or young adult in the provider's home, the Department will not pay for services covered under another contract or maintenance payment.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; 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; Suspended by CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-090-0190

### Payment Authorization

(1) Payment of a special rate or for personal care may be made only after:

(a) The Special Rate Review Committee has:

(A) Reviewed the methods used to arrive at the special rate or personal care amount;

(B) Considered the amounts paid for services provided that may apply to more than one child or young adult; such as supervision, relief care, in-home assistance, laundry, transportation; and

(C) Considered the equitability of rates for similar types of children or young adults.

(b) The agreement (CF 172A) has been authorized by the signatures of the caseworker, substitute caregiver, and supervisor. Exceptions additionally have been authorized by the Special Rate Committee chairperson and District Manager or designee.

(c) The required payment information has been entered on the Department's integrated information system.

(2) A new agreement (CF 172A or CF 172NPC) is required if there is a change in the substitute caregiver or a revision of the special rate produces a different rate than the previous special rate.

(3) Children or young adults, who are placed with substitute caregivers outside the county with custody and require a special rate or personal care, must have an agreement completed by the Child Welfare office in the county with custody. The Child Welfare office in the county where the child or young adult is placed, if asked, is responsible to participate in assessing the child or young adult's needs and in completing the agreement. Agreement authorization must be completed by the Child Welfare office in the county with custody.

(4) The special rate is effective from the date of the local Child Welfare office authorization. For special rate (CF 172NPC-Non-Personal Care) services provided prior to the date of the authorizing signature, the District Manager or designee may make the effective date of the agreement retroactive up to 90 days prior to the signature date.

(5) For Personal Care Rates, section (4) of this rule does not apply. The Personal Care Rate is effective from the date that the RN performs the assessment. For Personal Care services provided prior to the date of the RN's assessment, the District Manager or designee may make the effective date of the agreement retroactive only to the first day of the month in which the RN did the assessment.

(6) End Date: The maximum period of time for a special rate or Personal Care Authorization is 12 months. A special rate or personal care may be authorized for a lesser period as determined by the District Manager or designee. If a special rate or Personal Care Authorization expires and is not renewed before the next regular scheduled payment date, the foster care payment must revert to the basic maintenance rate.

[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 17-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 6-2002, f. 3-28-02, cert. ef. 4-1-02;



# ADMINISTRATIVE RULES

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; Suspended by CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-090-0200

### Exceptions and Variances

(1) Exceptions and variances consist of:

(a) Costs that are not in these rules (OAR 413-090-0100 to 413-090-0210); or

(b) Costs that exceed \$500 per month.

(2) Requests for exceptions and variances must be made in writing by the caseworker to the District Manager or designee. Requests must state the reason or reasons that the specific requirements of these rules cannot be met or met only in modified form, and state the requested additional rates or amount of time.

(3) Requests for exceptions and variances must be approved by the District Manager or designee.

(4) The granting of an exception shall not constitute a precedent for any other substitute caregiver, 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; 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; Suspended by CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-090-0210

### Termination of Personal Care Services and Payments

(1) Personal care services provided to a child or young adult are terminated when the child or young adult no longer meets the eligibility requirements under OAR 413-090-0130.

(2) Personal care services payments are made to the qualified provider for the specified personal care services from the effective date of the personal care services plan until the plan is terminated or the date the child or young adult is no longer in the care of the foster parent or relative caregiver, whichever is earlier.

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

## 413-130-0000

### Purpose

The purpose of these rules, OAR 413-130-0000 to 413-130-0130, is to describe the Department's responsibility to determine eligibility for adoption assistance for eligible Oregon children. Adoption assistance for children placed into Oregon from another state is the responsibility of the sending state.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0010

### Definitions

The following definitions apply to OAR 413-130-0000 to 413-130-0130:

(1) "Adoption assistance" means financial assistance and medical coverage granted an adoptive family to offset the short- and long-term costs of adopting an eligible child and may include cash payments, medical coverage, an agreement only, or special payments.

(2) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child.

(3) "Adoption assistance payments" mean payments paid monthly by the Department to the family on behalf of the child.

(4) "Adoption Assistance Review Committee" means a committee composed of field and central office staff who have expertise in the area of adoption.

(5) "Agreement only" means a contract between the Department and the family signed prior to the finalization of the adoption, to provide adoption assistance if a need for a monthly payment or medical coverage arises prior to the child's 18th birthday.

(6) "CANS screening" means the Child and Adolescent Strength and Needs screening, a process of integrating information on a child or young adult's strengths and needs, designed to support case planning, service planning, and supervision needs of a child or young adult.

(7) "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 they reside, to a child or young adult in the care or custody of the Department.

(8) "Department" means the Department of Human Services, Child Welfare.

(9) "Legally free" means that, with respect to a child, the legal rights of all parents with legal standing have been judicially terminated, voluntarily relinquished, or otherwise dispensed with so that the child may be adopted.

(10) "Licensed adoption agency" means an agency currently licensed in Oregon under the provisions of ORS 418.205 to 418.325 to provide adoption services.

(11) "Medical coverage" means receipt of a medical card covering Medicaid services in accordance with the Department's administrative rules.

(12) "Nonrecurring expenses" mean a one-time payment up to \$1,500, which the Department may pay to an adoptive family to assist with the expenses incurred in legally finalizing the adoption of a special needs child.

(13) "Payment" means cash assistance to adoptive families to meet the child's needs.

(14) "Personal care services" means 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 to live safely in the most independent least restrictive living situation.

(15) "Private child caring agency" means any private organization providing day treatment, adoption placement, residential care, foster care or other similar services for children, but does not include foster homes certified by the Department and homes established and maintained by fraternal organizations for the exclusive use of membership.

(16) "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.

(17) "Qualified alien" means, but is not limited to, permanent residents, asylees, and refugees under 8 USC 1641(b). A child who is an illegal alien or undocumented immigrant is not eligible for adoption assistance because he or she is not a qualified alien.

(18) "Qualified vendor attorney" means an attorney who has a price agreement with the Department to process the adoption of a child who is eligible for adoption assistance for the currently established vendor fee plus costs for filing and birth certificates.

(19) "Special payments" means payment for unanticipated, short-term costs which are directly related to the child's special needs or are essential to the welfare of the child, and are not covered by the adoptive family's insurance or by Medicaid as negotiated between the Department and the family.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 23-2005(Temp), f. 12-30-05, cert. ef. 1-1-06; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0020

### Eligibility for Adoption Assistance

A child in the custody of the Department, a Tribe with a Title IV-E Agreement, or a licensed adoption agency in Oregon is eligible for adoption assistance when the requirements of all of the following sections are met:

(1) The state has determined that the child cannot or should not be returned to the home of his or her parents. This decision is based on one of the following:

(a) An order from a court of competent jurisdiction terminating parental rights;

(b) The existence of a petition for termination of parental rights;

(c) For children under the jurisdiction of the court, a signed relinquishment;

(d) For children not under the jurisdiction of the court, a signed relinquishment and a subsequent court finding signed within six months of the date the child was last living with the parent that it would be contrary to the welfare of the child to return home at that time; or

(e) In the case of an orphan, verification of the death of the parent or parents.

(2) The child is determined to have special needs, meaning the child has at least one of the following factors or conditions which make adoptive placement difficult to achieve:

(a) A documented medical, physical, mental, emotional condition or other clinically diagnosed disability, or a documented history of abuse or neglect or other identified predisposing factor that places the child at risk for future problems that need treatment.

(b) Is a member of a sibling group which will be placed together and is difficult to place because there are three or more children, or if in a sibling group of two, at least one of the children is six years of age or older.

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(c) Is a member of an ethnic, racial, or cultural minority (such as African American, Hispanic, Asian, Indian, or Pacific Islander).

(d) Is eight years of age or older.

(3) A reasonable but unsuccessful effort to place the child with appropriate adoptive parents for adoption without assistance has been made, unless such effort is not in the best interests of the child.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0030

### Eligibility for Nonrecurring Expenses

(1) Any child who meets the eligibility criteria for adoption assistance under OAR 413-130-0020 is eligible for reimbursement of the nonrecurring expenses.

(2) A child being adopted by an Oregon resident who is not the responsibility of the Department or an Oregon licensed adoption agency also is eligible for reimbursement of nonrecurring expenses if all other eligibility requirements under OAR 413-130-0020 are met.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0040

### Eligibility for Adoption Assistance Payments

(1) The Department will make efforts to establish Title IV-E eligibility for an adoption assistance payment for any child eligible for adoption assistance under OAR 413-130-0020. Licensed adoption agencies must make all requested efforts to assist the Department in establishing Title IV-E eligibility.

(2) Additionally, a child must meet the requirements of one of the following subsections to be eligible for an adoption assistance payment:

(a) The child's Title IV-E eligibility was established at the time of removal.

(b) The child meets all eligibility requirements for Supplemental Security Income (SSI) benefits.

(c) The child was determined eligible for an adoption assistance payment with respect to a prior adoption and is now available for adoption because of the following:

(A) The prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated or relinquished; or

(B) The child's adoptive parents have died.

(3) In addition to the adoption assistance eligibility criteria under OAR 413-130-0020 and the requirements of section (2) of this rule, a child must meet the following requirements, as applicable:

(a) For a private agency adoption, the child must have been voluntarily placed with the private agency in out-of-home care and Title IV-E eligible in the month the voluntary agreement was signed.

(b) Judicial Determination Criteria. A "contrary to the welfare" or "best interest" ruling is not required for children receiving SSI, or for children whose eligibility is based on their minor parents' receipt of foster care payment while placed with their minor parents in foster care. For all other children, a judicial determination that it is "contrary to the welfare of the child to remain in the home" or is in the "best interest of the child to be removed from the home" must be contained in one of the following:

(A) The first court order of removal for a child removed by court order.

(B) A court order signed within six months of the month the child last lived with a specified relative if the child's removal was via parental relinquishment only. Documentation of the date of the signing of the court order is necessary.

(C) A court order with a finding made within 180 days of the date that the child voluntarily entered care, and signed within six months of the date the child was last living with the parent.

(c) The child must be a United States citizen or a "qualified alien" as described at OAR 413-100-0210(2).

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 11-1999(Temp), f. & cert. ef. 6-3-99 thru 11-30-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0045

### Child's Immigrant Status

(1) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, as amended, limited federal public benefits to qualified aliens. Adoption assistance under Title IV-E

of the Act is considered a federal public benefit for the purposes of the PRWORA and, therefore, limited to U.S. citizens and qualified aliens.

(2) In addition, if a substitute caregiver or adoptive parent is not a qualified alien, a child who is otherwise eligible under section 473 of PRWORA must meet the five-year residency requirement to receive Title IV-E adoption assistance as Section 403 of PRWORA requires a qualified alien entering the United States on or after the date of enactment of PRWORA (August 22, 1996), unless excepted, to live in the United States for five years before becoming eligible for certain federal public benefits. In accordance with section 403(c)(2)(F) of PRWORA, however, a federal payment for adoption assistance is excluded from the five-year residency requirement if the child and the foster or adoptive parent with whom the child is placed are qualified aliens under OAR 413-130-0050.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0050

### Availability of New Adoption Assistance and Adoption Assistance Payment Adjustments

(1) The availability of state funds governs the adoption assistance payments which may be obligated. If all available adoption assistance funds are obligated, the Department continues to accept and process applications and requests for adjustments in adoption assistance payments and establishes a waiting list. Adoption assistance agreements will be granted in the order of the date of approval as funds become available.

(2) Substitute care payments end when adoption assistance payments begin. Medical coverage continues until the adoption assistance payment is negotiated, agreements are signed, and adoption assistance benefits begin.

(3) When a child is legally free for adoption, the Department field staff completes the adoption assistance agreement with the adoptive family and submits the agreement to the Adoption Program no later than 60 days from the date the adoptive family is selected. Within 60 days of the receipt of the completed adoption assistance agreement, Adoption Program staff completes the processing of the application. The adoption assistance application may be initiated earlier if the adoptive family has been selected and the child is not yet legally free.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0060

### Agreement Only

(1) An agreement only between the Department and the adoptive family is signed when there is no current need for an adoption assistance payment, the adoptive family requests such an agreement, and the child is eligible for adoption assistance under OAR 413-130-0020.

(2) The agreement only becomes effective on the date the completed adoption assistance agreement is approved and signed by the Department, and automatically terminates upon the child's 18th birthday.

(3) The adoptive family must make a written request to the Department to initiate any adoption assistance benefits. The adoptive family must provide documentation to the Department describing the child's need for service at the time an adoption assistance benefit is requested.

(4) The adoptive family must notify the Department in writing of a decision not to accept an agreement only.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0070

### Determination of the Adoption Assistance Payment

(1) The Department considers relevant factors which include but are not limited to, the needs of the child, the services required to meet those needs, cost of the services, the family's ability to provide the services, and the community resources available to establish the amount of an adoption assistance payment.

(2) If a child under the age of eight years meets special needs status under OAR 413-130-0020(2) and has no documented medical, physical, mental, or emotional condition, or other clinically diagnosed disability, he or she will receive an adoption assistance payment that is no greater than the foster care base rate the child would receive if he or she continued in substitute care, unless the adoptive family enters into an agreement only.

(3) The adoption assistance payment is negotiated prior to the completion of the adoption assistance agreement. The Department considers the following factors:

(a) The baseline for negotiation is the foster care base rate the child would receive if he or she continued in substitute care plus any enhanced supervision payment as indicated by a CANS screening.

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(b) Effective September 1, 2009:

(A) An adoption assistance payment uses the child's most recent CANS screening conducted to determine the child's eligibility for enhanced supervision; and

(B) When the eligible adoptive child has a diagnosed medical need, other medically related documentation, including the payment under a personal care services plan, may be considered in determining the adoption assistance payment.

(4) The adoption assistance payments take effect upon completion of the adoption assistance agreement for a child who is legally free for adoption and in a home that the Department or the private agency has designated as the adoptive placement.

(5) Medicaid coverage, private insurance, public education, and all community resources must be considered as resources for the child and the adoptive family when determining the amount of an adoption assistance payment. A child's income from sources such as Social Security and Veterans benefits are considered in determining the adoption assistance payment, but will not necessarily be deducted dollar for dollar from the amount of the adoption assistance payment.

(6) When adoptive parents divorce, the Department may request updated information, including financial information, to reflect the change in family circumstances. Upon receiving a request from an adoptive parent for change of payee due to divorce, the Department notifies the other parent of the request. If the change of payee is challenged, a legal document describing custody is required.

(7) Adoptive parents who move out-of-state continue to be eligible for adoption assistance benefits. Medical coverage for the child may change under OAR 413-130-0100.

(8) An adoption assistance payment begins when all of the following criteria are met:

(a) The child is legally free for adoption;

(b) An adoption assistance agreement has been signed by the adoptive family and by the Department representative;

(c) The Department or a private agency has designated the family as the adoptive family.

(9) An adoption assistance payment may be retroactive to the date of the signed adoption assistance application if the child was legally free for adoption and in the designated placement on that date, and no foster care base rate, enhanced supervision, or personal care services payment was made for the same period.

(10) An adoption assistance payment is issued at the end of each month of eligibility.

(11) Adoption assistance payments made to an adoptive family by the Department are inalienable by any assignment or transfer and exempt from execution, levy, attachment, garnishment, and other legal process under the laws of this state.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 23-2008, f. & cert. ef. 10-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0075

### Renegotiation of Amount of Adoption Assistance Payment

(1) An adoptive family may request an increase of an adoption assistance payment through the Department's adoption assistance coordinator based upon:

(a) A significant change in the child's needs; or

(b) A change in the adoptive family's circumstances.

(2) Renegotiation of the adoption assistance payment is based on consideration of relevant factors which include but are not limited to the current needs of the child, the services required to meet those needs, cost of such services, the adoptive family's ability to pay for the services, and the community resources available.

(3) Effective September 1, 2009, renegotiation includes the consideration of the results of a CANS screening which is conducted prior to the renegotiation if the adoptive family demonstrates that the child's physical, mental health, behavioral, or developmental needs have worsened or required escalated care and treatment. A renegotiated adoption assistance payment is determined under OAR 413-130-0070(4).

(4) A renegotiated adoption assistance payment may not exceed the total combined foster care base rate, enhanced supervision, and personal care service payments for a child in substitute care. When the eligible adoptive child has a diagnosed medical need, other medically related documentation, including the personal care services plan, may be considered in determining the adoption assistance payment.

(5) A renegotiated adoption assistance payment may in no case be retroactive more than 12 months.

(6) When the adoption assistance payment is renegotiated, a new adoption assistance agreement with the revised adoption assistance pay-

ment must be signed by the adoptive family and the Department's adoption assistance coordinator prior to a change in the payment.

(7) If, after renegotiation, the adoptive family does not agree with the renegotiated adoption assistance payment amount, the adoptive family may appeal the decision as provided in OAR 413-130-0120.

Stat. Auth.: ORS 418.005, 418.340

Stats Implemented: ORS 418.330 - 418.340

Hist.: SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0080

### Payment for Nonrecurring Expenses

(1) The Department may make a one-time payment of up to \$1,500 to an adoptive family for nonrecurring expenses to assist with the costs incurred in legally finalizing the adoption of a special needs child, such as adoption fees, court costs, attorney fees, mediation costs, and other expenses which are directly related to the legal adoption of a special needs child. Other expenses are defined as the costs of adoption incurred by, or on behalf of, the adoptive family and for which the adoptive family carry the burden of payment, such as the adoption study, health and psychological examinations, supervision of the placement prior to adoption, transportation, and the reasonable costs of lodging and food for the child or the adoptive family during necessary travel to complete the adoption process. This payment may not duplicate expenses covered by Interstate Compact for Placement of Children, expenses covered by a Department contract with a private agency, or expenses already covered by some other resource available to the adoptive family.

(2) Documentation of the nonrecurring expenses is required and must be submitted prior to execution of the adoption assistance agreement. The agreement, indicating the nature and amount of the nonrecurring expenses, must be signed prior to the final decree of adoption.

(3) The legal fees, when reimbursement is requested, are included in the nonrecurring expenses. It is the responsibility of the adoptive family to choose a privately retained attorney or enter into a legal fees agreement with a qualified vendor attorney. The Department makes payment directly to the qualified vendor attorney after the adoption is legalized. For other attorneys, the adoptive family is responsible for payment, and the Department reimburses the adoptive family for reasonable charges. Reasonable charges are the current vendor rate, and only in extraordinary circumstances may a higher amount be considered.

(4) Nonrecurring payments will be made when the Department receives the final decree of adoption.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 23-2005(Temp), f. 12-30-05, cert. ef. 1-1-06; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0090

### Special Payments

Special payments for unanticipated, short-term costs which are directly related to the child's special needs or are essential to the welfare of the child, and are not covered by the adoptive family's insurance or by Medicaid may be approved in exceptional cases as negotiated between the Department and the adoptive family. The Department may authorize special payments for a limited duration, subject to the Department's discretion and availability of resources. The family must make documentation available to the Department when requested making a request for a special payment. A special payment is made to the adoptive family who then are responsible to reimburse the provider for services.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0100

### Medical Assistance

(1) A child is eligible for Medicaid coverage when:

(a) The child was receiving Title IV E foster care payments, Temporary Assistance to Needy Families (TANF), or SSI benefits at the time the adoptive placement was approved;

(b) The child and adoptive parents meet the income and resource standards of the Temporary Assistance for Needy Families program administered by the Office of Self Sufficiency Programs;

(c) Prior to the execution of the adoption assistance agreement, the child was not Title IV E eligible, but was receiving or was eligible to receive Medicaid under the Oregon Health Plan, and the child has a documented special need for medical or rehabilitative services, or services that preclude adoption without receipt of Medicaid benefits; or

(d) Prior to the execution of the adoption assistance agreement, the child was not eligible for Medicaid coverage because the child had income



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available above Department standards for Medicaid; however, the child had a condition which required a special foster care rate plus the standard foster care rate which was greater than the amount of the child's income.

(2) An adoptive child for whom Medicaid eligibility for has been established is issued a medical identification card for the child through the Division of Medical Assistance Programs. Payment for medical services will be in accordance with Department of Human Services administrative rules.

(3) Medical coverage for Title IV E eligible children is provided by the medical assistance program in the state where the child resides:

(a) If the child is placed outside the adoptive home and is eligible for federal funding through Title IV E or SSI, the state in which the child resides will provide medical coverage in accordance with the rules of that state even if the adoptive family resides in a separate state.

(b) If the adoptive family moves to another state or the child is placed for adoption in a state other than Oregon, the Department will provide the documentation necessary to assist the adoptive family to obtain Medicaid coverage.

(c) The Department will provide written verification of the child's Title IV E eligibility to the appropriate coordinator of the adoption assistance program in the state where the adoptive family is residing in order to facilitate Medicaid medical coverage.

(4) Medical coverage for children who are not eligible for Title IV E will be provided by the Division of Medical Assistance Programs under the rules of the Oregon Health Plan. If the child is placed in another state, or the adoptive family moves from Oregon to another state, the child may continue to receive medical coverage from Oregon, except in those cases where the other state will provide the Medicaid coverage (see section (3) of this rule).

(5) An adoption assistance agreement must be signed by the adoptive family and the Department which documents that the child is eligible for adoption assistance, and that medical coverage has been requested.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0110

### Administration of Approved Adoption Assistance

(1) It is the responsibility of Department and licensed private agency staff to:

(a) Notify or advise the prospective adoptive family of the availability of adoption assistance for an eligible child;

(b) Provide the prospective adoptive family with a copy of OAR 413-130-0000 to 413-130-0130; and

(c) Assist the prospective adoptive family in making an application for adoption assistance, if appropriate.

(2) A prospective adoptive family must submit a written application for adoption assistance to the Adoption Program through their respective Department branch office worker or private adoption agency worker.

(3) A prospective adoptive family applying for adoption assistance must be approved by the respective adoption agency as being suitable adoptive parents who meet all state standards including certification standards.

(a) A licensed adoption agency recommending adoption assistance for a prospective adoptive family is responsible to verify and document on the adoption assistance application that efforts were made to place the child without adoption assistance.

(b) The Department branch offices submitting an adoption assistance application must assure that the adoptive placement status has been approved by the Adoption Program.

(4) Prior to the finalization of adoptions and issuance of any benefits, written adoption assistance agreements must be completed that meet all of the following requirements. The agreement must:

(a) Be signed by each adoptive parent and the adoption assistance coordinator. An adoption assistance agreement establishes the child's monthly eligibility for benefits, as well as for nonrecurring expenses.

(b) State the duration of the agreement.

(c) State the amount of adoption assistance benefits, if any, and specify:

(A) The amount of the adoption assistance monthly payment, if any, and

(B) The nature and amount of any other payments, services, and assistance to be provided, including nonrecurring adoption expenses.

(d) State that the agreement remains in effect regardless of the state of residence of the adoptive family and the child.

(e) State whether the child will receive medical benefits, and specify the child's eligibility for Title XIX and Title XX.

(f) State that the adoptive parents have the right to a contested case hearing under Child Welfare Policies I-A.5.2, "Contested Cases" OAR 413-

010-0500 to 413-010-0535 and I-A.5.2.1, "Contested Cases" for any denial, reduction, or suspension of adoption assistance benefits.

(5) The initial effective date of the adoption assistance agreement is determined by the Adoption Program, taking into consideration the request of the adoptive family and the recommendations of the adoption agency or Department branch office. The effective date may not be prior to the completion of a signed assistance agreement, and must be effective no later than the date the adoption is finalized.

(6) Annually, the Adoption Program sends a letter to adoptive families, except those with an agreement only, inquiring whether there has been a change in circumstances or need for benefits.

(7) No assistance may be provided to adoptive parents if the adoptive parents are no longer legally and financially responsible for the support of the child, or the child is no longer receiving care and support from the adoptive parents. An adoptive parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military.

(8) In the case of an adopted child who becomes legally free for adoption due to the adoptive parent or parents' relinquishment of the child, the termination of the adoptive parent or parents' parental rights to the child, or the death of the adoptive parent or parents, the determination of eligibility of the adopted child for adoption assistance remains based on the eligibility of the child as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance benefits. The child must also meet special needs criteria at the time the child again becomes available for adoption. (This rule is intended to meet the requirements of Sec. 473 (a)(2)(C) of the Social Security Act, 42 USC 673.)

(9) If a child receiving adoption assistance benefits is placed in substitute care, adoption assistance benefits may be adjusted, continued, or suspended. If the adoptive family is involved in the child's treatment, and the plan is for the child to return home, the family may ask to have the adoption assistance suspended, continued, or adjusted to reflect current expenses. When the child returns to the care of the adoptive family, adoption assistance benefits may be reviewed upon request by the adoptive family.

(10) An adoptive family must immediately inform the agency when a change in circumstances indicates that there is no longer a need for adoption assistance.

(11) The Department may terminate the agreement upon 30 days written notice to the adoptive family when the child is no longer in the home, and the adoptive family is no longer providing any support for the child.

(12) An adoption assistance agreement automatically terminates, as required by Oregon law, when the child is 18 years old.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 11-1999(Temp), f. & cert. ef. 6-3-99 thru 11-30-99; SOSCF 22-1999, f. & cert. ef. 11-24-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0115

### Adoption Assistance Review Committee

(1) The Adoption Assistance Review Committee serves as a consultation and review body for the adoption assistance program.

(a) Adoption Program staff may, at the Department's discretion, refer unusual or exceptionally costly benefit requests to the Adoption Assistance Review Committee for consultation; or

(b) If, during negotiations of adoption assistance benefits, Adoption Program staff and the prospective adoptive parents are unable to reach agreement, the matter may be referred to the Committee for review at the request of either Adoption Program staff or the adoptive parents.

(2) The prospective adoptive parents and the caseworker must provide written documentation for the Committee's consideration.

(3) The caseworker for the prospective adoptive parents may participate in the Committee by phone.

(4) The Committee reviews relevant materials and provides a recommendation regarding level of benefits to the Department's adoption assistance coordinator. The Adoption Assistance Review Committee takes into consideration the special needs of the child and the financial circumstances of the prospective adoptive parents.

(5) If the prospective adoptive family or adoptive family requests further review of the adoption assistance benefits package offered to the family by the Department's adoption assistance coordinator, subsequent to the recommendation of the Adoption Assistance Review Committee, the Adoption Program manager reviews the materials and makes a decision. If the adoptive or prospective adoptive family remains unsatisfied, they may request a contested case hearing to appeal the level of benefits as described in OAR 413-130-0120.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

# ADMINISTRATIVE RULES

Hist.: SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0120

### Right to a Contested Case Hearing

(1) Except for a termination required by law or legislative action, on a child's 18th birthday, or under OAR 413-130-0125, at any time the Department takes action to deny an application for, reduce, or terminate an adoption assistance payment, a recipient of adoption assistance benefits must be notified of the right to a contested case hearing.

(2) If agreement cannot be reached between the Department and the adoptive family on the amount or type of benefits, the adoptive family has the right to request a contested case hearing within 30 days of receipt of notification of this right. Excluded from the right of appeal are special payments under OAR 413-130-0090.

(3) Requests for a contested case hearing must be addressed in writing to the Adoption Program manager.

(4) The Adoption Program manager or designee must:

(a) Assure that the individual who requests the hearing receives a written statement that sets out the facts and the particular sections of the statutes and rules on which the Department based its initial decision; and

(b) Forward the contested case hearing request to the Office of Administrative Hearings (OAH).

(5) Hearings will be conducted under Child Welfare Policy I-A.5.2.1, "Contested Cases".

(6) The administrative law judge prepares and distributes a proposed order under Child Welfare Policy I-A.5.2.1, "Contested Cases" and according to any interagency agreement between the Department and OAH.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SCF 11-1997, f. & cert. ef. 10-6-97; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2003, f. 1-21-03, cert. ef. 2-1-03; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0125

### Budgetary Reductions of Adoption Assistance

Once a child is adopted and determined to be eligible for Title IV-E adoption assistance, an adoption assistance payment may not be adjusted automatically without the agreement of the adoptive family for any reason. This includes any statewide reduction in foster care base rates and adoption assistance payments made for budgetary reasons.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: CWP 16-2003, f. 1-21-03, cert. ef. 2-1-03; CWP 38-2003(Temp), f. & cert. ef. 11-19-03 thru 5-17-04; CWP 4-2004, f. & cert. ef. 4-1-04; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0127

### Adjustments to Adoption Assistance

Effective November 1, 2003, adoption assistance benefits payable under an adoption assistance agreement in effect on October 31, 2003 are changed as follows:

(1) Monthly payments are increased by 8.108 percent.

(2) Except as provided in section (3) of this rule, nonrecurring payments and special payments are not changed.

(3) A special payment is increased by 8.108 percent if it was payable under an adoption assistance agreement that was in effect on January 31, 2003; was reduced on February 1, 2003; and remained in effect continuously through October 31, 2003.

Stat. Auth.: ORS 418.005 & 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: CWP 37-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 4-28-04; CWP 4-2004, f. & cert. ef. 4-1-04; CWP 16-2008, f. & cert. ef. 7-1-08; Suspended by CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 413-130-0130

### Post Finalization Applications for Adoption Assistance

(1) An adoptive family may request the opportunity to apply for adoption assistance after the adoption has been finalized based on the following extenuating circumstances:

(a) Relevant facts regarding the child, the biological family, or child's background were known, but not shared with adoptive parents prior to legalization;

(b) Adoption assistance was denied based on an assessment of the financial need of the adoptive family and the adoptive family's financial need has changed;

(c) Determination was made by the state that a child was ineligible for assistance, but information becomes known which indicates it would be appropriate to review this determination; or

(d) Failure by the state to advise the adoptive family of a special needs child of the availability of adoption assistance.

(2) An adoptive family must submit a written request to the Department's adoption assistance coordinator indicating the desire to apply for adoption assistance after an adoption has been legally finalized.

(3) Upon receipt of the written request, the Adoption Program staff determine, within thirty days, whether the child meets Title IV E eligibility requirements.

(4) When an adoptive family requests that the Department provide historic information regarding the child to determine eligibility for adoption assistance, the Department may obtain non-identifying genetic, social, and health history information as provided by ORS 109.425 through 109.507. In addition, the Department may request a court order to review the sealed adoption file.

(a) If it is determined that a child meets Title IV E eligibility requirements, federal policy requires a contested case hearing be held before the state may provide adoption assistance benefits:

(A) The Department's adoption assistance coordinator must write a summary of the situation and submit a hearing request form and appropriate documentation to the Office of Administrative Hearings within 45 days of receipt of the adoptive parent request for a contested case hearing.

(B) An adoptive family has the burden of proof to show that extenuating circumstances exist. The Department may provide corroborating facts to the adoptive family or the administrative law judge.

(C) The contested case hearing will be conducted under Child Welfare Policy I-A.5.2.1, "Contested Cases".

(b) If a post legal contested case hearing decision finds that extenuating circumstances exist, an adoption assistance application may be signed, effective the date of the contested case hearing.

(5) If it is determined that a child does not meet Title IV E eligibility requirements, the Department's adoption assistance coordinator must prepare information for the Adoption Program manager's review including information submitted by the adoptive family and information from Department records. The Adoption Program manager decides if extenuating circumstances under section (1) of this rule exist which justify accepting an adoption assistance application from the adoptive family.

(a) A written finding will be sent to the adoptive family within 30 days.

(b) If the Adoption Program manager finds that extenuating circumstances do not exist, the adoptive family may request a contested case hearing under OAR 413-130-0120. The administrative law judge in such a hearing reviews whether extenuating circumstances exist so that the adoptive family may submit an application for adoption assistance. Whether the adoption assistance application is approved is a separate determination by the Department.

(6) If the decision, through a contested case hearing or Adoption Program manager review, is that the adoptive family is eligible to apply for adoption assistance on behalf of the child, and the adoption assistance application results in the award of adoption assistance:

(a) The adoption assistance payments (in the form of a one time lump sum payment) may not be retroactive for more than 12 months from the date of the signed adoption assistance application; and

(b) If after negotiation, the adoptive family does not agree with the amount negotiated, the family may appeal the decision under OAR 413-130-0120.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.330 - 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

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**Rule Caption:** Changing OARs affecting Child Welfare programs.

**Adm. Order No.:** CWP 7-2009(Temp)

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09 thru 9-27-09

**Notice Publication Date:**

**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, 413-070-0982

**Rules Suspended:** 413-070-0900(T), 413-070-0905(T), 413-070-0915(T), 413-070-0917(T), 413-070-0920(T), 413-070-0925(T), 413-070-0930(T), 413-070-0935(T), 413-070-0937(T), 413-070-0940(T), 413-070-0945(T), 413-070-0955(T), 413-070-0960(T), 413-070-0965, 413-070-0970, 413-070-0980

**Subject:** These rules about payments to guardians eligible to receive assistance 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 set the requirements and respon-

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sibilities for the Department and guardians of an eligible child around assistance payments, payment structure, eligibility requirements for enhanced supervision and personal care services payments, guardianship and adoption assistance payments, and the availability of a contested case hearings process for the client initiated review of a denial, reduction, or termination of these payments on behalf of an eligible child. These rules also are being amended and suspended 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 changes in guardianship assistance payments, to comply with federal requirements addressing limitations for reducing adoption assistance 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 temporary rules also continue the temporary rule changes the Department made on March 31, 2009.

OAR 413-070-0900 about the purpose of the Department's guardianship assistance rules, OAR 413-070-0905 about the definitions used in the Department's guardianship assistance rules, OAR 413-070-0915 about the requirements for a child to be eligible for guardianship assistance, OAR 413-070-0917 about the requirements for a child in the care and custody of tribe to be eligible for guardianship assistance, OAR 413-070-0920 about when guardianship is determined to be the most appropriate permanency plan for a child, OAR 413-070-0925 about when the Department may approve guardianship assistance, OAR 413-070-0930 about the requirements for income and payment standards and medical benefits in the guardianship assistance program, OAR 413-070-0935 about the formulation of a guardianship assistance agreement between the Department and a guardian, OAR 413-070-0937 about courts orders for guardianship, OAR 413-070-0940 about the suspension or termination of guardianship assistance benefits, OAR 413-070-0945 about annual reviews of guardianship assistance eligibility and required reporting by a guardian, OAR 413-070-0955 about changes a guardian must report, 413-070-0960 about special payments to vendor attorneys and for legal expenses, and OAR 413-070-0982 about contested case hearing rights are being amended, and OAR 413-070-0965 about the application requirements for guardianship assistance, OAR 413-070-0970 about social and support services available to the child and the guardian, and OAR 413-070-0980 about budgetary reductions of guardianship assistance payments are being suspended to clarify the Department's policies for this program, include definitions used throughout the guardianship assistance program rules (OAR 413-070-0900 to 413-070-0982), reflect current Department terminology, and bring the guardianship assistance program into compliance with federal requirements.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-070-0900

### Purpose

The purpose of these rules, OAR 413-070-0900 to 413-070-0982, is to describe the Department responsibility to determine eligibility for guardianship assistance for a child in Oregon. Guardianship assistance for a child placed into Oregon from another state 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

## 413-070-0905

### Definitions

The following definitions apply to OAR 413-070-0900 to 413-070-0982:

(1) "Another Planned Permanent Living Arrangement (APPLA)" means a permanency plan for a stable, secure living arrangement for a child, and includes building relationships with significant people in the child's life that will continue after substitute care.

(a) "Planned" means the arrangement is intended, designed, considered, premeditated, or deliberate.

(b) "Permanent" means enduring, lasting, or stable.

(c) APPLA is the least preferred permanency plan of the four permanency plan options for a child.

(2) "Child" means a person under 18 years of age.

(3) "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.

(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 payment paid monthly by the Department to the guardian on behalf of the eligible child.

(8) "Permanency Committee" means a group of three persons, who are responsible for making a decision regarding a child's permanency plan when a child likely cannot or will not return 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;

(B) Have an identified chairperson approved by the District Manager or designee.

(b) The members must:

(A) Be knowledgeable of permanency issues;

(B) Have no personal or professional relationship to the child or prospective placement resource; and

(C) Represent multiple child welfare offices.

(9) "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 placed in the home by the Department.

(10) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody of the Department.

(11) "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

## 413-070-0915

### Child 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 would be Title IV-E eligible.

(2) A child eligible for guardianship assistance remains eligible when the child is placed in substitute care, but 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) The Department does not reestablish the dependency of a child placed into 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 reasons such as a change in the guardian's circumstances making the guardian unable to care for the child or the death of the 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

## 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 413-070-0982, the following requirements apply to a child in the care and custody of a tribe:



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(1) A child eligible for benefits under Title IV-E in the legal care and custody of a tribe having a Title IV-E agreement with the Department is eligible for guardianship assistance.

(2) A child 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 guardian, of the Department's design; 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) A participating tribe agrees that if the tribe reestablishes custody of a child formerly in a guardianship placement established under these rules, the tribe must notify the Department's Adoption Program within 30 days and provide a copy of the court order terminating the guardianship.

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

## 413-070-0920

### Determination of Guardianship As the Most Appropriate Permanency Plan for a Child

The Department or a participating tribe may consider guardianship as a permanent plan for a child under all of the following conditions:

(1) The child has been in the Department's or the participating tribe's legal custody for a minimum of --

(a) Six months, if the prospective guardian is the child's relative caregiver; or

(b) Twelve months, if the prospective guardian is not the child's relative caregiver.

(2) The child is in substitute care and determined eligible for Title IV-E.

(3) The child has a stable and positive relationship with a prospective guardian and has lived for the past six consecutive months in the home of the prospective guardian.

(4) The child is a sibling of another child living with the same prospective guardian.

(5) 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. The Department waives the age requirement for the members of a sibling group placed with a non-relative prospective guardian if at least one sibling is 12 years of age or older and meets all other subsidized guardianship criteria under this rule.

(6) 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; and

(b) The Department determines through a Permanency Committee review that adoption is not an appropriate plan for the child.

(7) The Department and the prospective guardian agree, and the Department documents in the child's case record, that the child and the prospective guardian can maintain a stable relationship and function effectively without Department supervision.

(8) 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.

(9) Each legal parent consents to the permanency plan of guardianship or has been given adequate notice under the law.

(10) The Department consults with the child, if 14 years of age or older, regarding guardianship as a permanency plan.

(11) A court order approves guardianship and terminates Department or tribal care, custody, and supervision; or, if a 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.

(12) The child is a legal resident of, an immigrant to, or citizen of the United States, and is under the care of a prospective guardian residing in this country legally.

(13) 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.

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

## 413-070-0925

### Approval of Guardianship Assistance

The Department may approve guardianship assistance on behalf of an eligible child when 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.

(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):

(a) Submitting an application for child support services in connection with each of the child's parents.

(b) Assigning to the Department, upon obtaining the right to receive child support, 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

## 413-070-0930

### Requirements for Income and Payment Standards and Medical Benefits

(1) When guardianship assistance is authorized, the guardianship assistance payment may be no greater than the current foster care base rate and any enhanced supervision payment the child receives as a result of the most recent CANS screening completed while the child was still in foster care under Child Welfare Policy I-E.5.1 "Maintenance and Treatment Payments", OAR 413-090-0000 to 413-090-0050 minus the child's benefit income, which does not include child support and tribal dividend payments.

(2) The guardianship assistance payment is established through the following considerations:

(a) 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.

(b) The guardian must be the designated payee for any benefits the child receives other than child support and tribal dividend payments, except that the guardian must assign to the Department benefits received irregularly by the guardian to avoid adjustments in the guardianship assistance benefits.

(3) The guardianship assistance payment is contingent upon the guardian's continued compliance with the requirements of the 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.

(4) A child residing outside the state of Oregon may receive a guardianship assistance payment based on the foster care rate effective for the child's state of residence.

(5) The effective date of guardianship assistance is the later of the date all parties have signed the guardianship assistance agreement (see OAR 413-070-0935) or the date of the court order of guardianship.

(6) If a child receiving guardianship assistance benefits is placed in substitute care, guardianship assistance may be adjusted, continued, or suspended. If the guardian is involved in the child's treatment, and the plan is for the child to return to the guardian's home, the guardian may ask to have the guardianship assistance benefits suspended, continued, or adjusted to reflect current expenses. If the child returns to the care of the guardian, the Department reviews the guardianship assistance benefits and adjusts the benefits as appropriate.

(7) 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 program payment and is kept separate from other money in the guardian's possession.

# ADMINISTRATIVE RULES

(8) The Department unilaterally may amend, suspend, or terminate the guardianship 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.

(9) The guardianship assistance payment does not automatically increase. A guardian may submit a written request for an increase in the child's guardianship assistance no greater than the Department approved rate based on the child's current age plus the initial amount of enhanced supervision when the child continues as a resident of Oregon. A retroactive guardianship assistance payment increase only may be authorized for the period commencing the first day of the month in which the written request is received by the Department. For a guardianship assistance payment made to a child residing in another state, the guardian may submit a written request for an increase in the child's guardianship assistance payment no greater than the foster care base rate the child would receive if the child was in foster care in that state.

(10) The Department may adjust the guardianship assistance benefits when the child's income used to calculate the basic guardianship assistance monthly benefit payment 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.

(11) 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

## 413-070-0935

### Determination of the Guardianship Assistance Agreement

(1) A guardianship assistance applicant must complete and sign an application, and return the application to the Department branch office providing case management for review and eligibility determination.

(2) A guardian is not required to apply for the guardianship assistance and applying is voluntary.

(3) An applicant may withdraw an application at any time.

(4) Before a guardian may receive guardianship assistance, there must be a written guardianship assistance agreement between the Department and the guardian which must include:

(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) Mutual understanding that no retroactive guardianship assistance payment will be authorized except as provided under OAR 413-070-0930(9).

(g) 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 guardianship assistance, payments on behalf of the child cannot be reduced without the agreement of the guardian. However, budget reductions may result in reduced guardianship assistance payments under any new agreement.

(h) The guardian must submit an application for child support enforcement services for each of the child's parents.

(i) The guardian agrees to cooperate with child enforcement services under OAR 413-070-0925(5).

(j) The guardian understands guardianship assistance payments are contingent upon the guardian's cooperation with the requirements under OAR 413-070-0925(5).

(k) The guardian understands that guardianship assistance payment may be terminated or suspended under OAR 413-070-0930 for failure to comply with OAR 413-070-0925(5), or under 413-070-0940.

(l) The extent to which each child for whom the Department is providing a guardianship assistance payment remains eligible for medical assistance once the guardianship is established.

(m) The guardian agrees to comply with the Guardianship Assistance Program reporting requirements under OAR 413-070-0955.

(n) The guardianship assistance payment remains in effect without regard to the state of residency of the guardian.

(5) The Department must provide the guardian with a copy of the guardianship assistance agreement.

(6) The Department may review any guardianship 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

## 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 will not pursue a court order establishing a guardianship until an application is approved by the Department's Adoption Program.

(2) The guardian is ineligible for family 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.

(3) The Department will 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

## 413-070-0940

### Suspension or Termination of Guardianship Assistance Benefits

(1) The guardianship assistance payments continue without court involvement. The Department must terminate or suspend guardianship assistance payment on the day when any one of the following occurs:

(a) The child reaches age 18 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 guardianship assistance payment on the day when any one of the following occurs:

(a) The child is incarcerated for more than three months;

(b) The child is out of the home for more than a 30-day period or is no longer living in the home; or

(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.

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

## 413-070-0945

### Annual Reviews of Eligibility and Required Reporting

(1) The Department may review eligibility for guardianship assistance 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 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 Program. The Adoption 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 guardian receiving guardianship assistance payments must report immediately, orally or in writing, to the Department's Adoption Program 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 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

# ADMINISTRATIVE RULES

## 413-070-0955

### Changes That Must be Reported

A guardian receiving guardianship assistance payments must report immediately, orally or in writing, to the Department's Adoption Program: any of the changes described in OAR 413-070-0940, a change of address, or if 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

## 413-070-0960

### Special Payments; Vendor Attorney and Legal Expenses

(1) 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 absent parents 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 hearing; 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

## 413-070-0965

### Application Requirements

In the Guardianship Assistance Program:

(1) A guardianship assistance applicant must complete and sign an application, and return the application to the Department branch office providing case management for review and eligibility determination.

(2) A guardian is not required to apply for the Guardianship Assistance Program and applying is voluntary.

(3) An applicant may withdraw an application 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 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

## 413-070-0970

### Guardianship; Social and Support Services

(1) The Department provides a range of services to a caregiver before a guardianship is established. The Department provides an orientation to the prospective guardian and prospective guardian's family to assure that each family member understands the benefits and responsibilities of each individual in the guardianship. The orientation includes biological and legal parents when possible, particularly when intra- and inter-familial tensions between a birth parent and a prospective guardian affect the well-being of the child, prospective guardian, or prospective guardian's family.

(2) A guardian and the child in the guardianship have access to local Department services after establishment of the guardianship as do adoptive parents, including access to the Oregon Post Adoption Resource Center or other contracted resource center, and crisis intervention services

(3) 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.

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

## 413-070-0980

### Budgetary Reductions of Guardianship Assistance

(1) If a legislative or executive branch action makes it necessary for the Department to reduce Guardianship Assistance Program benefits, the Department sends notification to each recipient of Guardianship Assistance Program benefits ten days before the effective date of any reduction about the following:

(a) The amount or percentage of the guardianship assistance benefit reduction;

(b) The effective date of the reduced guardianship assistance benefit amount; and

(c) The reason for the reduction.

(2) Any reduction to Guardianship Assistance Program benefits:

(a) Applies uniformly to every recipient of Guardianship Assistance Program benefits.

(b) Does not constitute a change in circumstances warranting a review of the recipient's Guardianship Assistance Program benefits under OAR 413-070-0930.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 19-2003(Temp), f. & cert. ef. 1-23-03 thru 6-20-03; 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; Suspended by CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09

## 413-070-0982

### Contested Case Hearings

Guardians, recipients of guardianship assistance, and applicants for guardianship assistance are entitled to the opportunity for a contested case hearing as provided in ORS 183.411 to 183.685 concerning disputes about a guardianship assistance payment. (See Child Welfare Policy I-A.5.2, "Contested Case Hearings" OAR 413-010-0500 to 413-010-0535).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: 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 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09

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

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

**Adm. Order No.:** SSP 12-2009(Temp)

**Filed with Sec. of State:** 6-23-2009

**Certified to be Effective:** 7-1-09 thru 12-28-09

**Notice Publication Date:**

**Rules Amended:** 461-120-0310, 461-120-0340, 461-135-0075, 461-135-1195, 461-145-0080

**Subject:** 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.

OAR 461-120-0340 about the requirements for a client in the Temporary Assistance for Needy Families (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.

OAR 461-135-0075 about the limitation on the months of eligibility for Temporary Assistance for Needy Families (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.

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 allowing 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.

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



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Temporary Assistance for Needy Families (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.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 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

## 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

## 461-135-0075

### Limitation on Eligibility Period; TANF

(1) A minor parent head of household or an adult may not receive a TANF grant in Oregon if the minor parent head of household or adult has received a TANF grant in excess of 60 months except as allowed in this rule.

(2) The following months do not count toward the time limit in section (1) of this rule:

(a) Months prior to July 1, 2003 in which a minor parent head of household or an adult received a TANF grant in Oregon or another state.

(b) Months between July 1, 2003 and September 30, 2007 in which a minor parent head of household or adult received TANF in Oregon; and

(A) Participated in required JOBS activities or other education, employment, or job training program including teen parent programs; or

(B) Was not required to participate in JOBS activities or other education, employment, or job training program including teen parent programs.

(c) Months beginning July 1, 2003 in which the family resided in Indian Country (as defined in 18 U.S.C. 1151) and 50 percent or more of the adult residents of that area were unemployed.

(d) Months beginning October 1, 2007 in which the minor parent head of household or adult is a participant in the Oregon JOBS Plus, Pre-TANF, Post-TANF, or SFPSS programs.

(e) Months 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

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*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 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

## 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, 412.014, 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

## 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

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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:

(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

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

**Adm. Order No.:** SSP 13-2009

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09

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**Rules Amended:** 461-001-0000, 461-001-0030, 461-110-0530, 461-110-0630, 461-115-0050, 461-135-0075, 461-135-0415, 461-135-1110, 461-145-0380, 461-150-0020, 461-150-0030, 461-150-0042, 461-150-0050, 461-150-0055, 461-150-0060, 461-150-0070, 461-150-0080, 461-150-0090, 461-150-0100, 461-155-0190, 461-155-0250, 461-155-0290, 461-155-0291, 461-155-0295, 461-155-0660, 461-160-0300, 461-160-0550, 461-160-0551, 461-160-0620, 461-165-0010, 461-165-0060, 461-165-0130, 461-165-0140, 461-170-0150, 461-195-0501, 461-195-0521, 461-195-0621

**Rules Repealed:** 461-150-0047, 461-150-0049, 461-155-0190(T), 461-155-0250(T), 461-155-0290(T), 461-155-0291(T), 461-155-0295(T), 461-165-0060(T), 461-193-0650, 461-195-0521(T), 461-110-0530(T), 461-135-0075(T)

**Subject:** OAR 461-001-0000 about the definitions for Chapter 461 is being amended to state the definition of an electronic application and clarify when an individual in a nursing facility is considered to be in a non-standard living arrangement.

OAR 461-001-0030 about the definitions used in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs for long-term care and

waivered clients is being amended to restate the definition of “eligible dependent”.

OAR 461-110-0530 about financial group composition in all of the Department’s programs, OAR 461-160-0550 about deductions taken from a client’s income when determining adjusted income for clients not receiving Supplemental Security Income (SSI) benefits and living in the community with no children present in the household group (the individuals who live together with or without benefit of a dwelling) in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs, and OAR 461-160-0551 about deductions taken from a client’s income when determining adjusted income for clients not receiving Supplemental Security Income (SSI) benefits and living in the community with children present in the household group in the OSIP and OSIPM programs are being amended to state correctly which filing group (the individuals from the household group whose circumstances are considered in the eligibility determination process) members are included in the financial group (filing group members whose income and resources count in determining eligibility and benefits) in the OSIP program for clients in standard and nonstandard living arrangements and in the OSIPM program for clients in a standard living arrangement when there is an ineligible spouse included in the filing group. OAR 461-110-0530 also is being amended to state, for clients in the OSIPM program in a standard living arrangement, that the spouse of the client is considered to be in the financial group for resource determination even if not included in the financial group for income determination. OAR 461-160-0550 also is being amended to remove an unnecessary definition of the term “ineligible”.

OAR 461-110-0630 about need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) composition in the Department’s programs is being amended to remove references regarding an ineligible spouse’s income and clarify need group composition in the Oregon Supplemental Income Program (OSIP) and the Oregon Supplemental Income Program Medical (OSIPM) programs.

OAR 461-115-0050 about when an application to the Department is complete and when a new application is needed is being amended to state when an electronic application is complete and that in the Oregon Supplemental Income Program Medical (OSIPM) program a new application is not required when the client’s case closed in the previous month due to failure to pay the cost of care for long term care services or the participant fee for the Employed Persons with Disabilities subprogram unless the Department determines that an application is required.

OAR 461-135-0075 about exceptions to the eligibility limitation period of 60 months in the Temporary Assistance for Needy Families (TANF) program is being amended to add an exemption for months beginning July 1, 2008 in which the individual receiving the grant is experiencing an economic hardship.

OAR 461-135-0415 about the requirement for a client to make a copayment to the day care provider or other satisfactory arrangements with the day care provider in the Employment Related Day Care (ERDC) program is being amended to state clearly who the Department considers as the primary provider.

OAR 461-135-1110 about the eligibility of students enrolled in higher education for the OHP-OPU (Oregon Health Plan coverage for adults who qualify under the 100 percent income standard) program is being amended to add the expected family contribution level, at which some students enrolled in higher education become ineligible for OHP-OPU, for the 2009-2010 school year while removing the information about the 2007-2008 school year.

OAR 461-145-0380 about the treatment of a client’s pension and retirement plans is being amended to specify requirements regarding the election of monthly or periodic payments from the plans for clients in the Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs to comply with federal law. This rule also is being amended to exclude certain annuities



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purchased by clients with funds from a pension or retirement plan from the definition of pension and retirement plans for clients in the OSIP, OSIPM, and QMB programs.

OAR 461-150-0020 about the use of prospective eligibility and budgeting (the process of calculating the benefit level) for all Department administered Chapter 461 programs is being amended to state that in all programs except the Oregon Health Plan (OHP) program, prospective budgeting is used for annualized income and prorated educational income, remove language about how overpayments are calculated when actual income exceeds anticipated income, clarify the rule language, and add cross references to other rules where terms are defined.

OAR 461-150-0030 about the use of retrospective eligibility (the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits) and budgeting (the process of calculating the benefit level) is being amended to state that retrospective eligibility and budgeting is used in all programs except Employer Related Day Care and the Oregon Health Plan.

OAR 461-150-0042 about the eligibility (the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits) and budgeting (the process of calculating the benefit level) methods utilized in the Emergency Assistance program is being amended to include cross-references to other rules for defined terms and to follow Department grammar conventions.

OAR 461-150-0047 about the treatment of income for cases assigned to the simplified reporting system (SRS) is being repealed. The rule's relevant provisions are being relocated to OAR 461-150-0060 and amended to state how different types of income are budgeted.

OAR 461-150-0049 about the use of prospective eligibility (the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits) and budgeting (the process of calculating the benefit level) in the Employment Related Day Care (ERDC) program is being repealed. The rule's relevant provisions are being relocated to OAR 461-150-0060 and amended to restate how varying types of income are classified and how future income is anticipated.

OAR 461-150-0050 about when the Department uses prospective or retrospective eligibility (the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits) and budgeting (the process of calculating the benefit level) in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs is being amended to state that in ongoing benefit months prospective eligibility and budgeting are used when certain types of income can be anticipated and that in all programs, except the OSIP-EPD and OSIPM-EPD programs, retrospective eligibility and budgeting are used for ongoing months for cases with varying income, non-standard living arrangements, a retrospective liability determination, and the anticipated income varies in a manner making the client periodically ineligible for benefits. This rule also is being amended to clarify language and add cross references to other rules for defined terms.

OAR 461-150-0055 about the budget month (the calendar month from which nonfinancial and financial information is used to determine eligibility and benefit level for the payment month) and countable income in the Oregon Health Plan (OHP) program is being amended to state the budget month for a client reapplying for an OHP program and no longer eligible for his or her current OHP program is the last month of his or her current eligibility period. This rule is also being amended to restate that for an individual joining an OHP program filing group (the individuals from the household group whose circumstances are considered in the eligibility determination process), the budget month is the month in which the individual

requests medical benefits. This rule also is being amended to clarify language and add cross references to other rules for defined terms.

OAR 461-150-0060 about the use of prospective or retrospective eligibility (the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits) and budgeting (the process of calculating the benefit level) in the Employment Related Day Care (ERDC), Food Stamp (FS), Medical Assistance Assumed (MAA), Medical Assistance Family (MAF), Refugee Assistance (REF), Refugee Assistance Medical (REFM), and Temporary Assistance for Needy Families (TANF) programs is being amended to state how and when the Department determines use of prospective or retrospective eligibility and budgeting in those programs and to incorporate the relevant provisions from OAR 461-150-0047 and 461-150-0049 into this rule. This rule is also being amended to state how the Department handles income in the initial month in the FS program for cases assigned to various reporting systems. This rule is also being amended to state that the initial month is included when budgeting income for the ERDC program and in the ERDC program income for the fifth month of the FS certification period is used to determine the income for the seventh and following months in the certification period.

OAR 461-150-0070 about the prospective budgeting of a client's stable income is being amended to state that the rule's provisions do not apply to the Oregon Health Plan (OHP) program, restate how the anticipated future monthly income for a financial group (the filing group members whose income and resources count in determining eligibility and benefits) is calculated based on how frequently the client is paid, and restate that in the Food Stamp (FS) program stable income received less often than monthly is treated as periodic income (income received on a regular basis less often than monthly). This rule also is being amended to clarify language and add cross references to other rules for defined terms.

OAR 461-150-0080 about the prospective budgeting (the process of calculating the benefit level) of variable earned or unearned income for all clients, except those in the Oregon Health Plan program and those assigned to the monthly reporting system, is being amended to restate how variable income is treated in the prospective eligibility (the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits) and budgeting processes. This rule is also being amended to clarify language and add cross references to other rules for defined terms.

OAR 461-150-0090 about converting contracted and self-employment income to an annualized amount in the prospective budgeting (the process of calculating the benefit level) process is being amended to state that this rule does not apply to the Oregon Health Plan (OHP) and Refugee Assistance Medical (REFM) programs, what constitutes self-employment income, how contract income is treated, and how contract income is converted into an annualized amount.

OAR 461-150-0100 about the use of prospective budgeting (the process of calculating the benefit level) for the initial month of benefits for a destitute filing group in the Food Stamp (FS) program is being amended to clarify language and add cross references to other rules for defined terms.

OAR 461-155-0190 about the income and payment (benefit amount) standards in the Food Stamp (FS) program is being amended to reflect increases in the Food Stamp Payment Standards (Thrifty Food Plan). The increases were made effective April 1, 2009 via temporary rule to comply with the passage of the federal American Recovery and Reinvestment Act of 2009, and this amendment makes the temporary rule changes filed April 1, 2009 permanent.

OAR 461-155-0250 about the income and payment standards in the Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to make permanent a temporary rule change adopted on March 1, 2009, reflecting the annual change in the adjusted income standard based on the federal poverty level for the OSIP-Employed Persons with Disabilities (OSIP-EPD) and OSIPM-Employed Per-

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sons with Disabilities (OSIPM-EPD) programs. This rule is also being amended to remove current rule language related to annual standards so that that language will not need to be amended each year when the program standards change.

OAR 461-155-0290 about the income standards in the Qualified Medicare Beneficiaries - Basic (QMB-BAS) program, OAR 461-155-0291 about the income standards in the Qualified Medicare Beneficiaries - Disabled Worker (QMB-DW) program, and OAR 461-155-0295 about the income standards in the Qualified Medicare Beneficiaries - Specified Limited Medicare Beneficiary (QMB-SMB) and Qualified Medicare Beneficiaries - Qualified Individuals (QMB-SMF) programs are being amended to reflect the annual changes in the income standards based on changes to the federal poverty level. These amended rules will make permanent the temporary rule changes adopted effective April 1, 2009.

OAR 461-155-0660 about how an accommodation allowance for a special need is determined for clients in the Oregon Supplemental Income Program (OSIP, assistance to seniors and people with disabilities) and Oregon Supplemental Income Program Medical (OSIPM) programs receiving in-home long-term care services is being amended to replace the term "original purchase money mortgage" with the term "property agreement", define the term "property agreement", and clarify how to calculate the special need allowance amount.

OAR 461-160-0300 about use of income to determine eligibility and benefits and OAR 461-170-0150 about the anticipating with periodic review reporting system for clients in the Employment Related Day Care (ERDC) program are being amended to make technical and grammatical changes only and correctly cross-reference the relevant administrative rule. OAR 461-160-0300 is also being amended to replace the term "Division" with "Department".

OAR 461-160-0620 about the standards used to calculate how much of the client's income can be diverted to a community spouse for clients in the Oregon Supplemental Income Program Medical (OSIPM) receiving long-term care or waived services is being amended to reflect the annual federal increase in the minimum maintenance need and shelter standards.

OAR 461-165-0010 about the legal status under Oregon law of benefit payments made in programs covered by Chapter 461 administrative rules, OAR 461-165-0130 about when the Department may send benefit payments out of state, OAR 461-165-0140 about the endorsement of benefit checks and the survivorship of benefits when the recipient passes away, OAR 461-195-0501 about definitions for overpayments and intentional program violations, and OAR 461-195-0621 about intentional program violations and the penalties and liabilities for overpayments are being amended to remove language about and references to Food Stamp (FS) program coupons. OAR 461-165-0010 also is being amended to state how long FS program benefits issued by Electronic Benefit Transfer (EBT) card remain available for client use and when unused benefits on an EBT card are expunged (made no longer available for client use). OAR 461-165-0130 also is being amended to state that the Department does not send FS program benefits to a client outside the state of Oregon.

OAR 461-165-0060 about the minimum benefit amount provided to eligible clients in the Food Stamp (FS) program is being amended to indicate that when the FS benefit allotment for a benefit group (the individuals who receive benefits) would be less than ten dollars a month the benefit group is not eligible to receive benefits in the initial month of benefits. This rule also is being amended to make the temporary changes effective April 1, 2009 permanent.

OAR 461-193-0650 about countable income for the Refugee Case Services Project is being repealed as the topic is now covered in another administrative rule in this division of rules.

OAR 461-195-0521 about methods for calculating overpayments (benefits paid to a client in error which the client needs to repay to the Department) is being amended to state that the difference in the Food Stamp program between the Thrifty Food Plan benefit amount put into place as of April 1, 2009 in response to passage of the fed-

eral American Recovery and Reinvestment Act of 2009 and the Thrifty Food Plan benefit amount in effect on March 31, 2009 is not included when calculating overpayment amounts. These changes were made in the temporary rule filed effective April 1, 2009 and this rule is also being amended to make the temporary rule changes filed April 1, 2009 permanent. This rule is also being amended to state when a Post-TANF program grant credit is allowed against an overpayment caused by reported earned income in the Temporary Assistance to Needy Families (TANF) program. This rule is also being amended to state when an overpayment in the prospective budgeting (the process of calculating the benefit level) process is a client error overpayment. This rule is also being amended to state that when an overpayment in the General Assistance (GA), Oregon Supplemental Income Program (OSIP), Refugee Assistance (REF), State Family Pre-SSI/SSDI (SFPSS), or TANF programs is due to Department error there is no corresponding medical program overpayment if the client had been eligible for medical benefits under certain other programs.

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### 461-001-0000

#### Definitions for Chapter 461

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDSD), or any other agency formerly part of the Department of Human Services shall be taken to mean the Department of Human Services (DHS), except that the rule in which reference occurs only regulates programs covered by Chapter 461 of the Oregon Administrative Rules.

(2) A reference to an Administrator of an agency mentioned in section (1) 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.

## ADMINISTRATIVE RULES

(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) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

(20) "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.

(21) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(22) "Department" means the Department of Human Services (DHS).

(23) "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.

(24) "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).

(25) "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.

(26) "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.

(27) "Electronic application" is an application electronically signed and submitted through the internet.

(28) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(29) "Equity value" means fair market value minus encumbrances.

(30) "Fair market value" means the amount an item is worth on the open market.

(31) "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.

(32) "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.

(33) "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.

(34) "HPN" means a health plan new/noncategorical client eligible under OHP-OPU.

(35) "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.

(36) "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.



## ADMINISTRATIVE RULES

(37) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(38) "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.

(39) "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.

(40) "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.

(41) "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).

(42) "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.

(43) "Marriage" means the union of a man and a woman who are legally married.

(44) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.

(45) "Minor parent", in the ERDC, EXT, MAA, MAF, REF, REFM, and TANF programs, means a parent under the age of 18.

(46) "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.

(47) "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.

(48) "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.

(49) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(50) "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.

(51) "Periodic income" means income received on a regular basis less often than monthly.

(52) "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.

(53) "Qualified Partnership Policy" means a long term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:

(a) Issued while the client was a resident in Oregon on January 1, 2008 or later; or

(b) Issued in another state while the client was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.

(54) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as real property.

(55) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(56) "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.

(57) "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.

(58) "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.

(59) "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.

(60) "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).

(61) "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.

(62) "Stable income" means income that is the same amount each time it is received.

(63) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.

(64) "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(65) "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.

(66) "Trust funds" mean money, securities, or similar property held by a person or institution for the benefit of another person.

(67) "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.

# ADMINISTRATIVE RULES

(68) “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. & cert. ef. 7-13-78; AFS 54-1984, f. 12-28-84, cert. 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

## 461-001-0030

### Definitions; OSIP, OSIPM Long-Term Care or Waivered

These terms apply to rules in Chapter 461 about OSIP and OSIPM long-term care and waived clients:

(1) Community spouse: An individual who is legally married (see OAR 461-001-0000) to an institutionalized spouse and is not in a medical institution or nursing facility.

(2) Continuous period of care: Reside for a period of at least 30 consecutive days or until death in a long term care facility, waivable care setting, or an acute care hospital. There must be sufficient evidence to show there is a reasonable expectation that the client will remain in care for at least 30 consecutive days. For the purposes of this policy, an interruption in care (for example, leaving and then returning to a nursing home, or switching from one type of care to another) that lasts less than 30 days is not considered a break in the 30 consecutive days of care. A new period of care begins if care is interrupted for 30 or more days.

(3) Eligible dependent:

(a) For cases with a community spouse, an eligible dependent is a minor (under the age of 21) or dependent child, dependent parent, or dependent sibling of the institutionalized or community spouse who is residing with the community spouse and claimed as a tax dependent by either spouse.

(b) For cases without a community spouse, an eligible dependent is a minor (under the age of 21) or dependent child residing with and claimed as a tax dependent by the client.

(4) Institutionalized spouse: An individual who is in long term care or receiving waivable home or community based services for a continuous period and is married to a community spouse.

(5) Waivered services are services needed to keep an individual out of a long term care facility. Waivered services are:

- (a) In home services.
- (b) Services in a residential care facility.
- (c) Services for an individual in an assisted living facility.
- (d) Adult foster care services.
- (e) Home adaptations to accommodate a client’s physical condition.
- (f) Home delivered meals provided in conjunction with in-home services.

(g) Specialized Living Facilities.

(h) Adult Day Care.

(i) Community transition services.

(6) Waivered client: A client receiving Title XIX waived services for a continuous period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.700

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 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; Renumbered from 461-160-0560, 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 13-2009, f. & cert. ef. 7-1-09

## 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 and benefits.

(2) In the EXT, MAA, MAF, REF, REFM, SAC, and TANF 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 who chooses not to be included in the *need group* (see OAR 461-110-0630); and

(b) Individuals who receive 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 individuals live in a standard living arrangement (see OAR 461-001-0000), all members of the filing group (see OAR 461-110-0410) are in the financial group.

(b) When individuals live 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 individuals live in a standard living arrangement:

(A) Except as provided in paragraph (B) of this subsection, all members of the filing group are in the financial group.

(B) When an individual is not assumed eligible (see OAR 461-135-0010) for OSIPM:

(i) The individual’s ineligible spouse 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 standard: the ineligible spouse 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 individuals live 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) For all programs other than EXT, MAA, MAF, OHP, OSIP, OSIPM, REF, REFM, SAC, and TANF, the *financial group* consists of all the individuals 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

## 461-110-0630

### Need Group

(1) The need group consists of the individuals whose basic and special needs are used in determining eligibility and *benefit level*.

(2) In the EA, REF, and REFM programs, the need group consists of the members of the financial group (see OAR 461-110-0530) who meet all nonfinancial eligibility requirements, except that members disqualified for an intentional program violation are not in the need group.

(3) In the ERDC, OSIP-EPD, OSIPM-EPD, QMB, and SAC programs, the need group consists of each member of the financial group.

(4) In the EXT program, the need group consists of each member of the financial group except an individual excluded from the need group for not complying with social security number requirements under OAR 461-120-0210.

(5) In the FS program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements, except the following people are not in the need group:

(a) A member disqualified for an intentional program violation.

(b) A fleeing felon under OAR 461-135-0560.

(c) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(6) In the GA and GAM programs, the need group consists of each member of the financial group except that the following individuals may not be in the need group:

(a) A fleeing felon under OAR 461-135-0560.

(b) An individual in violation of a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(c) An individual not complying with social security number requirements under OAR 461-120-0210.

(7) In the MAA and TANF programs, the need group is formed as follows:

(a) Except as provided in subsection (b) of this section, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizenship and alien status

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requirements of OAR 461-120-0110 or the citizenship documentation requirements of OAR 461-115-0705.

(b) The need group cannot include:

(A) A parent who is in foster care and for whom foster care payments are being made.

(B) An unborn child.

(C) In the TANF program:

(i) An individual who cannot be in the need group because of a disqualification penalty.

(ii) An individual who cannot be in the need group because the individual has exceeded the 60-month time limit and does not meet any of the exceptions listed in OAR 461-135-0075.

(iii) A fleeing felon under OAR 461-135-0560.

(iv) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(8) In the MAF program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizen and alien status requirements of OAR 461-120-0110 or the citizenship documentation requirements of OAR 461-115-0705, except for the following individuals:

(a) A parent who is in foster care and for whom foster care payments are being made.

(b) The father of an unborn child who has no eligible dependent children.

(9) In the OHP program:

(a) An unborn child of a pregnant female is included in the need group.

(b) The need group consists of each member of the financial group except an individual excluded from the need group for not complying with social security number requirements under OAR 461-120-0210.

(10) In the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs:

(a) If a child is applying, the need group consists of the child.

(b) In all other situations, the need group consists of each member of the financial group.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 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 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-115-0050

### When an Application Must Be Filed

A client must file an application, or may amend a completed application, as a prerequisite to receiving benefits as follows:

(1) A client may apply for the TA-DVS program as provided in OAR 461-135-1220.

(2) In all programs other than the TA-DVS program:

(a) Except as provided in sections (3), (4), (5), and (6) of this rule, a client wishing to apply for program benefits must submit a complete application on a form approved by the Department.

(b) An application is complete if all of the following requirements are met:

(A) All information necessary to determine the individual's eligibility and benefit amount is provided on the application for each individual in the filing group.

(B) The applicant, even if homeless, provides a mailing address.

(C) The application is signed. An individual required but unable to sign the application may sign with a mark, witnessed by another individual.

(D) The application is received by the Department, except an electronic application (see OAR 461-001-0000) meets the requirements of this paragraph only when submitted to and received by the Department with an electronic signature.

(3) A new application is not required in the following situations:

(a) In the Food Stamp program, when a single application can be used both to determine a client is ineligible in the month of application and to determine the client is eligible the next month. This can be done when:

(A) Anticipated changes make the *filing group* (see OAR 461-110-0370) eligible the second month; or

(B) The filing group provides verification between 30 and 60 days following the filing date (see OAR 461-115-0040), under OAR 461-180-0080.

(b) In all programs except the Food Stamp program, when a single application can be used both to determine a client is ineligible on the date

of request (see OAR 461-115-0030) and to determine the client is eligible when anticipated changes make the filing group eligible within 45 days from the date of request.

(c) When the case is closed and reopened during the same calendar month.

(d) When benefits were suspended for one month because of the level of income, and the case is reopened the month following the month of suspension.

(e) When reinstating medical benefits for a pregnant woman covered by OAR 461-135-0950.

(4) When a client establishes a new date of request (see OAR 461-115-0030) prior to the end of the month following the month of case closure, unless the Department determines a new application is required, a new application is not required in the following situations:

(a) In the OSIPM program, when the client's case closed due to failure to make a liability payment required under OAR 461-160-0610.

(b) In the OSIPM-EPD program, when the client's case closed due to failure to make a participant fee payment required under OAR 461-160-0800.

(5) A new application is required to add a newborn child to a benefit group (see OAR 461-110-0750) according to the following requirements:

(a) For the REF and TANF programs:

(A) A new application is not required if the child is listed on the application as "unborn" and there is sufficient information about the child to establish its eligibility.

(B) A new application is required if the child is not included on the application as "unborn."

(b) In the EXT, MAA, MAF, OHP, and REFM programs, no additional application is required to add the child to the benefit group of the child's mother. The child may be added to a benefit group other than the benefit group of the child's mother if eligibility can be determined without submission of a new application.

(c) In the ERDC and FS programs, an application is not required to add the child to the benefit group.

(d) In all programs other than ERDC, EXT, FS, MAA, MAF, OHP, REF, REFM, and TANF, an application is required.

(6) Except for OHP-OPU applicants who must use the OHP 7210R Application (see OAR 461-135-1125), a new application is required to add an individual, other than a newborn child, to a benefit group according to the following requirements:

(a) In the ERDC and FS programs, a new application is not required.

(b) In the EXT, MAA, MAF, OHP, REF, REFM, SAC, and TANF programs, an individual may be added by amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.

(c) In all programs other than ERDC, EXT, FS, MAA, MAF, OHP, REF, REFM, SAC, and TANF, a new application is required.

(7) A client whose TANF grant is closing may request ERDC orally or in writing.

(8) For all programs except the EXT, FS, MAA, MAF, and OHP programs, a client may change between programs administered by the Department using the current application if the following conditions are met:

(a) The client makes an oral or written request for the change.

(b) The Department has sufficient evidence to determine eligibility and benefit level for the new program without a new application.

(c) The program change can be effected while the client is eligible for the first program.

(9) Except for OHP-OPU applicants who must use the OHP 7210R Application (see OAR 461-135-1125), a new application is not required in the EXT, MAA, MAF, OHP, OSIP, OSIPM, and QMB programs to redetermine eligibility for the same program or to change between these programs if the following conditions are met:

(a) The client is currently receiving benefits from one of these programs; and

(b) The Department has sufficient evidence to redetermine eligibility for the same program or determine eligibility for the new program without a new application or by amending the current application.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.049, 414.042  
Stats. Implemented: ORS 411.060, 411.070, 411.117, 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 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 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 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-1996, cert. ef. 7-1-96; 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 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 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; 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 2-



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2008(Temp), f. & cert. ef. 1-28-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09

## 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 SFPSS programs.

(e) Months beginning October 1, 2007 in which the filing group (see OAR 461-110-0330) is a two-parent family receiving cash assistance in Oregon for which deprivation is based on unemployment or underemployment of the primary wage earner.

(f) Months beginning October 1, 2007 in which the individual who is now a parent or pregnant was in that month a minor child and neither the head of a household nor married to the head of a household.

(g) Months beginning October 1, 2007 in which a minor parent head of household or adult 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 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

## 461-135-0415

### ERDC Requirement to Make Copay or Satisfactory Arrangements

In the ERDC program:

(1) The caretaker is responsible for paying the copayment to the primary provider of child care unless the ERDC filing group received TANF benefits the previous month and the Child Care Billing form was sent to the provider showing no copayment.

(2) If the client has only one provider during a month, that provider is the primary provider. If the client uses more than one provider, the client must designate one as the primary provider. Notwithstanding any designation by the client, the Department considers a provider having the copayment amount (not to exceed the client's established copayment amount) deducted from its valid billing statement the primary provider for that period.

(3) If the copayment exceeds the amount billed by the primary provider, the Department may treat a different provider as the primary provider or split the copayment among the providers who bill for care.

(4) A client who fails to pay a copayment to or to make satisfactory arrangements with the primary provider is ineligible for ERDC if the provider notifies the Department of an overdue copayment within 60 days after the Department issues payment for the month at issue. The period of ineligibility ends under any of the following circumstances:

(a) On the first day of the month in which the client makes the copayment or makes satisfactory arrangements with the provider.

(b) On the first day of the month after three years have lapsed from the date the client failed to make the copayment.

(c) On the first day of the month in which the client provides verification that the copayment debt was discharged by a bankruptcy filing.

(5) The Department will make the payment to a provider if a Child Care Billing form is mailed to the provider prior to the notification described in section (4) of this rule.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.122

Hist.: 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 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-135-1110

### Eligible and Ineligible Students; OHP-OPU

(1) In the OHP-OPU program, an individual enrolled full time in higher education is ineligible to receive benefits, unless the requirements of one of the following subsections are met:

(a) The student:

(A) Meets the income requirements for a Pell grant;

(B) Is not currently covered by private major medical health insurance or an HMO; and

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(C) Has not been covered by private major medical health insurance or by an HMO for the six months immediately preceding the date of application.

(b) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974 (19 U.S.C. § 2296).

(2) For the purposes of this rule:

(a) Higher education includes the following:

(A) Any public or private university, college or community college.

(B) Any post-secondary vocational or technical school that is eligible to accept Pell grants.

(b) Full time is defined by the school.

(c) *Meets the income requirements* for a Pell grant means:

(A) The student's Student Aid Report shows an "expected family contribution" less than \$4,042 for the 2008-2009 school year or less than \$4,618 for the 2009-2010 school year; or

(B) The student is eligible for a Pell grant and provides documentation of eligibility from the school's financial aid office.

(3) A student's enrollment status continues during school vacation and breaks. A student's higher education status ends when the student graduates, drops out (as verified by their disenrolling), reduces the student's credit or attendance hours below full-time status, is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 414.042

Hist.: AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; 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 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 14-2002(Temp), f. & cert. ef. 10-30-02 thru 4-28-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; 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 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-145-0380

### Pension and Retirement Plans

(1) Pension and retirement plans include the following:

(a) Benefits employees receive only when they retire. These benefits can be disbursed in lump-sum or monthly payments.

(b) Benefits that employees are allowed to withdraw when they leave a job before retirement.

(c) The following retirement plans if purchased by a client with funds from the plans authorized by section 401 of the Internal Revenue Code of 1986:

(A) Traditional Defined-Benefit Plan.

(B) Cash Balance Plan.

(C) Employee Stock Ownership Plan.

(D) Keogh Plan.

(E) Money Purchase Pension Plan.

(F) Profit-Sharing Plan.

(G) Simple 401(k).

(H) 401(k).

(d) Retirement plans purchased by a client with funds from plans authorized by section 403 of the Internal Revenue Code of 1986 at subsections (a) or (b).

(e) The following retirement plans and annuities if purchased by a client with funds from the plans authorized by section 408 of the Internal Revenue Code of 1986 at subsections (a), (b), (c), (k), (p), or (q), or at section 408A:

(A) Individual Retirement Annuity.

(B) Individual Retirement Account (IRA).

(C) Deemed Individual Retirement Account or Annuity under a qualified employer plan.

(D) Accounts established by employers and certain associations of employees.

(E) Simplified Employee Pension (SEP).

(F) Simple Individual Retirement Account (Simple-IRA).

(G) Roth IRA.

(f) The following retirement plans offered by governments, nonprofit organizations, or unions:

(A) 457(b) Plan.

(B) 501(c)(18) Plan.

(C) Federal Thrift Savings Plan under 5 USC 8439.

(g) In all programs except the OSIP, OSIPM, and QMB programs, an annuity purchased by a client with funds from a plan authorized under subsection (c), (d), or (f) of this section.

(2) An annuity purchased by the spouse (see OAR 461-001-0000) of a client with funds from a retirement plan described in subsection (1)(e) of this rule is not considered a retirement plan and is treated in accordance with OAR 461-145-0020 and 461-145-0022.

(3) Benefits the client receives from pension and retirement plans are treated as follows:

(a) Monthly payments are counted as unearned income.

(b) All payments not covered by subsection (a) of this section are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(4) In the OSIP, OSIPM, and QMB programs:

(a) Except for an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule:

(A) The equity value (see OAR 461-001-0000) of a pension or retirement plan is excluded as a resource if the individual is eligible for monthly or periodic payments under the terms of the plan and has applied for those payments. When an individual is permitted to choose or change a payment option, the individual must select the option that:

(i) Provides payments commencing on the earliest possible date; and

(ii) Completes payments within the actuarial life expectancy, as published in the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration, of the individual.

(B) The equity value of all pension and retirement plans not covered by paragraph (A) of this subsection that allow clients to withdraw funds, minus any penalty for withdrawal, is counted as a resource.

(b) The equity value of an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule is excluded as a resource if it meets the payout requirements of OAR 461-145-0022(10)(c). Otherwise, the equity value is counted as a resource.

(5) In the FS program, the value of retirement accounts identified in sections 401(a), 403(a), 403(b), 408, 408(k), 408(p), 408A, 457(b), or 501(c)(18) of the Internal Revenue Code, or in a Federal Thrift Savings Plan account are excluded resources.

(6) In the OHP program, the equity value of a pension or retirement plan that allows a client to withdraw funds before retirement is excluded as a resource.

(7) In all programs except the FS, OHP, OSIP, OSIPM, and QMB programs, the equity value of a pension and retirement plan that allows a client to withdraw funds before retirement, minus any penalty for early withdrawal, is counted as a resource.

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 21-1995, f. 9-20-95, cert. ef. 10-1-95; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-150-0020

### Prospective Eligibility and Budgeting

For prospective *eligibility* (see OAR 461-001-0000) and budgeting (see OAR 461-001-0000):

(1) The budget month (see OAR 461-001-0000) and payment month (see OAR 461-001-0000) are the same.

(2) The client's anticipated income, household composition, and other relevant factors are used to determine the client's eligibility and benefit level. The client and Department jointly anticipate the client's income based on the income already received and the income the client expects to receive.

(3) In all programs except the OHP program, prospective budgeting is used for annualized income and prorated educational income.

(4) When prospective budgeting is used and the actual income differs from the amount determined under section (2) of this rule:

(a) If the anticipated income exceeds the actual income, a client is not entitled to a benefit supplement.

(b) If the actual income exceeds the anticipated income, there may be a client-error overpayment under OAR 461-195-0521.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2001(Temp), f. & cert. ef. 4-4-01 thru 6-30-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 7-2004(Temp), f. & cert. ef. 4-1-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-150-0030

### Retrospective Eligibility or Budgeting

In all programs except the ERDC and OHP programs:

(1) For retrospective eligibility (see OAR 461-001-0000) or budgeting (see OAR 461-001-0000), the budget month (see OAR 461-001-0000), is the month before the payment month (see OAR 461-001-0000).

(2) To determine retrospective eligibility, the Department uses:

(a) All nonfinancial information from the last day of the budget month to evaluate all eligibility factors; and

(b) Information from the entire budget month to evaluate income and resources.

(3) To determine the benefit amount under retrospective budgeting, the Department uses all information from the entire budget month. Financial information includes income and resources available under OAR 461-140-0020 and 461-140-0040 in the budget month.

# ADMINISTRATIVE RULES

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 8-1992, f. & cert. ef. 4-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-150-0042

### Prospective Eligibility and Budgeting; EA

In the EA program, the Department uses prospective eligibility (see OAR 461-001-0000) and budgeting (see OAR 461-001-0000) as follows:

(1) For the month of application, prospective eligibility is used, including for a client who leaves a filing group (see OAR 461-110-0310) because of domestic violence.

(2) For budgeting, OAR 461-160-0140 is used to determine benefit level.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-150-0050

### Prospective or Retrospective Eligibility and Budgeting; GA, GAM, OSIP, OSIPM, QMB

In the GA, GAM, OSIP, OSIPM, and QMB programs, the Department determines when to use prospective or retrospective eligibility (see OAR 461-001-0000) and budgeting (see OAR 461-001-0000) as follows:

(1) In the GA, GAM, OSIP (except OSIP-IC), OSIPM (except OSIPM-IC), and QMB programs:

(a) For the initial month (see OAR 461-001-0000), use prospective eligibility and budgeting. Money received from a nonrecurring source before the date of application is excluded. If any money remains after the date of application, it is counted as a resource.

(b) For each ongoing month (see OAR 461-001-0000):

(A) Prospective eligibility and budgeting is used when the case includes income that can be anticipated under OAR 461-150-0070, 461-150-0080, or 461-150-0090 and paragraph (B) of this subsection does not apply.

(B) In all programs except the OSIP-EPD and OSIPM-EPD programs, retrospective eligibility and budgeting is used when the case includes varying income, and:

(i) The client is in a nonstandard living arrangement (see OAR 461-001-0000) and the liability required under OAR 461-160-0610 must be determined retrospectively; or

(ii) The anticipated income varies in such a way that the client may periodically become ineligible for benefits.

(C) In the OSIP-EPD and OSIPM-EPD programs, use prospective eligibility and budgeting for varying earned income.

(2) In the OSIP-IC and OSIPM-IC programs, the budget month (see OAR 461-001-0000) is the initial month of eligibility.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09

## 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 three months preceding the budget month is added.

(b) The total is divided by three, 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

## 461-150-0060

### Prospective or Retrospective Eligibility and Budgeting; ERDC, FS, MAA, MAF, REF, REF, REF, TANF

In the ERDC, FS, MAA, MAF, REF, REF, and TANF programs, the Department determines how and when to use prospective or retrospective eligibility (see OAR 461-001-0000) and budgeting (see OAR 461-001-0000) as follows:

(1) For the initial month (see OAR 461-001-0000):

(a) In the ERDC program, income is budgeted so the anticipated amount is the same for each month, including the initial month.

(b) In the FS program, a case in the first month of its certification period (see OAR 461-001-0000) that was in MRS the prior month and will continue to be in MRS, the Department uses eligibility and budgeting as described in section (3) of this rule.

(c) For an FS program case in CRS and in the MAA, MAF, REF, and TANF programs, actual income is used in the initial month. Actual income is the income already received in the initial month plus all the income that reasonably may be expected to be received within the initial month.

(d) For an FS program case in SRS, actual income is used in the initial month if that income is not reflective of ongoing monthly income due to a new or terminated source or a significant change in ongoing income. All other income is processed under section (3) of this rule.

(e) In the REF program:

(A) When a client has moved to Oregon from the client's original resettlement state, see OAR 461-135-0010.

(B) For a client not assumed eligible under paragraph (A) of this subsection and OAR 461-135-0010, the Department uses only the initial month for eligibility and budgeting.

(f) The Department uses prospective eligibility and budgeting under OAR 461-150-0020 for cases not covered under subsections (a) to (e) of this section, including for a client who leaves a filing group because of domestic violence (see OAR 461-001-0000) and enters a domestic violence shelter (see OAR 461-001-0000) or safe home (see OAR 461-001-0000).

(g) No supplement is issued based on incorrectly anticipated information.

(2) Income is budgeted so that the anticipated amount is the same for each month. The type of income is determined and calculated as follows:

(a) Income that must be annualized is calculated under OAR 461-150-0090 to arrive at a monthly figure.

(b) Educational income (see OAR 461-145-0150) is assigned to the months it is intended to cover, regardless of when it is received. The income is prorated over these months.

(c) Ongoing stable income (see OAR 461-001-0000) is anticipated under OAR 461-150-0070.

(d) Ongoing variable income (see OAR 461-001-0000) is anticipated under OAR 461-150-0080.

(e) Periodic income (see OAR 461-001-0000) is anticipated under OAR 461-140-0100 and 461-140-0110.

(f) Lump-sum income (see OAR 461-001-0000) is anticipated under OAR 461-140-0100, 461-140-0200, and 461-140-0123.

(g) In the ERDC program, for temporary income and other situations when the child care need will last two consecutive months or less, the income is anticipated to be received in the months of child care need and calculated under OAR 461-150-0080.

(3) For an ongoing month (see OAR 461-001-0000):

(a) For a benefit group (see OAR 461-110-0750) not in MRS, the Department uses prospective eligibility and budgeting. The type of income is determined and calculated under section (2) of this rule.

(b) For a benefit group in MRS, the Department uses retrospective eligibility and budgeting under OAR 461-150-0030 until there is a break in benefits of one or more calendar months. The Department continues to use retrospective budgeting even if there is a break of one calendar month and:



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(A) A case is suspended for one month because of periodic extra income or some other change that is not expected to continue into the following month; or

(B) A case is suspended for one month for not filing a monthly report and the benefit group files a monthly report for the suspend month before the end of the following month. The Department treats a report received after the following month as a new application and uses prospective budgeting.

(c) If the budgeting method changes from prospective to retrospective, the Department treats income from a terminated source that was counted prospectively as follows:

(A) If the actual amount received was less than or equal to the anticipated amount, the income is excluded.

(B) If the actual amount received was greater than the anticipated amount, the Department counts the difference between actual and anticipated amounts.

(4) When an individual is added to an ongoing filing and benefit group, eligibility is determined as follows:

(a) If the individual is joining a benefit group in MRS, retrospective budgeting is used for the benefit group, including the income of the new individual.

(b) For any other benefit group, prospective budgeting is used.

(5) In the ERDC and FS programs, income reported on the Interim Change Report form under OAR 461-170-0011 and 461-170-0102 is used to determine eligibility and benefit level. Income for the fifth month of the FS program certification period (see OAR 461-001-0000) is used to determine the income for the seventh and following months in the certification period if the client anticipates it will remain the same throughout the period. If the client anticipates the income will change, the client and the Department jointly estimate the income for the remaining months of the certification period. For a client who had self-employment income annualized, no change is made unless there is a substantial change in the revenue of the business.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 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 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; 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 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-150-0070

### Prospective Budgeting of Stable Income

(1) In all programs except the OHP program, stable income (see OAR 461-001-0000) in prospective budgeting (see OAR 461-001-0000) and eligibility (see OAR 461-001-0000) is treated so that the monthly amount is used to anticipate the income of the financial group (see OAR 461-110-0530). The amount of stable income for each month is determined as follows:

(a) If paid once per month, that amount is used.

(b) If paid twice per month or semi-monthly, that amount is converted to a monthly amount by multiplying it by two.

(c) If paid once every other week or biweekly, that amount is converted to a monthly amount by multiplying it by 2.15.

(d) If paid once per week, that amount is converted to a monthly amount by multiplying it by 4.3.

(2) In the FS program, stable income the client expects to receive less often than monthly is treated as periodic income (see OAR 461-001-0000) under OAR 461-140-0110.

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. 3-30-89, 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 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-150-0080

### Prospective Budgeting of Variable Income; Not OHP; Not MRS

In all programs except the OHP program, variable income (see OAR 461-001-0000) is used as follows in prospective budgeting (see OAR 461-001-0000) and eligibility (see OAR 461-001-0000) so that the anticipated amount is the same for each month, except as specified in OAR 461-150-0060 and section (6) of this rule:

(1) For income paid more than once per month, determine an average amount per pay period in accordance with sections (2) to (4) of this rule. The average amount is then converted to a monthly amount as follows, if paid:

(a) Twice per month, multiply by 2;

(b) Every other week, multiply by 2.15; or

(c) Once per week, multiply by 4.3.

(2) For variable earned income based on an hourly wage when the past is representative, monthly income is determined by calculating an aver-

age number of hours per pay period, then these hours are multiplied by the hourly wage and converted to a monthly amount under section (1) of this rule.

(3) For variable earned income involving various rates of pay (overtime, shift differential, tips) when the past is representative, monthly income is determined by calculating the average income per pay period, then the average income is converted to a monthly amount under section (1) of this rule.

(4) For variable earned or unearned income when the past is representative and income cannot be calculated under section (2) or (3) of this rule, monthly income is determined by averaging the income over:

(a) A representative period of months by totaling the income for those months and dividing by the number of months used; or

(b) A representative number of pay periods and converting to a monthly amount under section (1) of this rule.

(5) For variable earned and unearned income when the past is not representative of the income the financial group (see OAR 461-110-0530) will receive during the eligibility period, the client and the Department jointly determine the anticipated income.

(6) In the FS program:

(a) A financial group with variable income may choose to have the benefit level changed from month to month under this section or to have the monthly income determined under sections (1) to (5) of this rule. A financial group choosing to have the benefit level changed from month to month must inform the Department of the anticipated income for each month of the certification period (see OAR 461-001-0000) and the Department uses the reported anticipated income to calculate the monthly benefit.

(b) A financial group meeting the definition of "destitute household" in OAR 461-135-0575 is not eligible to use the income averaging option for the initial month (see OAR 461-001-0000) of eligibility or the first month of a new certification period. For a destitute financial group, income for the initial month of eligibility and the first month of a certification period is determined under OAR 461-150-0100, thereafter, the financial group is subject to sections (2) to (5) of this rule.

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 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-150-0090

### Prospective Budgeting: Annualizing Contracted or Self-employment Income

In all programs except the OHP and REFM programs:

(1) Income from self-employment, including contract income while self-employed, is annualized in accordance with OAR 461-145-0910 unless the income meets the provisions of section (4) of this rule.

(2) In the ERDC, FS, MAA, MAF, REF, and TANF programs, contract income not meeting the criteria of self-employment income (see OAR 461-145-0910) is treated as follows:

(a) The income is annualized under section (3) of this rule if it is received during less than a 12-month period but is intended as a full year's income, except that income derived from a contract and received on an hourly or piecework basis is not annualized.

(b) If received monthly over the term of the contract period or on an hourly or piecework basis, the income is treated as stable income (see OAR 461-001-0000) under 461-150-0070 or variable income (see OAR 461-001-0000) under 461-150-0080.

(3) Contract income that is not the annual income of the financial group (see OAR 461-110-0530) and not paid on an hourly or piecework basis is prorated over the period the income is intended to cover.

(4) If past income is not representative of future income, or when a substantial increase or decrease is expected in next year's countable self-employment income, income is not annualized. In this case, anticipated income and costs are used to determine the countable income.

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 13-1992, 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; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-150-0100

### Initial Month Prospective Budgeting for Destitute Filing Groups; FS

For a destitute (see OAR 461-135-0575) filing group, only the following income is used to determine eligibility (see OAR 461-001-0000) and benefit level in the initial month (see OAR 461-001-0000) or the first month of the certification period (see OAR 461-001-0000):

(1) Income received from the first of the month through the filing date (see OAR 461-115-0040); and

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(2) Income received after the filing date that is regular and ongoing. Income from a new source anticipated to be received after the filing date is not used.

Stat. Auth.: ORS 411.816  
Stats. Implemented: ORS 411.816  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; SSP 13-2009, f. & cert. ef. 7-1-09

## 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

## 461-155-0250

### Income and Payment Standard; OSIP, OSIPM

(1) For an OSIP (except OSIP-EPD) or OSIPM (except OSIPM-EPD) client in long term care or in a waived nonstandard living arrangement (see OAR 461-001-0000), the countable income limit standard is 300 percent of the full SSI standard for a single individual. Other OSIP and OSIPM clients do not have a countable income limit.

(2) The non SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) adjusted income standard takes into consideration the need for shelter (housing and utilities), food, and other items. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(3) The standard in this section is used as the adjusted income limit for non SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) clients. The OSIP-AB and OSIPM-AB adjusted income standard includes a transportation allowance. See OAR 461-155-0020 for the adjusted number in the household. The total standard is: [Table not included. See ED. NOTE.]

(4) To be eligible for OSIP (except OSIP-EPD or OSIP-IC), a person must be receiving SSI or be eligible for an ongoing special need. The payment standard for SSI/OSIP clients living in the community is the SIP (supplemental income payment) amount. The SIP is a need amount added to any other special or service needs to determine the actual payment. In some cases, the need amount is zero.

(a) For clients whose unearned income minus any SSI or Veterans Nonservice Connected Disability Benefits is less than \$20: [Table not included. See ED. NOTE.]

(b) For clients whose unearned income minus any SSI or Veterans Nonservice Connected Disability Benefits is \$20 or more: [Table not included. See ED. NOTE.]

(c) The SSI OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For spouses who each receive SSI and receive services in an AFC, ALF or RCF, an amount is added to each person's SIP payment that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one person need group.

(e) When one or both spouses receive SSI and are not included in subsection (d) of this section, the two-person need group is used to determine the SIP amount. This amount is used even if one (or both) of the individuals is receiving services and has a need group of one according to OAR 461-110-0630.

(5) In the OSIP and OSIPM programs, individuals in a nursing facility or an ICF-MR are allowed the following amounts for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unreimbursed medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted earned income limit is 250 percent of the federal poverty level for a family of one.

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 411.060 & 411.070  
Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-

28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; Suspended by SSP 3-2007(Temp), f. & cert. ef. 3-9-07 thru 6-30-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; Suspended by SSP 5-2007(Temp), f. 3-30-07, cert. ef. 4-1-07 thru 6-30-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; 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 2-2009(Temp), f. 2-27-09, cert. ef. 3-1-09 thru 8-28-09; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-155-0290

### Income Standard; QMB-BAS

The adjusted income standard for the QMB-BAS program is 100 percent of the 2009 federal poverty level. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; 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

## 461-155-0291

### Income Standard; QMB-DW

The adjusted income standard for the QMB-DW program is 200 percent of the 2009 federal poverty level (see OAR 461-155-0290). [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-155-0295

### Income Standard; QMB-SMB

The adjusted income standard for QMB-SMB is 120 percent of the 2009 federal poverty level (see OAR 461-155-0290). [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 4-2006, f. & cert. ef. 3-1-06; SSP 2-2007(Temp), f. & cert. ef. 3-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 6-2008(Temp), f. 2-29-08, cert. ef. 3-1-08 thru 8-28-08; SSP 8-2008, f. & cert. ef. 4-1-08; 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 13-2009, f. & cert. ef. 7-1-09

## 461-155-0660

### Special Need; Accommodation Allowance

(1) OSIP and OSIPM clients living in a nursing facility are not eligible for an accommodation allowance. OSIP and OSIPM clients living in a nonstandard living arrangement (see OAR 461-001-0000) are not eligible for an accommodation allowance unless they are receiving, or are eligible to receive after a temporary absence, in-home waived services. OSIP and OSIPM clients who are receiving SSI (except those in a nursing facility) or are eligible to receive or are receiving in-home waived services are allowed an accommodation allowance if the client meets the criteria in section (2) or (3) of this rule.

(2) Temporary absence of client from home.

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(a) A temporary accommodation allowance may be authorized, where permitted under section (1) of this rule, if a client meets the following criteria:

(A) The client leaves his or her home or rental property and enters a hospital, state psychiatric institution, nursing facility, adult foster care facility, assisted living facility, residential care facility, group care home, or specialized living facility;

(B) The client cannot afford to keep the home without the allowance;

(C) The client will be able to return home within six months of leaving, according to a written statement from a primary practitioner, RN, or PAS (pre-admission screening) RN; and

(D) The home will accommodate the service plan of the client when the client returns.

(b) The allowance may be authorized for six months. If, after six months, the client continues to meet the criteria in subsection (a) of this section, an extension may be approved in writing by a supervisor.

(c) The accommodation allowance equals the total of the client's housing cost, including taxes and insurance, plus the limited standard utility allowance for the Food Stamp program provided in OAR 461-160-0420.

(3) Additional cost for accommodation. A client receiving SSI benefits (except those in a nursing facility) or in-home waived services may receive an accommodation allowance if the client's shelter cost exceeds the shelter standard in OAR 461-155-0250(2) and the requirements of one of the following subsections are met:

(a) The client has a documented increase in rent associated with access by a person with a disability.

(b) The client has been assessed to need a live-in provider, has accepted the services of a live-in provider, and requires an additional bedroom for the live-in provider.

(4) The accommodation allowance is determined as follows:

(a) For a client who receives an accommodation allowance based on increased costs associated with access by a person with a disability, only the additional increase in cost for the accommodation is allowed.

(b) For a client who receives an accommodation allowance based on the need for an additional bedroom for a live-in provider, the amount of the accommodation allowance is the limited standard utility allowance for the FS program under OAR 461-160-0420 plus:

(A) One-third of the monthly rental cost; or

(B) One-third of the monthly payment on the property agreement (including mortgage, trust deed, or land sale contract). The property agreement is the agreement existing at the time the client is approved for the accommodation allowance. The accommodation allowance for the housing portion ends if the debt is refinanced, unless the refinancing was done only to reduce the original property agreement's interest rate or total monthly payment amount and the owner realized no direct or indirect payment of the home's equity value from the refinancing.

(i) If the refinancing requirement under this paragraph is met, the amount of the accommodation allowance is one-third of the refinanced property agreement amount plus the limited standard utility allowance under OAR 461-160-0420.

(ii) If the refinancing requirement under this paragraph is not met and the housing portion of the accommodation allowance ends, the client remains eligible only for the limited standard utility allowance portion under OAR 461-160-0420.

(5) Special requirements.

(a) A client who rents and qualifies for an allowance under section (3) of this rule must take the steps necessary to obtain subsidized housing under any federal or state housing program. A client who fails, at any time, to take the steps necessary to obtain subsidized housing reasonably available is ineligible for the allowance. A client, who has been denied or revoked from participation in any rent subsidy program based on the client's own actions is ineligible for benefits under this rule.

(b) A client who rents housing and refuses subsidized housing will no longer be eligible for an accommodation allowance, except that if the housing that is offered is not suitable, related to accommodations, and the client continues to have increased costs related to accommodations in the client's current living situation, the accommodation allowance may continue until such time as appropriate subsidized housing is found.

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 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; 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 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-160-0300

### Use of Income to Determine Eligibility and Benefits for ERDC

The Department determines financial eligibility for ERDC and the benefit level as follows:

(1) The monthly income of the financial group (see OAR 461-110-0530) is determined in accordance with OAR 461-150-0060.

(2) The monthly income is compared to the ERDC eligibility standard in OAR 461-155-0180. If monthly income equals or exceeds the eligibility standard, the need group is ineligible for ERDC. If monthly income does not exceed the eligibility standard, the client's eligibility is determined under section (3) of this rule.

(3) For a client found eligible under section (2) of this rule, the allowable child care cost and the client's copay are determined as follows:

(a) The child care costs for which the client has been billed are compared to the amount provided in the appropriate child care chart in OAR 461-155-0150. The allowable child care cost is the lesser of the two amounts.

(b) The need group's copay is determined in accordance with OAR 461-155-0150.

(4) The copay is subtracted from the allowable child care cost, and the remainder is the payment the Department makes to the provider. If the copay is equal to or greater than the allowable child care cost, the client is not eligible for ERDC. If the copay is less than the allowable child care cost, the client meets the income requirement for ERDC.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.122

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 17-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; AFS 26-1990, f. & cert. ef. 11-29-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-160-0550

### Income Deductions; Non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) in the Community When There Are No Children in the Household Group

(1) For purposes of this rule, "child" means a natural or adopted child of an individual or a natural or adopted child of either member of a married couple.

(2) This rule is used to determine *adjusted income* (see OAR 461-001-0000) for all clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

(a) Live in the community;

(b) Are not assumed eligible (see OAR 461-135-0010);

(c) Do not receive Title XIX waived services; and

(d) Do not have at least one child in the *household group* (see OAR 461-110-0210).

(3) To determine adjusted income for clients described in section (2) of this rule, deductions from the countable (see OAR 461-001-0000) income of the financial group (see OAR 461-110-0530) are made in the following order:

(a) One standard deduction of \$20 from unearned income. This deduction may be taken from earned income if the client has less than \$20 in unearned income.

(b) One standard earned income deduction of:

(A) \$65 for OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA clients who are not blind; or

(B) \$85 for OSIP-AB and OSIPM-AB clients who are blind.

(c) An income deduction for documented impairment-related work expenses or blind work expenses.

(d) One half of the remaining earned income.

(e) Deductions under a plan for self-support.

Stat. Auth.: ORS 411.060, 411.070 & 414.042

Stats. Implemented: ORS 411.060, 411.070 & 414.042

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; 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 13-2009, f. & cert. ef. 7-1-09

## 461-160-0551

### Income Deductions; Non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) in the Community When There Are Children in the Household Group

(1) For purposes of this rule:

(a) Ineligible person means an individual who is not eligible to receive either SSI or TANF benefits.

(b) Child means a natural or adopted child of an individual or a natural or adopted child of either member of a married couple.

(2) This rule is used to determine adjusted income (see OAR 461-001-0000) for clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

(a) Live in the community;

(b) Are not assumed eligible (see OAR 461-135-0010);



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(c) Do not receive Title XIX waived services; and  
(d) Have children in the household group (see OAR 461-110-0210).  
(3) To determine adjusted income for clients described in section (2) of this rule, deductions from the countable (see OAR 461-001-0000) income of the financial group (see OAR 461-110-0530) are made in the following order:

(a) An allocation as described below:

(A) When an adult is applying, income is allocated (see paragraph (C) of this subsection) from an ineligible spouse included in the financial group to each ineligible child of the couple.

(B) When a child is applying:

(i) Income from ineligible parents is first allocated to each ineligible child in the household.

(ii) Second, the remaining income from subparagraph (i) of this paragraph is reduced as provided in subsections (b) through (f) of this section.

(iii) Third, the remaining income is reduced by the non-SSI OSIP and OSIPM adjusted income standard of the:

(I) Couple if both parents live with the child; or

(II) Individual if only one ineligible parent lives with the child.

(iv) Fourth, the remainder is deemed equally to each child applicant in the household.

(v) The income deemed to the child is added to the other income of the child and deductions are taken as described in subsections (b) through (f) of this section to calculate the child's adjusted income.

(C) The maximum amount of each allocation under paragraphs (A) and (B) of this subsection is the difference between the couple and the individual SSI Standard. The allocation for paragraphs (A) and (B) of this subsection is reduced by the other countable income of each ineligible child. An allocation is taken from unearned income first, and any remaining allocation is then taken from earned income.

(b) One standard deduction of \$20 from unearned income. This deduction may be taken from earned income if the client has less than \$20 in unearned income.

(c) One standard earned income deduction of:

(A) \$65 for clients in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs; or

(B) \$85 for clients in the OSIP-AB and OSIPM-AB programs.

(d) An income deduction for documented impairment-related work expenses or blind work expenses.

(e) One half of the remaining earned income.

(f) Deductions under a plan for self-support for clients in the OSIP-AB, OSIP-AD, OSIPM-AB, and OSIPM-AD programs.

Stat. Auth.: ORS 411.060, 411.070, 414.042

Stats. Implemented: ORS 411.060, 411.070, 414.042

Hist.: SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; 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 13-2009, f. & cert. ef. 7-1-09

## 461-160-0620

### Income Deductions and Client Liability; Long-Term Care Services or Waived Services; OSIPM

In the OSIPM program:

(1) Deductions from income are made for a client residing in or entering a long-term care facility or receiving Title XIX waived services as explained in subsections (3)(a) to (3)(h) of this rule.

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the client is determined according to subsection (3)(i) of this rule.

(3) Deductions are made in the following order:

(a) One standard earned income deduction of \$65 is made from the earned income in the OSIPM-AD and OSIPM-OAA programs. The deduction is \$85 in the OSIPM-AB program.

(b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.

(c) One of the following need standards:

(A) A \$30 personal needs allowance for a client receiving long-term care services.

(B) A \$90 personal needs allowance for a client receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) The OSIP maintenance standard for a client who receives waived services.

(d) A community spouse monthly income allowance is deducted from the income of the institutionalized spouse to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.

(A) Step 1 — Determine the maintenance needs allowance. \$1,822 is added to the amount over \$547 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$2,739 whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment

(principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the Food Stamp program (see OAR 461-160-0420).

(B) Step 2 — Compare maintenance needs allowance with community spouse's countable income. The countable income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(C) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(e) A dependent income allowance as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$1,822. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,822.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the client and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(f) Costs for maintaining a home if the client meets the criteria in OAR 461-160-0630.

(g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the client's dependent.

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(i) The client liability is determined as follows:

(A) For a client receiving waived services (except a client identified in OAR 461-160-0610(4)), the liability is the actual cost of the waived service or the adjusted income of the client, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for waived services. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For a client who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for the Mentally Retarded, or a non-waived mental health facility, there is a liability as described at OAR 461-160-0610.

(4) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or waived services is as follows:

(a) One standard earned income deduction of \$65 is made from the earned income for a client who is not blind; or

(b) One standard earned income deduction of \$85 is made from the earned income for a client who is blind.

Stat. Auth.: ORS 411.060 & 411.070

Stats. Implemented: ORS 411.060 & 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-165-0010

### Legal Status of Benefit Payments

(1) Under Oregon law, cash benefits are not subject to assignment, transfer, garnishment, levy, or execution, as long as they can be identified as program payments and are separate from other money in the client's possession.

(2) A cash payment accrues to and becomes vested in the client when issued.

(3) Except for EBT, the Department considers a benefit issued if the check has been handed to the client in the branch office, or mailed to the

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client. The Department considers a benefit issued, and received by the client, when a direct check deposit is made to the client's bank account.

(4) For EBT, the Department considers benefits issued and received when an EBT card and personal identification number (PIN) have been issued in person to the client, or the EBT card and PIN have been received by the client in the mail during conversion, and the benefits have been deposited to the client's EBT account.

(5) FS benefits issued by EBT remain available for client access for 12 calendar months from the date of issuance. The EBT system expunges unused benefits after 12 calendar months.

(6) Benefits to the client are unrestricted and do not require accountability for individual expenditures or amounts.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 418.047  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 11-1991, f. 4-30-91, cert. ef. 5-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-165-0060

### Minimum Benefit Amount; FS, REF, TANF

(1) In the FS program:

(a) A benefit group (see OAR 461-110-0750) is not eligible for benefits in the initial month (see OAR 461-001-0000) if the allotment is less than \$10.

(b) In an ongoing month (see OAR 461-001-0000), benefits are issued as follows:

(A) An eligible one- or two-person benefit group receives a minimum monthly allotment of eight percent of the TFP for one person as determined annually by FNS.

(B) An eligible benefit group of three or more persons receives the calculated benefit except that a group whose calculated benefit is \$1, \$3, or \$5 receives instead an allotment of \$2, \$4, or \$6 respectively. A group that is categorically eligible (see OAR 461-135-0505) may be eligible for zero benefits (\$0) for the certification period (see OAR 461-001-0000).

(2) Except as provided in section (3) of this rule, in the REF and TANF programs, benefits are not issued if the monthly benefit is less than \$10. Individuals who do not receive a cash payment because the monthly benefit is less than \$10 may be eligible for medical benefits.

(3) The \$10 requirement in section (2) of this rule does not apply to any of the following:

(a) Special payments, such as one-time special needs, emergency assistance, supplements, or a benefit reduced from \$10 or more to under \$10 due to the recovery of an overpayment.

(b) Dual payee payments made in money management cases if the monthly benefit amount is \$10 or more.

(c) Wage supplements issued to JOBS Plus participants.

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 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 19-2004(Temp), f. 7-30-04, cert. ef. 8-1-04 thru 9-30-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 24-2008(Temp), f. & cert. ef. 11-6-08 thru 5-5-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-165-0130

### Payment of Benefit Out-of-State

(1) For all programs except the FS and GA programs, the Department sends benefits out of state if a client is absent from Oregon and the client establishes the intent to return within 60 days.

(2) If a client is detained out of state beyond 60 days for medical reasons, continued eligibility is determined and the client is required to provide documentation of the need to remain in the other state.

(3) For medical benefits, out-of-state medical expenditures must have prior authorization.

(4) In the FS and GA programs, the Department does not send benefits out of state.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 418.047  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-165-0140

### Endorsement and Survivorship of Benefits

(1) The client or the client's payee must endorse checks issued in payment of a benefit. The endorsement on the check must be the same as the name appearing as payee.

(2) The client may endorse a check with a mark or thumbprint if duly witnessed by two people giving their full names and addresses.

(3) Benefits issued by EBT (electronic benefit transfer) may be used only with the Oregon Trail debit card and the client's matching personal identification number (PIN).

(4) The person with power of attorney may:

(a) Act as authorized representative or alternate payee.

(b) Endorse and cash the benefit check as in the following example: John Doe (Recipient) by Richard Jones (Power of Attorney)

(5) In all programs except the FS program, any cash benefit issued to clients before their death is available to their survivors.

(a) Checks may be endorsed in the name of the deceased beneficiary by the surviving spouse or next of kin, or by the administrator of their estate. The Department uses the following procedure:

(A) Before the next of kin endorses a check, the check must be presented to the branch office.

(B) The Department will rubber-stamp the endorsement on the check only if it has been determined that the client died on or after the first day of the period for which the payment was provided.

(C) The endorsement must show both the name of the deceased beneficiary and the name of the surviving spouse or next of kin, as well as the relationship of the endorser to the beneficiary.

(D) The person who endorses the check receives the proceeds of the benefit.

(b) For cash benefits in an EBT account (except for FS cash-out benefits), the Department will designate an adult survivor as the alternate payee. The Department will issue the payee an EBT card and PIN to access the balance in the EBT account.

(6) In the FS program, there is no survivor's right to benefits unless the survivor is independently entitled to benefits as a member of the benefit group. When the survivor is not in the benefit group:

(a) The Department will request the return of unnegotiated cash-out checks to the branch.

(b) For FS benefits that were issued by EBT, if no one remains in the benefit group, the Department will cancel the remaining benefits from the EBT account.

Stat. Auth.: ORS 411.060, 411.816, 412.049  
Stats. Implemented: ORS 411.060, 411.610, 411.816, 412.049, 412.151  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 13-2009, f. & cert. ef. 7-1-09

## 461-170-0150

### Anticipating With Periodic Review (APR); ERDC

In the ERDC program:

(1) The Department uses Anticipating with Periodic Review (APR) as the reporting system for all clients.

(2) The length of the APR certification period (see OAR 461-001-0000) is as follows:

(a) If the child care need occurs within one calendar month, the APR period will consist of that month only.

(b) If the child care need occurs within two consecutive calendar months, the APR period will consist of those two months only.

(c) When income can be reasonably anticipated for three months or more, the APR period may be up to six months.

(d) A case with companion FS program benefits and participating in SRS may have an APR certification period of up to 12 months.

(3) The Department recalculates the anticipated income over the remaining months when a client reports income changes between eligibility periods that, after the application of 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

## 461-195-0501

### Definitions

The definitions in this rule apply to programs covered by Chapter 461 of the Oregon Administrative Rules other than child care programs.

(1) Except as provided otherwise in section (4) of this rule, an overpayment is any of the following:

(a) A cash, medical or food stamp benefit received by or on behalf of a client, or a vendor payment made by the Department on behalf of a client, that exceeds the amount for which the client is eligible.

(b) Public assistance payments designated by the Department for a specific purpose which are spent by a person on an expense not approved by the Department and not considered a basic requirement under standards adopted by the Department pursuant to ORS 411.070.

(c) Misappropriated public assistance when a person cashes and retains the proceeds of a check from the Department on which that person is not the payee and the check has not been lawfully endorsed or assigned to the person.

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(d) Public assistance furnished for a need when that person is compensated by another source for the same need and the person fails to reimburse the Department when required by law.

(e) A cash benefit received by a client in the GA or SFPSS programs for a month for which the client receives a retroactive SSI lump sum payment.

(f) A JOBS or SFPSS program support payment (see OAR 461-190-0211) used by a client for other than the intended purpose or issued when a client was not eligible for TANF as a result of fraud.

(2) Overpayments are categorized as follows:

(a) Except as otherwise provided in subsections (c) and (d) of this section, an administrative error overpayment is an overpayment caused by any of the following circumstances:

(A) The Department failed to reduce, suspend, or end benefits after timely receipt of information that required such action;

(B) The Department failed to use the correct benefit standard;

(C) The Department failed to compute or process a payment correctly;

(D) The Department failed to require a general assistance client to complete an interim assistance agreement; or

(E) The Department committed a procedural error that was no fault of the filing group or authorized representative.

(b) An administrative technical overpayment is an overpayment in a program other than the Food Stamp program caused by a client's failure to register for the JOBS program, to have a social security number, or to make a declaration of citizenship or alien status.

(c) A client error overpayment is an overpayment caused by misunderstanding or error on the part of a client, a client's receipt of unreduced benefits pending a hearing decision, a client's failure to return a benefit known by the client to exceed the correct amount, or a client's use of a JOBS or SFPSS program support payment (see OAR 461-190-0211) used for other than the intended purpose.

(d) A fraud overpayment occurs when an overpayment is determined to be an intentional program violation (see OAR 461-195-0601 and 461-195-0611) or is substantiated through a criminal prosecution.

(e) In the Food Stamp program, a provider error overpayment is an overpayment made to a drug or alcohol treatment center or residential care facility that acted as a client's authorized representative.

(3) In the Food Stamp program, trafficking is the buying or selling of food stamp benefits for cash or consideration other than eligible food; or the exchange for food benefits of firearms, ammunition, explosives, or controlled substances.

(4) It is not an overpayment when:

(a) Specifically so provided by rule;

(b) The benefit is paid pending a contested case hearing in a disqualification case unless the client was ineligible for the benefit for a reason other than the disputed disqualification; or

(c) A client is found eligible as a result of an error in judgment by the Department when judgment is permitted and the eligibility decision was based on the best information available to the client and the Department.

Stat. Auth.: ORS 411.060, 411.070, 411.105, 411.816, 412.001, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.105, 411.105, 411.620, 411.640, 411.690, 411.816, 411.892, 412.001, 412.049, 414.025, 414.042

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 7-2001(Temp), f. & cert. ef. 4-4-01 thru 6-30-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 13-2009, f. & cert. ef. 7-1-09

## 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



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ed 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, SPSS, 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, 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

## 461-195-0621

### Intentional Program Violations; Penalties and Liability for Overpayments

(1) Disqualification penalties resulting from intentional program violations and other violations of law are listed in this rule. A person may be subject to disqualification for an IPV only if the person was advised of the disqualification penalties prior to committing the IPV. A disqualification established in another state continues in effect in Oregon.

(2) In the ERDC program, if an IPV is established against a person through a contested case hearing, a waiver of the right to hearing, or by a state or federal court, that person is liable for repayment to the Department of the full amount of overpayment the Department has established. The amount of restitution to the Department ordered by a court as part of a criminal proceeding does not lower the amount owed to the Department. Payments of restitution to the Department are credited against the amount owed. A client is not subject to an IPV disqualification but is still required to repay overpayment amounts.

(3) A child care provider found to have committed an intentional program violation (IPV) is ineligible for payment for child care as follows:

(a) A child care provider with an IPV established between April 1, 2001 and September 30, 2005 is permanently disqualified to receive payment.

(b) A child care provider who has incurred an overpayment established as an IPV claim after September 30, 2005 is ineligible for payment:

(A) For six months and until the full amount of the overpayment is paid; or

(B) Permanently, if the Child Care Program Manager finds that such ineligibility is in the public interest. The following is a non-exclusive list of reasons that support a determination of permanent ineligibility: safety concerns; or, the likelihood of future violations; or, the degree of egregiousness of any of the established IPV's; or, the degree of primary involvement in the violation by the provider.

(4) In the Food Stamp and TANF programs, when an IPV is established against a person through a contested case hearing, a waiver of the right to hearing, or by a state or federal court:

(a) That person is liable for repayment to the Department of the full amount of overpayment the Department has established, regardless of any restitution ordered by a court.

(b) The client is disqualified from receiving benefits in the program in which the IPV was committed for a period of 12 calendar months for the first IPV, 24 calendar months for the second IPV and permanently for the third IPV.

(c) If the TANF grant is affected by the IPV penalty imposed under this rule, eligibility for and the level of food stamp benefits are determined in accordance with OAR 461-145-0105.

(5) In the TA-DVS program, if an IPV is established against a person through a contested case hearing or a waiver of the right to hearing:

(a) That person is liable for repayment to the Department of the full amount of overpayment the Department has established, regardless of any restitution ordered by a court. The Department will seek repayment from the client only if seeking repayment would not place the client at greater risk of domestic violence.

(b) Subsequent applications for TA-DVS that meet the eligibility criteria set forth in OAR 461-135-1215 and 461-135-1225 must be staffed with the Department's central office.

(6) A person found by a federal, state, or local court to have traded a controlled substance for food benefits is disqualified from participation in the Food Stamp program as follows:

(a) For a period of two years upon the first occasion.

(b) Permanently upon the second occasion.

(7) A person found by a federal, state, or local court to have traded firearms, ammunition, or explosives for food benefits is permanently disqualified from participation in the Food Stamp program.

(8) A person convicted of an act prohibited by 7 U.S.C. 2024(b) or (c) (1999) involving an item covered by those subsections and having a value of \$500 or more is permanently disqualified from participation in the Food Stamp program.

(9) A person is disqualified for a 10-year period from receiving benefits in the program in which the person committed fraud if the person--

(a) In the TANF program:

(A) Is convicted in state or federal court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two or more states under programs that are funded under Title IV or XIX of the Social Security Act.

(B) Is found in an IPV hearing or admits, in a written waiver of the right to an IPV hearing, to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive benefits simultaneously from two or more states.

(b) In the Food Stamp program, is convicted in state or federal court, is found in an IPV hearing, or admits in a written waiver of the right to an IPV hearing, of having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple benefits simultaneously from one or more states under programs that are funded under the Food Stamp Act of 1977.

(10) The Department issues notice of disqualification in accordance with OAR 461-175-0220. The disqualification provided for in this rule begins the first of the month following the month in which the notice period ends.

(11) Once a disqualification period begins, it continues uninterrupted until completed, regardless of the eligibility of the filing group of the disqualified person.

Stat. Auth.: ORS 411.060, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.816, 412.049

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; 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 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 13-2009, f. & cert. ef. 7-1-09

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

**Adm. Order No.:** SSP 14-2009(Temp)

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09 thru 10-28-09

**Notice Publication Date:**

**Rules Amended:** 461-110-0530

**Subject:** OAR 461-110-0530 about the composition of financial groups (the individuals whose income and resources count in determining eligibility and benefits) in the Temporary Assistance for Needy Families (TANF) program is being amended to state that a caretaker relative, other than a parent, who chooses 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) must have income less than the non-needy countable income limit standard for the filing group (the individuals whose circumstances are considered in the eligibility determination process) of the caretaker relative to be excluded from the financial group; that only the spouses and dependent children of a caretaker relative, other than a parent, who choose not to be included in the need group and have income less than the non-needy countable income limit standard for the filing group of the caretaker relative may be excluded from the financial group; and that an individual in the filing group solely due

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to the requirements of OAR 461-110-0310(1)(b) (individuals in the filing group but not the household) may be excluded from the financial group. These amendments were originally made to this rule via a temporary rule effective May 1, 2009. In the interim unrelated changes to the permanent rule became effective on July 1, 2009 and the rule no longer includes the May 1, 2009 temporary changes. These temporary amendments reflect the May 1, 2009 temporary changes so that rule will once again include those amendments.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## **461-110-0530 Financial Group**

(1) Except as provided in 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

(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 (see OAR 461-001-0000) 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 remaining income of the spouse who is ineligible 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

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

**Adm. Order No.:** SSP 15-2009(Temp)

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09 thru 12-28-09

**Notice Publication Date:**

**Rules Amended:** 461-135-0075

**Subject:** OAR 461-135-0075 about the limitation on the months of eligibility for Temporary Assistance for Needy Families (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. These amendments were originally made to this rule via a temporary rule filed on June 23, 2009 and effective July 1, 2009. In the interim unrelated changes to the permanent rule became effective on July 1, 2009 and the rule no longer includes the June 23, 2009 temporary changes. These temporary amendments reflect the June 23, 2009 temporary changes so that rule will once again include those amendments.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## **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 SFSPSS 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;

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- (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:
- Physical acts that resulted in, or threatened to result in, physical injury to the individual.
  - Sexual abuse.
  - Sexual activity involving a dependent child.
  - Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.
  - Threats of, or attempts at, physical or sexual abuse.
  - Mental abuse.
  - 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 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

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

**Adm. Order No.:** SSP 16-2009(Temp)

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09 thru 9-28-09

**Notice Publication Date:**

**Rules Amended:** 461-135-0475

**Rules Suspended:** 461-135-0475(T)

**Subject:** OAR 461-135-0475 about the specific eligibility requirements for support service payments (for a client's basic living expenses needs) in the Pre-Temporary Assistance to Needy Families

(Pre-TANF) program is being suspended to increase the maximum potential monthly expenses covered.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-135-0475

### Specific Requirements; Pre-TANF Program

(1) This rule explains specific requirements for the Pre-TANF program. The eligibility criteria of the Pre-TANF program are the same as the TANF program. The purposes of the Pre-TANF program are:

- To help individuals find employment or other alternatives;
- To assess the employment potential of clients;
- To help clients determine the services needed to enhance their employability and their likelihood of becoming self sufficient;
- To determine if a needy *caretaker relative* (see OAR 461-001-0000) has or may have a barrier to employment or to family stability.
- To develop an individualized *case plan* (see OAR 461-001-0025) that establishes goals and identifies suitable *activities* (see OAR 461-001-0025) that promote family stability and financial independence.
- To provide basic living expenses immediately to families in need.

(2) Applicants for the TANF program whose unverified application indicates the client meets the TANF eligibility requirements participate in the Pre-TANF program. Their applications for the TANF program are also considered applications for the Pre-TANF program. The Pre-TANF program is open for not longer than 45 days following the *date of request* (see OAR 461-115-0030).

(3) Clients in the Pre-TANF program are subject to the requirements of the JOBS program, described in divisions 130 and 190 of this chapter of rules, and they are subject to the requirements of OAR 461-135-0085 pertaining to substance abuse and mental health.

(4) Once a client is found eligible for the Pre-TANF program, the client participates in initial screenings to determine the client's employment strengths and to determine if the client has any barriers to employment or family stability. If the screening indicates that there is or may be a barrier, the needy *caretaker relative* is referred for an in-depth evaluation by a person with relevant expertise or specialized training. The client and the Department prepare a *case plan* that specifies the basic living expenses and support service payments the client will receive through the Pre-TANF program and lists the *activities* of the client. The *case plan* may be adjusted at any time while the client is in the Pre-TANF program to reflect changing needs.

(5) Clients in the Pre-TANF program receive assistance, listed in the *case plan*, for basic living expenses, and the Department makes support service payments listed in the *case plan*, as follows:

(a) The Department will provide the client with basic living expenses necessary to stabilize the household so the client can accomplish the *activities* in the *case plan*. Basic living expenses covered by this section are limited to the current need of the client for shelter, utilities, household supplies (other than food), and personal incidentals that the client cannot meet with other, immediately available resources. Payments under this subsection are limited to 200 percent of the payment standard for the benefit group (see OAR 461-155-0030(2)). Payment for "past expenses" is made only when the need of the client cannot be adequately met by a less expensive alternative.

(b) Other support service payments are available to clients in the Pre-TANF program through the JOBS program (see OAR 461-190-0211 and 461-190-0241) in the same manner they are available to a TANF client.

(6) The Pre-TANF program is closed in any of the following circumstances:

(a) The client is unlikely to become employed within 45 days following the date of request, whether due to the employability of the client, the circumstances affecting the family, or other causes.

(b) The client fails without *good cause* (see OAR 461-130-0327) to comply with a requirement of an employment program or the *case plan*.

(c) In any circumstance that would make a client ineligible for TANF.

(d) Upon starting a JOBS Plus assignment.

(e) Upon employment and enrollment in the Post-TANF program.

(7) If Pre-TANF benefits are closed pursuant to subsection (6)(a) or (b) of this rule, TANF benefits may be opened if all TANF eligibility requirements are met.

Stat. Auth.: ORS 411.060, 411.070, 418.040, 418.100

Stats. Implemented: ORS 411.060, 411.070, 418.040, 418.100

Hist.: AFS 9-1997, f. & cert. ef. 7-1-97; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 16 2009(Temp), f. & cert. ef. 7-1-09 thru 9-28-09



# ADMINISTRATIVE RULES

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

**Rule Caption:** Hospital Provider Tax Rate Reduction.

**Adm. Order No.:** DMAP 24-2009

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 410-050-0861

**Subject:** The hospital provider tax rule change reduces the tax rate from .63% to .15%, effective July 1, 2009.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

### 410-050-0861

#### Tax Rate

The tax rate for the period beginning January 1, 2005 and ending June 30, 2006 is .68 percent. The tax rate for the period beginning July 1, 2006 and ending December 31, 2007 is .82 percent. The tax rate for the period beginning January 1, 2008 and ending July 30, 2009 is .63 percent. The tax rate for the period beginning July 1, 2009 is .15 percent.

Stat. Auth.: ORS 409.050, 410.070 & 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 2 & 3

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

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**Rule Caption:** Correction of Clerical Error Regarding Effective Date for Hospital Tax Rate.

**Adm. Order No.:** DMAP 25-2009(Temp)

**Filed with Sec. of State:** 7-15-2009

**Certified to be Effective:** 7-15-09 thru 1-10-10

**Notice Publication Date:**

**Rules Amended:** 410-050-0861

**Subject:** The hospital tax rate rule, OAR 410-050-0861, is being temporarily amended to correct a clerical error made during the July 1, 2009 permanent filing of this rule. The rule, as currently written, is ambiguous as to which tax rate applies for the period of July 1, 2009 to July 30, 2009. This temporary rule is being filed, retroactive to July 1, 2009, to correct the clerical error and remove the ambiguity by clarifying that the .63 percent tax rate applied during the January 1, 2008 to June 30, 2009 time frame.

This temporary rule is available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>.

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

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

### 410-050-0861

#### Tax Rate

The tax rate for the period beginning January 1, 2005 and ending June 30, 2006 is .68 percent. The tax rate for the period beginning July 1, 2006 and ending December 31, 2007 is .82 percent. The tax rate for the period beginning January 1, 2008 and ending June 30, 2009 is .63 percent. The tax rate for the period of January 1, 2008 through June 30, 2009 does not apply to the period beginning July 1, 2009. The tax rate for the period beginning July 1, 2009 is .15 percent.

Stat. Auth.: ORS 409.050, 410.070 & 411.060

Stats. Implemented: ORS 409.750 & 2003 OL Ch. 736 § 2 & 3

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

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## Department of Human Services, Public Health Division Chapter 333

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

**Adm. Order No.:** PH 6-2009(Temp)

**Filed with Sec. of State:** 6-16-2009

**Certified to be Effective:** 6-17-09 thru 12-13-09

**Notice Publication Date:**

**Rules Adopted:** 333-060-0127, 333-062-0102

**Rules Amended:** 333-060-0125, 333-060-0505, 333-060-0510, 333-062-0100

**Subject:** The Department of Human Services, Public Health Division is temporarily adopting and amending Oregon Administrative Rules in chapter 333, divisions 60 and 62, related to main drains and suction fittings in public swimming pools and public spa pools. These changes to the state administrative rules are to comply with the Federal Virginia Graeme Baker Pool and Spa Safety Act and to clear up any discrepancies between state and federal regulations.

The temporary rules update Oregon Administrative Rules to current federal standards and provide direction for new pool construction. The adoption of temporary rules will solve the problem with differences between the two set of requirements in a timely manner. The Division is also proposing the rules for permanent adoption through the normal rule revision process.

**Rules Coordinator:** Sally Peters—(971) 673-0561

### 333-060-0125

#### Inlets

(1) Pool inlets must be provided, sized and arranged to produce a uniform circulation of water so as to maintain a uniform disinfectant residual throughout the pool.

(2) There must be at least one inlet per 400 square feet of pool area or 10,000 gallons of water, whichever is greater.

(3) Pools more than 50 feet wide and reverse flow pools must use floor inlet fittings uniformly spaced no more than 20 feet apart and within 15 feet of the sidewalls.

(4) Grates must be designed so as to prevent entrapment of fingers.

(5) All recirculation inlet fittings must be adjustable for rate of flow. Wall inlet fittings must be directional.

(6) Inlet fittings must have tamper-proof screws that cannot be removed except with tools. Grates, vortex plates and inlet fittings must be in place whenever the pool is in use.

(7) Direct potable water pool inlets must:

(a) Be over-the-rim fill spouts with air gaps located under a diving board or beside grab rails; or

(b) Be through-the-wall fill lines located above the water level and equipped with an appropriate backflow prevention device installed per OAR 333-061-0071; or

(c) Be directly connected to the recirculation water supply and equipped with reduced pressure device installed per OAR 333-061-0071 on the potable water supply adjacent to the connection with the pool recirculation water.

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005 - 448.100, 448.990

Hist.: HD 2-1979, f. 1-25-79, ef. 3-1-79; Renumbered from 333-042-0143; HD 7-1986, f. & ef. 5-1-86; HD 22-1994, f. 8-22-94, cert. ef. 9-1-94; PH 6-2009(Temp), f. 6-16-09, cert. ef. 6-17-09 thru 12-13-09

### 333-060-0127

#### Submerged Suction Outlets and Drains

The provisions in this rule are consistent with the requirements of the federal Virginia Graeme Baker Pool and Spa Safety Act (VGBPSSA), 15 USC 8001. Public swimming pools, wading pools and spas that operate year-round were expected to be in compliance by December 19, 2008. Seasonal public pools and spas that were closed when the law went into effect are expected to be in compliance with the federal law on the day that they reopen in 2009. The U.S. Consumer Product Safety Commission (CPSC) is responsible for enforcing the VGBPSSA. Sections (1) and (2) of this rule will not be enforced by the state or a county delegated authority under ORS 448.100 against public swimming pools, wading pools and spas built prior to the effective date of this rule as the state is not responsible for enforcement of the VGBPSSA. However, any public swimming pool, wading pool or spa not in compliance with the VGBPSSA could be subject to an enforcement action by the CPSC.

(1) Two Outlets. There must be at least two outlets located at the lowest point of the pool floor to drain the entire floor area. Exceptions to this include:

(a) Reverse Flow Pools, where the drain is not connected to the recirculation system, but is provided for drainage of the pool through an air-gap connection to the sanitary sewer.

(b) Other suction-fitting arrangement that allows the drainage of the pool through an air-gap connection to the sanitary sewer, or other approved location, while also providing entrapment protection.

(c) Pools with no drain system, with provisions to completely drain the pool to the sanitary sewer or other approved location, by other means that have entrapment protection.

(2) MAIN DRAINS AND SUBMERGED SUCTION FITTINGS. All submerged suction fittings must be installed according to the standards below.

# ADMINISTRATIVE RULES

(a) Pool main drains must be installed in the deepest part of the pool and designed to minimize tripping and toe stubbing hazards. Suction fittings must be installed to minimize tripping, toe stubbing and scrape hazards.

(b) Main drain and submerged suction outlets must be designed with sufficient open area that the maximum velocity through the cover does not exceed the cover's listed flowrate.

(c) All hardware and fittings must be supplied by the manufacturer and installed according to the manufacturer's directions.

(d) Main drain and submerged suction fitting systems must provide ENTRAPMENT, HAIR ENTANGLEMENT and EVISCERATION protection.

(A) Main drains and submerged suction fittings and sumps must be compliant with the requirements of ANSI/ASME A112.19.8 (2007). The cover must be labeled and include; "VGB 2008," the logo of the third party listing agency, the standard for which it was tested, the gallons for which it was approved and the location it is to be placed.

(B) All submerged suction fittings must be installed with a sump designed and approved by the manufacturer for that outlet cover.

(C) All field built sumps must be designed by an Oregon registered engineer and must be built so the opening of the suction pipe is no closer than 1.5 times the pipe's inside diameter from the bottom of the listed suction cover/plate.

(D) Main drains and submerged suction fittings must be separated by at least three feet (measured from the main drain connector pipe centerlines) between the furthest fittings, or be on separate planes, placed so the floor and wall suction fittings cannot be easily blocked at the same time.

(i) The outlets must be sized to handle an equal portion of at least 200 percent of the recirculation flow.

(ii) The outlets must be installed so that they cannot be isolated from one another; no intervening valves.

(iii) The piping going back to the pump must be located in the hydraulic middle of the connector piping, and must be the same size as the connector piping.

(3) BROKEN OR MISSING GRATE FITTINGS. If the pool operator finds that a suction fitting is broken or missing, they must close the pool immediately, shut down the recirculation system and remain closed until the fitting has been replaced.

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005 - 448.100, 448.990

Hist.: PH 6-2009(Temp), f. 6-16-09, cert. ef. 6-17-09 thru 12-13-09

## 333-060-0505

### New Wading Pool Construction

(1) RECIRCULATION. All public wading pools that have submerged outlets must have at least two outlets for each pump. Each public wading pool, except those in subsection (1)(c) of this rule, must have a recirculation rate that meets or exceeds subsection (1)(a) or (1)(b) of this rule, whichever is greater:

(a) A 60-minute turnover time; or

(b) When skimmers are used, each skimmer must be designed to skim between 30 to 45 gpm water flow, when 70 percent of the recirculation flow is through the skimmers ((# of skimmers) x (30 to 45 gpm design flow)/0.70 = gpm recirculation rate). The skimmer piping must be designed to handle 100 percent of the recirculation rate.

(c) Spray pools, water playgrounds and interactive fountains that do not pond water and that use potable water once and dispose of it without recirculating it are not regulated or licensed by the Division.

(2) SEPARATE SYSTEM. Each public wading pool must have its own separate recirculation system.

(3) SURFACE SKIMMING. The pool must be designed to skim the water surface continuously. The Division may consider overflow structures such as intermittent fixed weir overflow and trench drains, if shown to be comparably compliant to gutter systems. The Division or its agent may consider alternate overflow designs if the designer shows that adequate skimming and water mixing occur when non-traditional designs are proposed.

(a) SKIMMERS must be listed as meeting ANSI/NSF Standard 50 requirements by a nationally recognized testing organization approved by the Division. A skimmer must be provided for every 400 square feet (37 m<sup>2</sup>) of water surface area or fraction thereof and provide flow in the amount determined in subsection (1)(b) of this rule.

(b) GUTTERS AND TRENCH DRAINS. Gutters allow skimming along the entire edge of the gutter. Generally the gutter extends completely around the perimeter of the pool. A TRENCH DRAIN is used much like a gutter, and is installed in zero-depth areas where an overflow lip cannot be provided. Trench drains are installed at the same angle as the floor. To skim properly, the bottom edge of the trench drains must be level to a very small tolerance and slightly below the water surface.

(A) To determine the minimum amount of surge capacity needed for the pool, add subparagraphs (3)(b)(A)(i) and (ii) of this rule and provide

this capacity by installing a surge tank, or any combination of surge tank, gutter, or trench drain:

(i) Provide a minimum surge capacity equal to an amount determined by calculating eight minutes of recirculation flow (8 x recirculation rate = surge capacity); then

(ii) Add the surge needs of any spray feature or water activity system. Allow an amount equal to at least two minutes of feature recirculation flow, or as recommended by the manufacturer, whichever is greater.

(B) Install an automatic fill device, to maintain the water level, on all wading pools with gutters or trench drains.

(4) INLETS. Locate the inlets to evenly distribute treated water to all parts of the wading pool and to move debris to the overflow and drain systems. The designer is responsible for demonstrating that the inlet system will provide adequate circulation to all portions of the wading pool:

(a) Use floor inlets on all wading pools more than 30 feet wide (9.1m), and on zero-depth pools.

(b) In-floor cleaning systems, or other products that may cause a tripping or stubbing hazard, are not allowed.

(c) All inlet fittings must have tamper-proof screws or attachments that cannot be removed except with tools. Inlet fittings will be in place whenever the pool is in use.

(5) SUBMERGED SUCTION FITTINGS AND MAIN DRAINS. All submerged suction fittings must be installed according to the standards below.

(a) Wading pool main drains must be installed in the deepest part of the pool and be designed to minimize tripping and toe stubbing hazards.

(b) Main drain and submerged suction outlets must be designed with sufficient open area that the maximum velocity through the cover does not exceed the cover's listed flowrate.

(c) All hardware and fittings must be supplied by the manufacturer and installed according to the manufacturer's directions.

(d) Main drain and submerged suction fitting systems must provide ENTRAPMENT, HAIR ENTANGLEMENT and EVISCERATION protection.

(A) Main drains and submerged suction fittings and sumps must be compliant with the requirements of ANSI/ASME A112.19.8 (2007). The cover must be labeled and include; "VGB 2008," the logo of the third party listing agency, the standard for which it was tested, the gallons for which it was approved and the location it is to be placed.

(B) Maintain any documentation about your main drain or suction fitting.

(C) All submerged suction fittings must be installed with a sump designed and approved by the manufacturer for that outlet cover.

(D) All field built sumps must be designed by an Oregon registered engineer and must be built so the opening of the suction pipe is no closer than 1.5 times the pipe's inside diameter from the bottom of the listed suction cover/plate.

(E) Two or more outlets must be provided. They must be separated by at least three feet (measured from the midpoint of the main drain connector pipe centerlines) between the furthest fittings, or be on separate planes, placed such that they cannot be blocked by one person.

(i) The outlets must be sized to handle an equal portion of at least 200 percent of the recirculation flow.

(ii) The outlets must be installed so that they cannot be isolated from one another; no intervening valves.

(iii) The main drain or submerged suction fitting-piping going back to the pump must be located in the hydraulic middle of the fitting connector piping, and must be the same size as the connector piping.

(6) BROKEN OR MISSING GRATE FITTINGS. If the pool operator finds that a suction fitting is broken or missing, they must close the wading pool immediately, shut down the recirculation system and remain closed until the fitting has been replaced.

(7) BASIN DESIGN. The slope of the pool bottom can be no more than 1 in 12. Eight inches (200 mm) is the maximum water depth allowed at any edge of the pool accessible from the deck. When perimeter water depths exceed eight inches (200mm) at the edge of the pool, stairs and handrails complying with the requirements of OAR 333-060-0080(1), (3), (4)(b), (7), (8), and (9), must be provided at the designated entry points.

(8) DECKING. Unobstructed decking, five feet (1.5 m) or more in width must be provided around the wading pool perimeter. When a wading pool is adjacent to a swimming pool, it must be located near the shallow end of the swimming pool, with a minimum of nine feet (2.7 m) of deck between the pools.

(9) ENCLOSURE. Enclose the wading pool area, as required by OAR 333-060-0105. Spray pools, water playgrounds, and fountains that do not pond water may comply with paragraph (11)(c)(E) of this rule in lieu of providing an enclosure.

(10) DEPTH MARKING:

(a) The operator must indicate the maximum pool depth in feet and inches, with a sign near each entrance to the wading pool.

# ADMINISTRATIVE RULES

(b) Depth markings must be placed around the pool perimeter indicating the water depth at the edge, following the requirements in OAR 333-060-0065.

(c) Pools with a zero-depth edge are not required to have perimeter depth markings, but are still required to provide the maximum depth signs.

(d) Pools and fountains that do not pond water are not required to have depth markings or maximum depth signs.

(11) **SPRAY FEATURES AND PLAY EQUIPMENT.** Fountains, sprays, slides and similar features may be installed, if specifically designed for aquatic installation:

(a) **WATER SOURCE.** Water-using features must be designed and installed to draw their water supply from the main drain or similar fitting, surge tank, trench drains or gutters, but not from the skimmers. The main drain fittings and the related piping must be sized for 100 percent of the pool recirculation rate plus 100percent of the capacity of any feature pump routed through the fittings. The sizing of the feature pump must be based on 20 ft. TDH (59,000 Pa), unless the actual TDH is calculated.

(b) **EQUIPMENT DESIGN AND INSTALLATION.** Play equipment shall be designed and installed to meet all applicable standards of the CPSC Handbook for Playground Safety (1997 edition), and ASTM F1487, Standard for Public Playground Equipment:

(A) Applicable requirements include equipment design and construction, proper anchoring, entrapment protection, protrusion safety, and safety use-zone sizing. All equipment shall be designed for use in pools.

(B) Play equipment must be designed to be difficult to climb, unless the equipment is specifically designed for climbing and provided with safety zones and impact attenuating surfaces acceptable to the Division.

(C) Swings are not allowed.

(D) Obstructions extending from the walls or the bottom of the wading pool are not permitted, unless a designed part of the play equipment, with provisions made for safety and good water circulation.

(E) "Children's Activity Slides" are small, low exit velocity slides designed for use by small children in shallow water. They must be designed by the manufacturer for use in 24 inches (0.6 m) or less of water, and installed as recommended by the manufacturer. Other types of slides are not allowed.

(F) Spray pools, using potable water, must comply with all requirements concerning basin design, materials, entrapment protection, fall protection, and safety during construction of the pool, and must be maintained and operated in a safe and healthy manner.

(c) **SPRAY POOLS or WATER PLAYGROUNDS.** Spray pools or water playgrounds are basins containing spray features intended for recreational use, but that do not collect water in the basin. If the water is captured and recirculated, the pool shall meet the requirements of OAR, chapter 333, division 060. If potable water is used once and drained to waste, the spray pool or water playground is not regulated or licensed under these rules:

(A) Design spray pools with a zero-depth design, with no walls in the basin.

(B) Spray pools do not require devices for skimming.

(C) All water recirculated through the spray features shall be filtered and sanitized, or from a potable water source. Equipment capable of continuously supplying at least 0.25 ppm additional chlorine to the line returning water to the spray features must be provided, except when potable water is supplied, used once and drained to waste, or all the water is filtered and treated before being sent back to the water features.

(D) Slip-resistant, easy to clean and water impervious surfaces must be installed in the spray basin. Impact attenuating surfaces, basin surfacing materials with shock absorbing properties, for use with equipment addressed in subsection (11)(b) of this rule, will be considered, but must be water impervious, not conducive to bacteria and algae growth, and resistant to vandalism and damage. All impact cushioning materials must be approved by the Division for use in a wet environment.

(E) Spray pools do not require a security enclosure. At least six feet (1.9 m) of deck around the perimeter of the pool basin and sloped away from the basin must be provided.

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

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005 - 448.100, 448.990

Hist.: PH 17-2006, f. 6-30-06, cert. ef. 7-1-06; PH 6-2009(Temp), f. 6-16-09, cert. ef. 6-17-09 thru 12-13-09

## 333-060-0510

### Existing Wading Pools

The requirements in this rule apply to all wading pools built before July 13, 2006.

(1) **RETRO-FIT RECIRCULATION SYSTEMS.** All water-retaining wading pools need recirculation, filtration, and disinfection. Those wading pools without water recirculation shall be renovated, or phased out of use and removed, before December 31, 2009.

(a) **COMPLIANCE.** Operators of all wading pools affected by this rule must provide to the Division or its agent, before July 1, 2007, a proposed plan and timetable for renovation or removal of the pool.

(A) The proposed plan and timetable will be reviewed by the Division or agent health department and an acceptable plan and timetable will be negotiated or approved.

(B) Before renovation begins, construction plans, a plan review application and fees must be submitted to the Division or its agent to obtain approval and a construction permit.

(C) If a wading pool operator fails to submit a plan by July 1, 2007, or fails to complete renovations or removal by December 31, 2009, the license for the pool will not be renewed:

(i) After December 31, 2009, wading pools without water recirculation systems and without a license to operate, are declared public nuisances under the authority of ORS 448.060; and

(ii) The Division or its agent, in compliance with ORS 448.060 may proceed with abatement of said nuisance.

(b) **INTERIM OPERATION.** Operators of wading pools that have no recirculation, filtration or disinfection systems must change the water at least every four hours. This may be accomplished by gradual drainage, or by dumping and filling. This may continue until the wading pool is retro-fit or December 31, 2009 whichever comes first. Additional requirements include:

(A) At opening, and every two hours after that, until closing, the water must be tested and a chlorinating product added to reach a residual of 5 ppm.

(B) The water must be drained at closing each day. Before opening again, the basin must be thoroughly rinsed and any debris removed. The basin must be scrubbed at least weekly, with a solution containing at least 50 ppm of chlorine, mixed according to the directions on the chemical container. Potable water must be used to fill the pool and the chlorine level adjusted.

(2) Protection against **ENTRAPMENT, HAIR ENTANGLEMENT** and **EVISCERATION** for all suction fittings will be provided on all wading pools, except those addressed in subsection (1)(b) of this rule by December 31, 2008.

(a) **COMPLIANCE.** If a wading pool operator fails to provide entrapment protection by December 31, 2008 the operator will close the wading pool until either protection is provided and approved by the Division or its agent, or the pool is removed. If corrections are not completed by December 31, 2009, the license for the pool will not be renewed.

(A) Before renovation begins; construction plans, a plan review application and fees must be submitted to the Division or its agent to obtain approval and a construction permit.

(B) After December 31, 2009, wading pools without entrapment protection and without a license to operate are declared public nuisances under the authority of ORS 448.060; and

(C) The Division or its agent, in compliance with ORS 448.060 may proceed with abatement of said nuisance, including summary abatement, if necessary.

(D) Renovations must meet the requirements of OAR 333-060-0505(5) after June 16th, 2009.

Stat. Auth.: ORS 448.011

Stats. Implemented: ORS 448.005 - 448.100, 448.990

Hist.: PH 17-2006, f. 6-30-06, cert. ef. 7-1-06; PH 6-2009(Temp), f. 6-16-09, cert. ef. 6-17-09 thru 12-13-09

## 333-062-0100

### Inlets

(1) Pool inlets must be provided, sized, and arranged to produce a uniform circulation of water so as to maintain a uniform disinfectant residual throughout the pool.

(2) There must be at least one inlet per 400 square feet of pool area or 10,000 gallons of water, whichever is greater, with a minimum of two inlets.

(3) Grates must be designed so as to prevent entrapment of fingers.

(4) All recirculation inlet fittings must be adjustable for rate of flow. Wall inlet fittings must be directional.

(5) Inlet fittings must have tamper-proof screws that cannot be removed except with tools. Grates, vortex plates and inlet fittings must be in place whenever the spa is in use.

(6) Direct potable water pool inlets must:

(a) Be over-the-rim spouts with an air-gap located beside grab rails; or

(b) Be through-the-wall fill lines located above the water level and equipped with an appropriate backflow prevention device installed per OAR 333-061-0071; or

(c) Be directly connected to the recirculation water supply and equipped with reduced pressure device installed per OAR 333-061-0071 on the potable water supply adjacent to the connection with the spa pool recirculation water.



# ADMINISTRATIVE RULES

Stat. Auth.: ORS 448.011  
Stats. Implemented: ORS 448.005 - 448.100 & 448.990  
Hist.: HD 14-1980(Temp), f. & ef. 12-19-80; HD 8-1981, f. & ef. 6-23-81; Renumbered from 333-042-0395; HD 23-1994, f. 8-22-94, cert. ef. 9-1-94; PH 6-2009(Temp), f. 6-16-09, cert. ef. 6-17-09 thru 12-13-09

## 333-062-0102

### Submerged Suction Fittings and Drains

The provisions in this rule are consistent with the requirements of the federal Virginia Graeme Baker Pool and Spa Safety Act (VGBPSSA), 15 USC 8001. Public swimming pools, wading pools and spas that operate year-round were expected to be in compliance by December 19, 2008. Seasonal public swimming pools, wading pools and spas that were closed when the law went into effect are expected to be in compliance with the federal law on the day that they reopen in 2009. The U.S. Consumer Product Safety Commission (CPSC) is responsible for enforcing the VGBPSSA. This rule will not be enforced by the state or a county delegated authority under ORS 448.100 against public swimming pools, wading pools and spas built prior to the effective date of this rule as the state is not responsible for enforcement of the VGBPSSA. However, any public pool or spa not in compliance with the VGBPSSA could be subject to an enforcement action by the CPSC.

#### (1) ALL POOLS

(a) Every spa pool must have an easy and effective means of draining the pool.

(b) Main drain and submerged suction outlets must be designed with sufficient open area that the maximum velocity through the cover does not exceed the cover's listed flowrate. Drains and suction fittings must be installed to minimize tripping, toe stubbing and scrape hazards.

(c) All hardware and fittings must be supplied by the manufacturer and installed according to the manufacturer's directions.

(d) **BROKEN OR MISSING GRATE FITTINGS.** If the pool operator finds that a suction fitting is broken or missing, the operator must close the pool immediately, shut down the recirculation system and remain closed until the fitting has been replaced.

(2) **NEW CONSTRUCTION.** Main drain and submerged suction fitting systems must provide ENTRAPMENT, HAIR ENTANGLEMENT AND EVISCERATION protection.

(a) Main drains and submerged suction fittings and sumps must be compliant with the requirements of ANSI/ASME A112.19.8 (2007). The cover must be labeled and include; "VGB 2008," the logo of the third party listing agency, the standard for which it was tested, the gallons per minute for which it was approved and the location it is to be placed.

(b) Maintain any documentation about your main drain or suction fitting.

(c) All submerged suction fittings must be installed with a sump designed and approved by the manufacturer for that outlet cover.

(d) All field built sumps must be designed by an Oregon registered engineer and must be built so the opening of the suction pipe is no closer than 1.5 times the pipe's inside diameter from the bottom of the listed suction cover/plate.

(e) Main drains and submerged suction fittings must be separated by at least three feet (measured from the main drain connector pipe centerlines) between the furthest fittings, or be on separate planes, placed so the floor and wall suction fittings cannot be easily blocked at the same time.

(A) The outlets must be sized to handle an equal portion of at least 200 percent of the recirculation flow.

(B) The outlets must be installed so that they cannot be isolated from one another; no intervening valves.

(C) The piping going back to the pump must be located in the hydraulic middle of the connector piping, and must be the same size as the connector piping.

Stat. Auth.: ORS 448.011  
Stats. Implemented: ORS 448.005 - 448.100 & 448.990  
Hist.: PH 6-2009(Temp), f. 6-16-09, cert. ef. 6-17-09 thru 12-13-09

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

**Rule Caption:** Clackamas County-Issued Adult Foster Home License, Transition to State Licensing.

**Adm. Order No.:** SPD 5-2009

**Filed with Sec. of State:** 6-24-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 6-1-2009

**Rules Adopted:** 411-050-0499

**Subject:** The Department of Human Services (DHS), Seniors and People with Disabilities Division is permanently adopting OAR 411-

050-0499 to transition the adult foster home licensing and inspection program from Clackamas County to DHS on July 1, 2009.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-050-0499

### Clackamas County-Issued Adult Foster Home License, Transition to State Licensing

(1) The purpose of this rule is to transition the adult foster home licensing and inspection program from Clackamas County to the Department of Human Services on July 1, 2009 and to allow time for existing Clackamas County licensed providers to come into compliance with SPD licensing standards. This rule only applies to adult foster homes in Clackamas County that were licensed by Clackamas County prior to July 1, 2009.

(2) SPD shall recognize an adult foster home license issued by Clackamas County Social Services Division pursuant to ORS 443.780 as a valid license to operate an adult foster home on and after July 1, 2009 until the expiration date of the license. At least 60 days prior to the expiration of the license, Clackamas County licensees must renew their adult foster home license with SPD pursuant to, and in accordance with ORS 443.705 to 443.825 and OAR chapter 411, division 050 requirements.

(3) Beginning on July 1, 2009, inspections or investigations may be conducted by SPD or its designee pursuant to OAR 411-050-0450.

(a) For purposes of license renewals, SPD shall issue a new license to an applicant if the home is in compliance with ORS 443.705 to 443.825 and OAR chapter 411, division 050 requirements.

(b) At the request of a licensee, or upon an inspection or investigation of a complaint, if licensee is not in compliance with OAR chapter 411, division 050 requirements, the licensee may request an exception from the administrative requirements pursuant to 411-050-0430.

(c) In determining whether to grant an exception, SPD shall consider, in addition to the standards set forth in OAR 411-050-0430, whether the applicant or licensee would have met any comparable Clackamas County licensing requirement or was granted an exception or waiver from the county requirement. An exception granted under 411-050-0430 pursuant to this rule may be issued with an effective date of July 1, 2009, or such later date as SPD determines appropriate.

(4) This rule shall be effective until December 31, 2010.

Stat. Auth.: ORS 443.775  
Stats. Implemented: ORS 443.705 - 443.825  
Hist.: SPD 5-2009, f. 6-24-09, cert. ef. 7-1-09

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**Rule Caption:** Medicaid Nursing Facilities.

**Adm. Order No.:** SPD 6-2009(Temp)

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09 thru 12-28-09

**Notice Publication Date:**

**Rules Amended:** 411-070-0005, 411-070-0442

**Subject:** To implement House Bill 2126 (2009 Regular Session), the Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending OAR 411-070-0005 and OAR 411-070-0442 relating to Medicaid nursing facilities to change the methodology for establishing nursing facility rates for the 2009-2011 biennium.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-070-0005

### Definitions

As used in OAR chapter 411, division 070, the definitions in OAR 411-085-0005 and the following definitions apply:

(1) "Accrual Method of Accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Active Treatment" means the implementation of an individualized care plan developed under and supervised by a physician and other qualified mental health professionals that prescribes specific therapies and activities.

(3) "Activities of Daily Living" means activities usually performed in the course of a normal day in an individual's life such as eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition/behavior.

(4) "Alternative Services" means individuals or organizations offering services to persons living in a community other than a nursing facility or hospital.

(5) "AMHD" means the Department of Human Services, Addictions and Mental Health Division

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(6) "Area Agency on Aging (AAA)" means an established public agency designated under the Older Americans Act, 42 USC 3025, and which has a responsibility for local administration of senior and disability programs as described in ORS chapter 410.

(7) "Basic Flat Rate Payment" and "Basic Rate" mean the statewide standard payment rate for all long term services provided to a Medicaid resident of a nursing facility except for services reimbursed through another Medicaid payment source. The "Basic Rate" is the bundled payment rate unless the resident qualifies for the complex medical add-on rate (in addition to the basic rate) or the bundled pediatric rate (instead of the basic rate).

(8) "Capacity" means licensed nursing beds multiplied by number of days in operation.

(9) "Case Manager" means a Seniors and People with Disabilities or Area Agency on Aging employee who assesses the service needs of an applicant or eligible individual, determines eligibility and offers service choices to eligible individuals. The case manager authorizes and implements the service plan and monitors the services delivered.

(10) "Cash Method of Accounting" means a method of accounting in which revenues are recognized only when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for them.

(11) "Categorical Determinations" means the provision in the Code of Federal Regulations {42 CFR 483.130} for creating categories that describe certain diagnoses, severity of illness or the need for a particular service that clearly indicates that admission to a nursing facility is normally needed or that the provision of specialized services is not normally needed.

(a) Membership in a category may be made by the evaluator only if existing data on the individual is current, accurate and of sufficient scope.

(b) An individual with Mental Illness or Developmental Disabilities may enter a nursing facility without PASRR Level II evaluation if criteria of a categorical determination are met as described in OAR 411-070-0043(2)(a)-(2)(c).

(12) "Certification" and "Certification for the Categorical Determination of Exempted Hospital Discharge" means that the attending physician has written orders for the individual to receive skilled services at the nursing facility.

(13) "Certified Program" means a hospital, private agency or an Area Agency on Aging certified by the Department to conduct Private Admission Assessments in accordance with ORS 410.505 through 410.530.

(14) "Change of Ownership" means a change in the individual or legal organization that is responsible for the operation of a nursing facility. Change of ownership does not include changes that are merely changes in personnel, e.g., a change of administrators. Events that change ownership include but are not limited to the following:

(a) The form of legal organization of the owner is changed (e.g., a sole proprietor forms a partnership or corporation);

(b) The title to the nursing facility enterprise is transferred to another party;

(c) The nursing facility enterprise is leased or an existing lease is terminated;

(d) Where the owner is a partnership, any event occurs which dissolves the partnership;

(e) Where the owner is a corporation, it is dissolved, merges with another corporation that is the survivor, or consolidates with one or more other corporations to form a new corporation; or

(f) The facility changes management via a management contract.

(15) "Client" means a resident for whom payment is made under the Medicaid Program.

(16) "Compensation" means the total of all benefits and remuneration, exclusive of payroll taxes and regardless of the form, provided to or claimed by an owner, administrator or other employee. They include but are not necessarily limited to the following:

(a) Salaries paid or accrued;

(b) Supplies and services provided for personal use;

(c) Compensation paid by the facility to employees for the sole benefit of the owner;

(d) Fees for consultants, directors, or any other fees paid regardless of the label;

(e) Key man life insurance;

(f) Living expenses, including those paid for related persons; or

(g) Gifts for employees in excess of federal Internal Revenue Service reporting guidelines.

(17) "Complex Medical Add-On Payment" and "Medical Add-On" means the statewide standard supplemental payment rate for a Medicaid resident of a nursing facility whose service is reimbursed at the basic rate if the resident needs one or more of the medication procedures, treatment procedures or rehabilitation services listed in OAR 411-070-0091, for the additional licensed nursing services needed to meet the resident's increased needs.

(18) "Continuous" means more than once per day, seven days per week. Exception: If only skilled rehabilitative services and no skilled nursing services are required, "continuous" means at least once per day, five days per week.

(19) "Costs Not Related to Resident Services" means costs that are not appropriate or necessary and proper in developing and maintaining the operation of a nursing facility. Such costs are not allowable in computing reimbursable costs. They include, for example, costs of meals sold to visitors, cost of drugs sold to individuals who are not residents, cost of operation of a gift shop and similar items.

(20) "Costs Related to Resident Services" means all necessary costs incurred in furnishing nursing facility services, subject to the specific provisions and limitations set out in these rules. Examples of costs related to resident services include nursing costs, administrative costs, costs of employee pension plans and interest expenses.

(21) "CPI" means the Consumer Price Index for all items and all urban consumers.

(22) "Department" or "DHS" means the Department of Human Services.

(23) "Developmental Disabilities" means a disability that originates in childhood that is likely to continue and significantly impacts adaptive behavior. Developmental Disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual attains the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18; and

(b) Originates in the brain and has continued, or can be expected to continue, indefinitely; and

(c) Constitutes a significant impairment in adaptive behavior; and

(d) The condition or impairment must not be primarily attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit Hyperactivity Disorder, a learning disability, personality disorder or sensory impairment.

(24) "Direct Costs" means costs incurred to provide services required to directly meet all the resident nursing and activity of daily living service needs. These costs are further defined in these rules. Examples: The person who feeds food to the resident is directly meeting the resident's needs, but the person who cooks the food is not. The person who is trained to meet the resident's needs incurs direct costs whereas the person providing the training is not. Costs for items that are capitalized or depreciated are excluded from this definition.

(25) "DRI Index" means the "HCFA or CMS Nursing Home Without Capital Market Basket" index, which is published quarterly by DRI/McGraw - Hill in the publication, "Global Insight Health Care Cost Review."

(26) "Exempted Hospital Discharge" for PASRR means an individual seeking temporary admission to a nursing facility from a hospital as described in OAR 411-070-0043(2)(a).

(27) "Facility" or "Nursing Facility" means an establishment that is licensed and certified by the Department as a nursing facility. A nursing facility also means a Medicaid certified nursing facility only if identified as such.

(28) "Facility Financial Statement" means Form SPD 35, or Form SPD 35A (for hospital-based facilities), and includes an account number listing of all costs to be used by all nursing facility providers in reporting to the Department for reimbursement.

(29) "Fair Market Value" means the price for which an asset would have been purchased on the date of acquisition in an arms-length transaction between a well-informed buyer and seller, neither being under any compulsion to buy or sell.

(30) "Generally Accepted Accounting Principles" means the accounting principles approved by the American Institute of Certified Public Accountants.

(31) "Goodwill" means the excess of the price paid for a business over the fair market value of all other identifiable, tangible, and intangible assets acquired, or the excess of the price paid for an asset over its fair market value.

(32) "Historical Cost" means the actual cost incurred in acquiring and preparing a fixed asset for use. Historical cost includes such planning costs as feasibility studies, architects' fees and engineering studies. It does not include "start-up costs" as defined in this rule.

(33) "Hospital-Based Facility" means a nursing facility that is physically connected and operated by a licensed general hospital.

(34) "Indirect Costs" means the costs associated with property, administration and other operating support (real property taxes, insurance, utilities, maintenance, dietary (excluding food), laundry and housekeeping). These costs are further described in OAR 411-070-0359, 411-070-0428, and 411-070-0465.

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(35) "Interrupted-Service Facility" means an established facility recertified by the Department following decertification.

(36) "Level I" means a component of the Federal PASRR requirement. It refers to the identification of individuals who are potential nursing facility admissions who have indicators of Mental Illness or Developmental Disabilities {42 CFR 483.128(a)}.

(37) "Level II" means a component of the Federal PASRR requirement. It refers to the evaluation and determination of whether nursing facility services and specialized services are needed for individuals with Mental Illness or Developmental Disability who are potential nursing facility admissions, regardless of the source of payment for the nursing facility service {42 CFR 483.128(a)}. Level II evaluations include assessment of the individual's physical, mental and functional status {42 CFR 483.132}.

(38) "Level of Care Determination" means an evaluation of the intensity of a person's health service needs. The level of care determination may not be used to require that the person receive services in a nursing facility.

(39) "Medicaid Occupancy Percentage" means the total Medicaid bed days divided by total resident days.

(40) "Medical Add-On" or "Complex Medical Add-On Payment" has the meaning provided in section (17) of this rule.

(41) "Mental Illness" means a major mental disorder as defined in the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM IV-TR) limited to schizophrenic, paranoid and schizoaffective disorders, bipolar (manic-depressive) and atypical psychosis. "Mental Illness" for pre-admission screening means having both a primary diagnosis of a major mental disorder (schizophrenic, paranoid, major affective and schizoaffective disorders, or atypical psychosis) and treatment related to the diagnosis in the past two years. Diagnoses of dementia or Alzheimers are excluded.

(42) "Mental Retardation" means significantly sub-average general intellectual function defined as IQ's under 70 existing concurrently with significant impairments in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have Mental Retardation if there is also significant impairment of adaptive behavior. The adaptive behavior must be primarily related to the issues of Mental Retardation. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision. Levels of Mental Retardation are:

(a) Mild Mental Retardation is used to describe the degree of retardation when intelligence test scores are 50-69. Individuals with IQ's in the 70-75 range can be considered as having Mental Retardation if there is significant impairment in adaptive behavior as defined in OAR 411-320-0020.

(b) Moderate Mental Retardation is used to describe the degree of retardation when intelligence test scores are 35-49.

(c) Severe Mental Retardation is used to describe the degree of retardation when intelligence test scores are 20-34.

(d) Profound Mental Retardation is used to describe the degree of retardation when intelligence test scores are below 20.

(43) "Necessary Costs" means costs that are appropriate and helpful in developing and maintaining the operation of resident facilities and activities. These costs are usually costs that are common and accepted occurrences in the field of long term nursing services.

(44) "New Admission" for PASRR purposes means an individual admitted to any nursing facility for the first time. It does not include individuals moving within a nursing facility, transferring to a different nursing facility or individuals who have returned to a hospital for treatment and are being admitted back to the nursing facility. New admissions are subject to the PASRR process {42 CFR 483.106(b)(1), (3), (4)}.

(45) "New Facility" means a nursing facility commencing to provide services to Seniors and People with Disabilities Division recipients.

(46) "Nursing Aide Training and Competency Evaluation Program (NATCEP)" means a nursing assistant training and competency evaluation program approved by the Oregon State Board of Nursing pursuant to ORS chapter 678 and the rules adopted pursuant thereto.

(47) "Occupancy Rate" means total resident days divided by capacity.

(48) "Ordinary Costs" means costs incurred that are customary for the normal operation.

(49) "Oregon Medical Professional Review Organization (OMPRO)" means the organization that determines level of services, need for services, and quality of services.

(50) "Pediatric Rate" means the statewide standard payment rate for all long term services provided to a Medicaid resident under the age of 21 who is served in a pediatric nursing facility or a self-contained pediatric unit.

(51) "Perquisites" means privileges incidental to regular wages.

(52) "Personal Incidental Funds" means resident funds held or managed by the licensee or other person designated by the resident on behalf of a resident.

(53) "Placement" means the location of a specific place where health services can be adequately provided to meet the service needs.

(54) "Pre-Admission Screening (PAS)" means the assessment and determination of a potential Medicaid-eligible individual's need for nursing facility services, including the identification of individuals who can transition to community based service settings and the provision of information about community based alternatives. This assessment and determination is required when potentially Medicaid-eligible individuals are at risk for admission to nursing facility services. PAS may include the completion of the Federal PASRR Level I requirement {42 CFR, Part 483, (C)-(E)}, to identify individuals with Mental Illness or Mental Retardation or Developmental Disabilities.

(55) "Pre-Admission Screening and Resident Review (PASRR)" means the Federal requirement, {42 CFR, Part 483, (C)-(E)}, to identify individuals who have Mental Illness or Developmental Disabilities and determine if nursing facility service is required and if specialized services are required. PASRR includes Level I and Level II functions.

(56) "Prior Authorization" means the local Seniors and People with Disabilities Division/Area Agency on Aging office participates in the development of proposed nursing facility care plans to assure that the facility is the most suitable service setting for the individual. Nursing facility reimbursement is contingent upon prior-authorization.

(57) "Private Admission Assessment (PAA)" means the assessment that is conducted for non-Medicaid individuals as established by ORS 410.505-410.545 and OAR chapter 411, division 071, who are potential admissions to a Medicaid-certified nursing facility. Service needs are evaluated and information is provided about long-term service choices. A component of PAA is the Federal PASRR Level I requirement, {42 CFR, Part 483.128(a)}, to identify individuals with Mental Illness or Developmental Disabilities.

(58) "Provider" means an organization that has entered into an agreement with the Department to provide services for individuals served by the Department.

(59) "Reasonable Consideration" means an inducement that is equivalent to the amount that would ordinarily be paid for comparable goods and services in an arms-length transaction.

(60) "Related Organization" means an entity that is under common ownership or control with, or has control of, or is controlled by the contractor. An entity is deemed to be related if it has five percent or more ownership interest in the other. An entity is deemed to be related if it has capacity derived from any financial or other relationship, whether or not exercised, to influence directly or indirectly the activities of the other.

(61) "Resident" or "Individual" means those for whom payment is made under the Medicaid program.

(62) "Resident Days" means the number of occupied bed days.

(63) "Resident Review" means a review conducted by the Addictions and Mental Health Division for individuals with Mental Illness or by the Seniors and People with Disabilities Division for individuals with Developmental Disabilities who are residents of nursing facilities. The findings of the Resident Review may result in referral to PASRR Level II {42 CFR 483.114}.

(64) "Restricted Fund" means a fund in which the use of the principal or principal and income is restricted by agreement with or direction by the donor to a specific purpose. Restricted fund does not include a fund over which the owner has complete control. The owner is deemed to have complete control over a fund that is to be used for general operating or building purposes.

(65) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(66) "Specialized Services for Mental Illness" means mental health services delivered by an interdisciplinary team in an inpatient psychiatric hospital for treatment of acute mental illness.

(67) "Specialized Services for Mental Retardation/Developmental Disabilities" means:

(a) For individuals with Mental Retardation/Developmental Disabilities under age 21, specialized services are equal to school services; and

(b) For individuals with Mental Retardation/Developmental Disabilities over age 21, specialized services means:

(A) A consistent and ongoing program that includes participation by the individual in continuous, aggressive training and support to prevent loss of current optimal function; and

(B) Promotes the acquisition of function, skills and behaviors necessary to increase independence and productivity; and

(C) Is delivered in community-based or vocational settings at a minimum of 25 hours a week.

(68) "Start-Up Costs" means one-time costs incurred prior to the first resident being admitted. Start-up costs include administrative and nursing salaries, utility costs, taxes, insurance, mortgage and other interest, repairs and maintenance, training costs, etc. They do not include such costs as



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feasibility studies, engineering studies, architect's fees or other fees that are part of the historical cost of the facility.

(69) "Supervision" means initial direction and periodic monitoring of performance. Supervision does not mean that the supervisor is physically present when the work is performed.

(70) "Title XVIII" and "Medicare" mean Title XVIII of the Social Security Act.

(71) "Title XIX," "Medicaid," and "Medical Assistance" means Title XIX of the Social Security Act.

(72) "Uniform Chart of Accounts (Form SPD 35)" means a list of account titles identified by code numbers established by the Department for providers to use in reporting their costs.

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

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

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070 & 414.065

Hist.: PWC 847(Temp), f. & ef. 7-1-77; PWC 859, f. 10-31-77, ef. 11-1-77; PWC 866(Temp), f. 12-30-77, ef. 1-1-78; AFS 19-1978, f. & ef. 5-1-78; AFS 58-1981, f. & ef. 9-1-81; Renumbered from 461-017-0010, AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 6-1985, f. 5-31-85, ef. 6-1-85; SSD 20-1990, f. & cert. ef. 10-4-90; SSD 6-1993, f. 6-30-93, cert. ef. 7-1-93; SSD 8-1994, f. & cert. ef. 12-1-94; SSD 1-1997, f. 6-30-97, cert. ef. 7-1-97; SPD 9-2006, f. 1-26-06, cert. ef. 2-1-06; SPD 12-2007, f. 8-30-07, cert. ef. 9-1-07; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08; SPD 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-070-0442

### Per Diem Rate Setting For the Rate Period Beginning July 1, 2003 Calculation of the Basic Rate and Complex Medical Needs Add-on Rate

(1) The rates are determined for the first year of each biennium, the rebasing year, and the second year of each biennium, the non-rebasing year.

(a) The Rebasing Year.

(A) The basic rate is based on the statements received by SPD by September (or postmarked by October 31, if an extension of filing has been approved by SPD) for the fiscal reporting period ending on June 30 of the previous even-numbered year. For example, for the biennium beginning July 1, 2003, statements for the period ending June 30, 2002 are used. SPD desk reviews or field audits these statements and determines the allowable costs for each nursing facility. The costs include both direct and indirect costs. The costs and days relating to pediatric beds are excluded from this calculation.

(B) For the 2009 rebasing period only, SPD shall limit the administrative and property cost components as follows:

(i) Administrative and general costs per facility, less provider tax and employee benefits, equals the lesser of the facility's allowable cost or the 50th percentile over all facilities; and

(ii) Allowable property expenses shall be limited by the Medicaid occupancy percentage when the facility has an occupancy rate of less than 60 percent.

(C) For each facility, its allowable costs after any limitations as set forth in section (1)(a)(B) of this rule are applied, less the costs of its self-contained pediatric unit (if any) is inflated from the mid-point of its fiscal reporting period to the mid-point of the first year of the biennium, hereafter referred to as the base year (e.g., for the biennium beginning July 1, 2003, the base year is the fiscal period ending June 30, 2004) by the annual change in the DRI Index, or its successor index, as measured in the previous 4th quarter.

(D) For each facility, its allowable costs after any limitations as set forth in section (1)(a)(B) of this rule are applied, per Medicaid day is determined using the allowable costs as inflated and resident days, excluding pediatric days as reported in the statement.

(E) The facilities are ranked from highest to lowest by the facility's allowable costs after any limitations as set forth in section (1)(a)(B) of this rule are applied, per Medicaid day.

(F) The basic rate will be determined by ranking the allowable costs after any limitations as set forth in section (1)(a)(B) of this rule are applied, per Medicaid day by facility and identifying the allowable cost per day at the applicable percentage. If there is no allowable cost per day at the applicable percentage, the basic rate is determined by interpolating the difference between the allowable costs per day that are just above and just below the applicable percentage to arrive at a basic rate at the applicable percentage.

(i) The applicable percentage for the period beginning July 1, 2003 through June 30, 2005 is at the 63rd percentile.

(ii) The applicable percentage for the period beginning July 1, 2005 through June 30, 2007 is at the 70th percentile.

(iii) The applicable percentage for the period beginning July 1, 2007 is at the 63rd percentile.

(b) The Non-Rebasing Year. On July 1 of each non-rebasing year, the basic flat rate will be inflated by the annual change in the DRI Index, or its successor index, as measured in the previous 4th quarter.

(2) The complex medical needs add-on rate is 40 percent of the basic rate for the rebasing year and the non-rebasing year.

(3) SPD may add a standard payment to fund implementation of certified nursing assistant staffing requirements contained in OAR 411-086-0100.

Stat. Auth.: ORS 410.070 & 414.065

Stats. Implemented: ORS 410.070, 414.065, OL 2003 ch 736, OL 2007 ch. 780, HB 2126 (2009)

Hist.: SPD 36-2004, f. 12-23-04, cert. ef. 12-28-04; SPD 15-2007(Temp), f. & cert. ef. 9-10-07 thru 3-8-08; SPD 2-2008, f. 2-29-08, cert. ef. 3-1-08; SPD 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

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

**Adm. Order No.:** SPD 7-2009(Temp)

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09 thru 12-28-09

**Notice Publication Date:**

**Rules Adopted:** 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

**Subject:** The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is temporarily adopting rules in OAR chapter 411, division 308 to prescribe standards, responsibilities, and procedures for providing long-term support to children with developmental disabilities who are eligible for crisis diversion services.

Long-term supports are designed to increase the family's ability to care for the child with developmental disabilities in the family home. Long-term supports resolve the crisis by providing supports to prevent the need for the child to be placed in, or to remain in, a residential setting outside of the child's family home.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-308-0010

### Statement of Purpose and Principles

(1) The rules in OAR chapter 411, division 308 prescribe standards, responsibilities, and procedures for providing long-term support for children with developmental disabilities to prevent out-of-home placement, or to return a child with developmental disabilities back to the family home from an out-of-home community placement.

(2) Long-term supports are provided to children with developmental disabilities who are eligible for crisis diversion services. Long-term supports are designed to increase the family's ability to care for the child with developmental disabilities in the family home. Long-term supports resolve the crisis by providing supports to prevent the need for the child to be placed or remain in a residential setting other than the child's family home.

Stat. Auth.: ORS 409.050, 410.070, & 417.346

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

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-308-0020

### Definitions

(1) "Abuse" means abuse of a child is defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" means activities usually performed in the course of a normal day in the child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior (play and social development).

(3) "Annual Support Plan" means the written details of the supports, activities, costs, and resources required for a child to be supported by the family in the family home. The child's Annual Support Plan articulates decisions and agreements made through a child- and family-centered process of planning and information-gathering conducted or arranged for by the child's services coordinator that involves the child (to the extent normal and appropriate for the child's age) and other persons who have been identified and invited to participate by the child's parent or guardian. The child's Annual Support Plan is the only plan of care required by the Seniors and People with Disabilities Division for a child receiving long-term support.

(4) "Assistant Director" means the assistant director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(5) "Child" means an individual under the age of 18 and eligible for long-term support.

(6) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area

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of the state operated by or under contract with the Seniors and People with Disabilities Division or a local mental health authority.

(7) "Cost Effective" means that a specific service or support meets the child's service needs and costs less than, or is comparable to, other service options considered.

(8) "CPMS" means the Client Processing Monitoring System.

(9) "Crisis" means:

(a) A situation where a child with a developmental disability is at imminent risk of placement outside the child's family home, or has already been placed outside the family home;

(b) The child requires supports due to the developmental disability to be able to safely remain in or return to the family home; and

(c) No alternative resources are available from which to obtain those supports.

(10) "DHS" means the Department of Human Services.

(11) "Developmental Disability" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(12) "Employer-Related Supports" mean activities that assist a family with directing and supervising provision of services described in a child's Annual Support Plan. Supports to a family assuming the role of employer include but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as job descriptions; and

(d) Fiscal intermediary services.

(13) "Family" for determining a child's eligibility for long-term support as a resident in the family home, for identifying persons who may apply, plan, and arrange for a child's supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one child with developmental disabilities where the primary caregiver is:

(a) Related to the child by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a child in the household with developmental disabilities and the child is related to one of the partners by blood, marriage, or legal adoption.

(14) "Family Home" means a child's primary residence that is not licensed, certified by, and under contract with the Department of Human Services as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(15) "Fiscal Intermediary" means a person or entity that receives and distributes long-term support funds on behalf of the family of an eligible child according to the child's Annual Support Plan.

(16) "General Business Provider" means an organization or entity selected by the parent or guardian of an eligible child, and paid with long-term support funds that:

(a) Is primarily in business to provide the service chosen by the child's parent or guardian to the general public;

(b) Provides services for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the child.

(17) "Guardian" means a person or agency appointed by the courts that is authorized by the court to make decisions about services for the child.

(18) "Incident Report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving a child.

(19) "Independent Provider" means a person selected by a child's parent or guardian and paid with long-term support funds that personally provide services to the child.

(20) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(21) "Long-Term Support" means individualized planning and service coordination, arranging for services to be provided in accordance with Annual Support Plans, and purchase of supports that are not available through other resources that are required for children with developmental disabilities who are eligible for crisis diversion services to live in the family home. Long-term supports are designed to:

(a) Prevent unwanted out-of-home placement and maintain family unity; and

(b) Whenever possible, reunite families with children with disabilities who have been placed out of the home.

(22) "Long-Term Support Funds" mean public funds contracted by the Department of Human Services to the community developmental disability program and managed by the community developmental disability program to assist families with purchase of supports for children with developmental disabilities according to each child's Annual Support Plan. Long-term support funds are available only to children for whom the Department of Human Services designates funds to the community developmental disability program by written contracts that specify the children by name.

(23) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(24) "Nursing Care Plan" means a plan of care developed by a nurse that describes the medical, nursing, psychosocial, and other needs of a child and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or family.

(25) "OHP" means the Oregon Health Plan.

(26) "Plan Year" means twelve consecutive months used to calculate what long-term support funds may be made available annually to support an eligible child.

(27) "Proactive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(28) "Provider Organization" means an entity selected by a child's parent or guardian, and paid with long-term support funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(29) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(30) "Regional Process" means a standardized set of procedures through which a child's Annual Support Plan and funding to implement the Annual Support Plan are reviewed for approval. The review is performed by a committee of stakeholder representatives from a child's geographic service area and includes review of the potential risk of out-of-home placement, the appropriateness of the proposed supports, and cost effectiveness of the Annual Support Plan.

(31) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Seniors and People with Disabilities Division, who plans, procures, coordinates, and monitors long-term support, and acts as a proponent for children with developmental disabilities and their families.

(32) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(33) "Support" means assistance eligible children and their families require, solely because of the effects of developmental disability on the child, to maintain the child in the family home.

(34) "These Rules" mean the rules in OAR chapter 411, division 308.

Stat. Auth.: ORS 409.050, 410.070, & 417.346

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

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-308-0030

### Long-Term Support Administration and Operation

(1) FISCAL INTERMEDIARY SERVICES. The CDDP must provide, or arrange a third party to provide, fiscal intermediary services for all families. The fiscal intermediary receives and distributes long-term support funds on behalf of the family. The responsibilities of the fiscal intermediary include payments to vendors as well as all activities and records related to payroll and payment of employer-related taxes and fees as an agent of families who employ persons to provide services, supervision, or training in the

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family home or community. In this capacity, the fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

## (2) GENERAL RECORD REQUIREMENTS.

(a) Confidentiality. The CDDP must maintain records of services to individuals in accordance with OAR 411-320-0070, ORS 179.505, 192.515–192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any DHS administrative rules and policies pertaining to individual service records.

(b) Disclosure. For the purpose of disclosure from individual medical records under these rules, CDDPs under these rules shall be considered “providers” as defined in ORS 179.505(1), and ORS 179.505 shall be applicable.

(A) Access to records by DHS does not require authorization by the family.

(B) For the purposes of disclosure from non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(c) Individual records. Records for children who receive long-term support must be kept up-to-date and must include:

(A) An easily-accessed summary of basic information as described in OAR 411-320-0070(3) including date of enrollment in long-term support.

(B) Records related to receipt and disbursement of long-term support funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-308-0130, and documentation of family acceptance or delegation of record keeping responsibilities outlined in this rule. Records must include:

(i) Itemized invoices and receipts to record purchase of any single item;

(ii) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals;

(iii) Written professional support plans, assessments, and reviews to document acceptable provision of behavior support, physical therapy, occupational therapy, speech and language, nursing, and other professional training and consultation services; and

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services.

(C) Incident reports involving CDDP staff;

(D) Assessments used to determine supports required, preferences, and resources;

(E) Documentation of the child’s eligibility for crisis services and approval of the child’s Annual Support Plan through a regional process;

(F) The child’s Annual Support Plan and reviews;

(G) The services coordinator’s correspondence and notes related to plan development and outcomes; and

(H) Family satisfaction information.

(d) General financial policies and practices. The CDDP must:

(A) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all long-term support revenue by source, all expenses by object of expense, and all assets, liabilities, and equities; and

(B) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any DHS administrative rule pertaining to fraud and embezzlement.

(e) Records retention. Records must be retained in accordance with OAR chapter 166, division 150, Secretary of State, Archives Division.

(A) Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period, or until audited.

(B) Individual records must be kept for a minimum of seven years.

(3) COMPLAINTS AND APPEALS. The CDDP must provide for review of complaints and appeals by or on behalf of children related to long-term support as set forth in OAR 411-320-0170(2)(c).

(4) OTHER OPERATING POLICIES AND PROCEDURES. The CDDP must develop and implement such written statements of policy and procedure, in addition to those specifically required by this rule, as are necessary and useful to enable the CDDP to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 410.070, & 417.346

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

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-308-0040

### Required Long-Term Support

(1) The CDDP must provide or arrange for the following services to support all children receiving long-term support in the family home:

(a) SERVICE COORDINATION.

(A) Assistance for families to determine needs, plan supports in response to needs, and develop individualized plans based on available natural supports and public resources;

(B) Assistance for families to find and arrange the resources to provide planned supports;

(C) Assistance for families and children (as appropriate for age) to effectively put the child’s Annual Support Plan into practice including help to monitor and improve the quality of personal supports and to assess and revise the child’s Annual Support Plan goals; and

(D) Assistance to families to access information, referral, and local capacity building services through the county’s family support program under OAR chapter 411, division 305.

(b) EMPLOYER-RELATED SUPPORTS.

(A) Fiscal intermediary services in the receipt and accounting of long-term support funds on behalf of families in addition to making payment with the authorization of families; and

(B) Assistance to families to fulfill roles and obligations as employers of support staff when staff is paid with long-term support funds.

(2) The CDDP must inform families about long-term support when a child is determined by a qualified services coordinator to be at risk of out-of-home placement. The CDDP must provide accurate, up-to-date information that must include:

(a) Criteria for entry and for determining how much assistance with purchasing supports shall be available, including information about eligibility for crisis services and how long-term supports are different from family support services the child and family may have received under OAR chapter 411, division 305;

(b) Common processes encountered in using long-term support, including the long-term support planning process, evaluation and review of plans, funding approval process, and how to raise and resolve concerns about long-term support;

(c) Responsibility of providers of long-term support and CDDP employees as mandatory reporters of child abuse;

(d) A description of family responsibilities in regard to use of public funds; and

(e) An explanation of family rights to select and direct the providers of services authorized through the eligible child’s Annual Support Plan and purchased with long-term support funds from among those qualified according to OAR 411-308-0130 to provide supports.

(3) The CDDP must make information required in sections (1) and (2) of this rule available using language, format, and presentation methods appropriate for effective communication according to each family’s needs and abilities.

Stat. Auth.: ORS 409.050, 410.070, & 417.346

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

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-308-0050

### Financial Limits of Long-Term Support

(1) In any plan year, long-term support funds used to purchase supports for a child must be limited to the amount of long-term support funds specified in the child’s Annual Support Plan.

(2) Payment rates used to establish the limits of financial assistance for specific service in the child’s Annual Support Plan must be based on SPD rate guidelines for costs of frequently-used services. SPD rate guidelines notwithstanding, final costs may not exceed local usual and customary charges for these services as evidenced by the CDDP’s own documentation.

Stat. Auth.: ORS 409.050, 410.070, & 417.346

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

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-308-0060

### Eligibility for Long-Term Support

(1) ELIBILITY. The CDDP of a child’s county of residence may find a child eligible for the long-term support when the child:

(a) Is determined eligible for developmental disability services by the CDDP;

(b) Is under the age of 18;

(c) Is experiencing a crisis and may be safely served in the family home; and

(d) Lives in the family home, is at risk of out-of-home placement, requires long-term support to be maintained in the family home, and does not receive or will stop receiving other DHS-paid in-home or community living services other than state Medicaid plan services, adoption assistance, or short-term assistance, including crisis services provided to prevent out-of-home placement; or

(e) Resides in DHS-paid residential services and requires long-term support to return to the family home in the county served by the CDDP.



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(2) CONCURRENT ELIGIBILITY. Children are not eligible for long-term support from more than one CDDP unless the concurrent service:

- (a) Is necessary to affect transition from one county to another with a change of residence;
- (b) Is part of a collaborative plan developed by both CDDPs; and
- (c) Does not duplicate services and expenditures.

Stat. Auth.: ORS 409.050, 410.070, & 417.346

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

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-308-0070

### Long-Term Support Entry, Duration, and Exit

(1) ENTRY. An eligible child may enter long-term support only when long-term support funds are authorized through a regional process specifically to provide supports required to prevent out-of-home placement of the eligible child, or to provide supports required for an eligible child to return to the family home from a community placement. Funds for a child for whom SPD designated funds in family support services to the CDDP by written contract prior to June 30, 2009 that specified the child by name do not need to be reauthorized through a regional process.

(2) TRANSITION FROM FAMILY SUPPORT. Children for whom SPD designated funds in family support services under OAR chapter 411, division 305 prior to June 30, 2009, may receive long term supports under their existing family support plan until the child's plan is scheduled for quarterly review by the services coordinator or the plan is scheduled for review by the region, but in no case later than December 27, 2009.

(3) DURATION OF SERVICES. Once a child has entered long-term support, the child and family may continue receiving services from that CDDP through the last day of the month during which the child turns 18, as long as the supports continue to be necessary to prevent out-of-home placement, the child remains eligible for long-term support, the child's Annual Support Plan is developed each year and kept current, and funds are available at the CDDP to continue services.

(4) CHANGE IN SUPPORTS. All increases in the child's Annual Support Plan based on changes in supports needed to maintain the child in the family home, and redirection of more than 25% of the long-term support funds in the child's Annual Support Plan to purchase different supports than those originally authorized, must be approved through a regional process.

(5) CHANGE OF COUNTY OF RESIDENCE. If a child and family move outside the CDDP's area of service, the originating CDDP must arrange for services purchased with long-term support funds to continue, to the extent possible, in the new county of residence. The originating CDDP must:

(a) Provide information about the need to apply for services in the new CDDP and assist the family with application for services if necessary; and

(b) Contact the new CDDP to negotiate the date on which the long-term support, including responsibility for payments, shall transfer to the new CDDP.

(6) EXIT. A child must leave a CDDP's long-term support:

(a) When the child no longer resides in the family home;

(b) At the written request of the child's parent or guardian to end the service relationship;

(c) When the long-term supports are no longer necessary to prevent out-of-home placement;

(d) At the end of the last day of the month during which the child turns 18;

(e) When the child and family moves to a county outside the CDDP's area of service, unless transition services have been previously arranged and authorized by the CDDP as required in section (5) of this rule; or

(f) No less than 30 days after the CDDP has served written notice, in the language used by the family, of intent to terminate services because:

(A) The child's family either cannot be located or has not responded to repeated attempts by CDDP staff to complete the child's Annual Support Plan development and monitoring activities and does not respond to the notice of intent to terminate;

(B) Funds are no longer available for long-term support in the family's county of residence; or

(C) The CDDP has sufficient evidence to believe that the family has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's Annual Support Plan, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with long-term support.

Stat. Auth.: ORS 409.050, 410.070, & 417.346

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

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-308-0080

### Annual Support Plan

(1) The CDDP must provide or arrange for an annual planning process to assist families in establishing outcomes, determining needs, planning for supports, and reviewing and redesigning support strategies for all children eligible for long-term support. The planning process must occur in a manner that:

(a) Identifies and applies existing abilities, relationships, and resources while strengthening naturally occurring opportunities for support at home and in the community; and

(b) Is consistent in both style and setting with the child's and the child's family's needs and preferences, including but not limited to simple interviews with the child and family, informal observations in home and community settings, or formally structured meetings.

(2) The CDDP, the child (as appropriate for age), and the child's family must develop a written Annual Support Plan for the child as a result of the planning process prior to purchasing supports with long-term support funds and annually thereafter. The child's Annual Support Plan must include but not be limited to:

(a) The eligible child's legal name and the name of the child's parent (if different than the child's last name), or the name of the child's guardian;

(b) A description of the supports that are required to address the crisis including the reason the support is necessary to prevent out-of-home placement or to return the child from a community placement outside the family home;

(c) Beginning and end dates of the plan year as well as when specific activities and supports are to begin and end;

(d) The types of supports to be purchased with long-term support funds, including the type of provider, quantity, frequency, and per unit cost;

(e) Total annual cost of supports;

(f) The schedule of the child's Annual Support Plan reviews; and

(g) Signatures of the child's services coordinator, the child's parent or guardian, and the child (as appropriate for age).

(3) The child's Annual Support Plan or records supporting development of each child's Annual Support Plan must include evidence that:

(a) Long-term support funds are used only to purchase goods or services necessary to prevent the child from out-of-home placement, or to return the child from a community placement to the family home;

(b) The services coordinator has assessed the availability of other means for providing the supports before using long-term support funds, and other public, private, formal, and informal resources available to the child have been applied and new resources have been developed whenever possible;

(c) Basic health and safety needs and supports have been addressed including but not limited to identification of risks including risk of serious neglect, intimidation, and exploitation;

(d) Informed decisions by the child's parent or guardian regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(e) Education and support for the child and the child's family to recognize and report abuse.

(4) The services coordinator must obtain and attach a Nursing Care Plan to the child's written Annual Support Plan when long-term support funds are used to purchase care and services requiring the education and training of a nurse.

(5) Long term supports may only be provided after the child's Annual Support Plan is developed in accordance with sections (1)(2)(3) and (4) of this rule, authorized by the CDDP, and signed by the child's parent or guardian.

(6) The services coordinator must conduct and document reviews of the child's Annual Support 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 Support Plan and subsequent Annual Support Plan documents;

(b) At least annually, or as determined through the regional process:

(A) Evaluate progress toward achieving the purposes of the child's Annual Support Plan;

(B) Record final long-term support fund 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 need for specific supports or continued use of long-term support funds to purchase supports. This must include a review of the child's continued risk for out-of-home placement.

(7) The originating CDDP must assist long-term support recipients when the family and eligible child move to a county outside its area of service by:

(a) Continuing long-term support fund payments authorized by the child's Annual Support Plan which is current at the time of the move, if the

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support is available, through the end date of the child's Annual Support Plan; and

(b) Transferring the unexpended portion of the child's long-term support funds to the new CDDP of residence.

Stat. Auth.: ORS 409.050, 410.070, & 417.346

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

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-308-0090

### Managing and Accessing Long-Term Support Funds

(1) Funds contracted to a CDDP by SPD to serve a specifically-named child may be used only to support that specified child. Services must be provided according to each child's SPD-approved Annual Support Plan. The funds may only be used to purchase supports described in OAR 411-308-0120. Continuing need for services must be regularly reviewed according to SPD procedures described in these rules.

(2) No child receiving long-term support may concurrently receive services through:

- (a) State Plan Personal Care;
- (b) Children's Intensive Behavior Model Waiver;
- (c) Direct Assistance under Family Support;
- (d) Medically Fragile Children's Model Waiver;
- (e) Medically Involved Children's Model Waiver; or
- (f) Long-term support from another CDDP.

(3) Children receiving long-term support may receive crisis diversion services provided through the CDDP or region while receiving long-term support. Children receiving long-term support may utilize family support services, other than direct assistance funds, while receiving long-term support. The CDDP must clearly document the services and demonstrate that the services are arranged in a manner that does not allow duplication of funding.

Stat. Auth.: ORS 409.050, 410.070, & 417.346

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

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-308-0100

### Conditions for Long-Term Support Purchases

(1) A CDDP must only use long-term support funds to assist families to purchase supports for the purpose defined in OAR 411-308-0010(1) and in accordance with the child's Annual Support Plan that meet requirements for development and content in OAR 411-308-0080.

(2) The CDDP must arrange for supports purchased with long-term support funds to be provided:

(a) In settings and under purchasing arrangements and conditions that allow the family to redirect long-term support funds to purchase supports and services from another qualified provider.

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

- (A) Represents a risk to health and safety of the child or others;
- (B) Is likely to continue and become more serious over time;
- (C) Interferes with community participation;
- (D) Results in damage to property; or
- (E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the family home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with OAR 411-308-0130 governing provider qualifications.

(3) When long-term support funds are used to purchase services, training, supervision, or other personal assistance for children, the CDDP must require and document that providers are informed of:

- (a) Mandatory responsibility to report suspected abuse;
- (b) Responsibility to immediately notify the child's parent or guardian, or any other person specified by the child's parent or guardian, of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;
- (c) Limits of payment:

(A) Long-term support fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the family or any other source.

(B) The provider must bill all third party resources before using long-term support funds unless another arrangement is agreed upon by the CDDP and described in the child's Annual Support Plan.

(d) The provisions of section (6) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(4) The method and schedule of payment must be specified in written agreements between the CDDP and the child's parent or guardian.

(a) Support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and time-keeping for staff working with more than one eligible child.

(b) The CDDP is specifically prohibited from reimbursement of families for expenses or advancing funds to families to obtain services. The CDDP must issue payment, or arrange through fiscal intermediary services to issue payment, directly to the qualified provider on behalf of the family after approved services described in the child's Annual Support Plan have been satisfactorily delivered.

(5) The CDDP must inform families in writing of records and procedures required in OAR 411-308-0030(2)(c)(B) regarding expenditure of long-term support funds. During development of the child's Annual Support Plan, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.

(6) Sanctions for Independent Providers, Provider Organizations, and General Business Providers.

(a) A sanction may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with long-term support funds, the provider has:

- (A) Been convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or authorization of service;
- (B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;
- (C) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;
- (D) Failed to safely and adequately provide the authorized services;
- (E) Had a substantiated allegation of abuse or neglect against him or her;

(F) Failed to cooperate with any DHS or CDDP investigation or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of section (4) of this rule and OAR 411-308-0130; or

(K) Been suspended or terminated as a provider by another division within DHS.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with long-term support funds;

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the CDDP or SPD, as applicable;

(c) If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction.

(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(A) A provider may appeal a sanction by requesting an administrative review by the SPD Assistant Director.

(B) For an appeal regarding provision of Medicaid services, written notice of the appeal must be received by SPD within 30 days of the date the sanction notice was mailed to the provider.

(e) A provider may be immediately suspended by the CDDP as a protective service action or in the case of alleged criminal activity that could pose a danger to the child. The suspension may continue until the issues are resolved.

(f) At the discretion of SPD, providers who have previously been terminated or suspended by any division within DHS may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 410.070, & 417.346

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

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-308-0110

### Using Long-Term Support Funds for Certain Purchases is Prohibited

Long-term support funds must not be used for:

(1) Services that:

(a) Duplicate benefits and services otherwise available to citizens regardless of disability;

(b) Replace normal parental responsibilities for the child's care, education, recreation, and general supervision;

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(c) Provide financial assistance with food, clothing, shelter, and laundry needs common to children with or without disabilities;

(d) Replace other governmental or community services available to the child or the child's family; or

(e) Exceed the actual cost of supports that must be provided for the child to be supported in the family home.

(2) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child and consumer safety agencies;

(3) Services or activities that are carried out in a manner that constitutes abuse;

(4) Services from persons who engage in verbal mistreatment and subject a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(5) Services that restrict a child's freedom of movement by seclusion in a locked room under any condition;

(6) Purchase of family vehicles;

(7) Purchase of service animals or costs associated with the care of service animals;

(8) Health and medical costs that the general public normally must pay, including but not limited to:

(a) Medical or therapeutic treatments;

(b) Health insurance co-payments and deductibles;

(c) Prescribed or over-the-counter medications;

(d) Mental health treatments and counseling;

(e) Dental treatments and appliances;

(f) Dietary supplements and vitamins; or

(g) Special diet or treatment supplies not related to nutrition, incontinence, or infection control.

(9) Ambulance services;

(10) Legal fees including but not limited to the costs of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(11) Vacation costs or any costs associated with the vacation;

(12) Services, training, support, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(13) Employee wages or contractor payments for time or services when the child is not present or available to receive services including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(14) Services, activities, materials, or equipment that are not necessary, cost effective, or do not meet the definition of support;

(15) Education and services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(16) Services, activities, materials, or equipment that the CDDP determines may be obtained by the family through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(17) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(18) Purchase of services when there is sufficient evidence to believe that the child's parent or guardian, or the service provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's Annual Support Plan, refused to cooperate with record keeping required to document use of long-term support funds, or otherwise knowingly misused public funds associated with long-term support.

Stat. Auth.: ORS 409.050, 410.070, & 417.346

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

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-308-0120

### Supports Purchased with Long-Term Support Funds

(1) When conditions of purchase are met, supports comply with the Medicaid Home and Community Based Services Waiver, and provided purchases are not prohibited under OAR 411-308-0110, long-term support funds may be used to purchase a combination of the following supports based upon the needs of the child consistent with the child's Annual Support Plan and available funding:

(a) Specialized consultation including behavior consultation and nursing delegation;

(b) Environmental accessibility adaptations;

(c) Family caregiver supports;

(d) Family training;

(e) In-home daily care;

(f) Respite; and

(g) Specialized equipment and supplies.

(2) SPECIALIZED CONSULTATION – BEHAVIOR CONSULTATION. Behavior consultation is the purchase of individualized consultation provided only as needed in the family home to respond to a specific problem or behavior identified by the child's parent or guardian and the services coordinator. Behavior consultation services must be documented in a Behavior Support Plan prior to final payment for the services.

(a) Behavior consultation shall only be authorized to support a primary caregiver in their caregiving role, not as a replacement for an educational service offered through the school.

(b) Behavior consultation must include:

(A) Working with the family to identify:

(i) Areas of a child's family home life that are of most concern for the family and child;

(ii) The formal or informal responses the family or provider has used in those areas; and

(iii) The unique characteristics of the family that could influence the responses that would work with the child.

(B) Assessing the child. The behavior consultant utilized by the family must conduct an assessment and interact with the child in the family home and community setting in which the child spends most of their time. The assessment must include:

(i) Specific identification of the behaviors or areas of concern;

(ii) Identification of the settings or events likely to be associated with or to trigger the behavior;

(iii) Identification of early warning signs of the behavior;

(iv) Identification of the probable reasons that are causing the behavior and the needs of the child that are being met by the behavior, including the possibility that the behavior is:

(I) An effort to communicate;

(II) The result of a medical condition;

(III) The result of an environmental cause; or

(IV) The symptom of an emotional or psychiatric disorder.

(v) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness, etc.) that impact the development of strategies and affect the child and the area of concern; and

(vi) An assessment of current communication strategies.

(C) Developing a variety of positive strategies that assist the family and provider to help the child use acceptable, alternative actions to meet the child's needs in the most cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by a family and provider to the early warning signs.

(i) Positive, preventive interventions must be emphasized.

(ii) The least intrusive intervention possible must be used.

(iii) Abusive or demeaning interventions must never be used.

(iv) The strategies must be adapted to the specific disabilities of the child and the style or culture of the family.

(D) Developing emergency and crisis procedures to be used to keep the child, family, and provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-adversive interventions must be utilized. SPD shall not pay a provider to use physical restraints on a child receiving long-term support.

(E) Developing a written Behavior Support Plan that includes the following:

(i) Use of clear, concrete language and in a manner that is understandable to the family and provider; and

(ii) Describes the assessment, recommendations, strategies, and procedures to be used.

(F) Teaching the provider and family the recommended strategies and procedures to be used in the child's natural environment.

(G) Monitoring, assessing, and revising the Behavior Support Plan as needed based on the effectiveness of implemented strategies.

(c) Behavior consultation does not include:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services including but not limited to consultation and training for classroom staff, adaptations to meet the needs of the child at school, assessment in the school setting for the purposes of an Individualized Education Program, or any service identified by the school as required to carry out the child's Individual Education Program.

(3) SPECIALIZED CONSULTATION – NURSING DELEGATION.

(a) Nursing delegation is the purchase of individualized consultation from a nurse in order to delegate tasks of nursing services in select situations. Tasks of nursing care are those procedures that require nursing education and licensure of a nurse to perform as described in OAR chapter 851, division 047.

(b) SPD requires nursing delegation for unlicensed providers paid with long-term support funds when a child requires tasks of nursing care.

(4) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) Environmental accessibility adaptations include:



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(A) Physical adaptations to a family home that are necessary to ensure the health, welfare, and safety of the child in the family home due to the child's developmental disability or that are necessary to enable the child to function with greater independence around the family home and in family activities.

(B) Environmental modification consultation to determine the appropriate type of adaptation to ensure the health, welfare, and safety of the child.

(C) Motor vehicle adaptations for the primary vehicle used by the child that are necessary to meet the unique needs of the child and ensure the health, welfare, and safety of the child.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the family home that are of general utility and are not for the direct safety, remedial, or long term benefit to the child;

(B) Adaptations that add to the total square footage of the family home; and

(C) General repair or maintenance and upkeep required for the family home or motor vehicle, including repair of damage caused by the child.

(c) Funding for environmental accessibility adaptations is one time funding that is not continued in subsequent plan years. Funding for each environmental accessibility adaptation must be specifically approved by through a regional process to ensure the specific adaptation is necessary to prevent out-of-home placement or to return the child to the family home, and to ensure that the proposed adaptation is cost effective. Environmental accessibility adaptations may only be included in a child's Annual Support Plan when all other public and private resources for the environmental accessibility adaptation have been exhausted.

(d) The CDDP must ensure that projects for environmental accessibility adaptations involving building renovation or new construction in or around a child's home costing \$5,000 or more per single instance or cumulatively over several modifications are approved by SPD before work begins and before final payment is made, are completed or supervised by a contractor licensed and bonded in the State of Oregon, and that steps are taken as prescribed by SPD for protection of SPD's interest through liens or other legally available means.

(e) The CDDP must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure. This does not preclude any reasonable accommodation required under the Americans with Disabilities Act.

(5) FAMILY CAREGIVER SUPPORTS. Family caregiver services assist families with unusual responsibilities of planning and managing provider services for their children.

(a) Family caregiver supports include:

(A) Child and family-centered planning facilitation and follow-up;

(B) Fiscal intermediary services to pay vendors and to carry out payroll and reporting functions when providers are domestic employees of the family; and

(C) Assistance with development of tools such as job descriptions, contracts, and employment agreements.

(b) Family caregiver supports exclude application fees and the cost of fingerprinting or other background check processing fee requirements.

(6) FAMILY TRAINING. Family training services include the purchase of training, coaching, counseling, and support that increase the family's ability to care for and maintain the child in the family home.

(a) Family training services include:

(A) Counseling services that assist the family with the stresses of having a child with a developmental disability.

(i) To be authorized, the counseling services must:

(I) Be provided by licensed providers including but not limited to psychologists licensed under ORS 675.030, professionals licensed to practice medicine under ORS 677.100, social workers licensed under ORS 675.530, and counselors licensed under ORS 675.715;

(II) Directly relate to the child's developmental disability and the ability of the family to care for the child; and

(III) Be short-term.

(ii) Counseling services are excluded for:

(I) Therapy that could be obtained through OHP or other payment mechanisms;

(II) General marriage counseling;

(III) Therapy to address family members' psychopathology;

(IV) Counseling that addresses stressors not directly attributed to the child;

(V) Legal consultation;

(VI) Vocational training for family members; and

(VII) Training for families to carry out educational activities in lieu of school.

(B) Registration fees for organized conferences, workshops, and group trainings that offer information, education, training, and materials about the child's developmental disability, medical, and health conditions.

(i) Conferences, workshops, or group trainings must be prior authorized and include those that:

(I) Directly relate to the child's developmental disability; and

(II) Increase the knowledge and skills of the family to care for and maintain the child in the family home.

(ii) Conference, workshop, or group trainings costs exclude:

(I) Registration fees in excess of \$500 per family for an individual event;

(II) Travel, food, and lodging expenses;

(III) Services otherwise provided under OHP or available through other resources; or

(IV) Costs for individual family members who are employed to care for the child.

(b) Funding for family training is one time funding that is not continued in subsequent plan years. Funding for each family training event must be specifically approved through a regional process to ensure the family training event is necessary to prevent out-of-home placement or to return the child to the family home, and to ensure the family training event is cost effective. Family training may only be included in a child's Annual Support Plan when all other public and private resources for the event have been exhausted.

(7) IN-HOME DAILY CARE. In-home daily care services include the purchase of direct provider support provided to the child in the family home or community by qualified individual providers and agencies. Provider assistance provided through in-home daily care must support the child to live as independently as appropriate for the child's age and must be based on the identified needs of the child, supporting the family in their primary caregiving role. Primary caregivers are expected to be present or immediately available during the provision of in-home daily care.

(a) In-home daily care services provided by qualified providers or agencies include:

(A) Basic personal hygiene - Assistance with bathing and grooming;

(B) Toileting, bowel, and bladder care - Assistance in the bathroom, diapering, external cleansing of perineal area, and care of catheters;

(C) Mobility - Transfers, comfort, positioning, and assistance with range of motion exercises;

(D) Nutrition — feeding and monitoring intake and output;

(E) Skin care — Dressing changes;

(F) Physical healthcare including delegated nursing tasks;

(G) Supervision — Providing an environment that is safe and meaningful for the child and interacting with the child to prevent danger to the child and others, and maintain skills and behaviors required to live in the community;

(H) Assisting the child with appropriate leisure activities to enhance development in and around the family home and provide training and support in personal environmental skills;

(I) Communication - Assisting the child in communicating, using any means used by the child;

(J) Neurological - Monitoring of seizures, administering medication, and observing status; and

(K) Accompanying the child and family to health related appointments.

(b) In-home daily care services must:

(A) Be previously authorized by the CDDP before services begin;

(B) Be necessary to resolve the crisis and documented in the child's Annual Support Plan;

(C) Be delivered through the most cost effective method as determined by the services coordinator; and

(D) Only be provided when the child is present to receive services.

(c) In-home daily care services exclude:

(A) Hours that supplant the natural supports and services available from family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow a primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to resolve the crisis;

(D) Support generally provided at the child's age by parents or other family members;

(E) Educational and supportive services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(F) Services provided by the family; and

(G) Home schooling.

(d) In-home daily care services may not be provided on a 24-hour shift-staffing basis. The child's primary caregiver is expected to provide at least eight hours of care and supervision for the child each day with the exception of overnight respite.

(8) RESPITE. Respite services include short-term care and supervision provided to a child on a periodic or intermittent basis furnished

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because of the temporary absence of, or need for relief of, the primary caregiver.

(a) Respite may include both day and overnight services that may be provided in:

- (A) The family home;
- (B) A licensed, certified, or otherwise regulated setting; or
- (C) A qualified provider's home. If overnight respite is provided in a qualified provider's home, the CDDP and the child's parent or guardian must document that the home is a safe setting for the child.
- (b) The CDDP shall not authorize respite services:
  - (A) Solely to allow primary caregivers to attend school or work;
  - (B) That are ongoing and occur on a regular schedule such as eight hours a day, five days a week;
  - (C) On more than a periodic schedule;
  - (D) For more than 14 consecutive days in a calendar month; or
  - (E) For vacation travel and lodging expenses.

(9) **SPECIALIZED EQUIPMENT AND SUPPLIES.** Specialized equipment and supplies include the purchase of devices, aids, controls, supplies, or appliances that are necessary to enable a child to increase their abilities to perform and support activities of daily living, or to perceive, control, or communicate with the environment in which they live.

(a) The purchase of specialized equipment and supplies may include the cost of a professional consultation, if required, to assess, identify, adapt, or fit specialized equipment. The cost of professional consultation may be included in the purchase price of the equipment.

(b) To be authorized by the CDDP, specialized equipment and supplies must:

- (A) Be in addition to any medical equipment and supplies furnished under OHP and private insurance;
  - (B) Be determined necessary to the daily functions of the child; and
  - (C) Be directly related to the child's disability.
- (c) Specialized equipment and supplies exclude:
- (A) Items that are not necessary or of direct medical or remedial benefit to the child;
  - (B) Specialized equipment and supplies intended to supplant similar items furnished under OHP or private insurance;
  - (C) Items available through family, community, or other governmental resources;

- (D) Items that are considered unsafe for the child;
- (E) Toys or outdoor play equipment; and
- (F) Equipment and furnishings of general household use.

(d) Funding for specialized equipment with an expected life of more than one year is one time funding that is not continued in subsequent plan years. Funding for each specialized equipment purchase must be specifically approved through a regional process to ensure the support is necessary to prevent out-of-home placement or to return the child to the family home, and to ensure the support is cost effective. Specialized equipment may only be included in a child's Annual Support Plan when all other public and private resources for the equipment have been exhausted.

(e) The CDDP must secure use of equipment or furnishings costing more than \$500 through a written agreement between the CDDP and the child's parent or guardian that specifies the time period the item is to be available to the child and the responsibilities of all parties should the item be lost, damaged, or sold within that time period. Any equipment or supplies purchased with long-term support funds that are not used according to the child's Annual Support Plan, or according to an agreement securing the state's use, may be immediately recovered.

Stat. Auth.: ORS 409.050, 410.070, & 417.346  
Stats. Implemented: ORS 417.340-417.355, 427.005, 427.007, 430.610 - 430.670  
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-308-0130

### Standards for Providers Paid with Long-Term Support Funds

Independent providers, provider organizations, and general business providers paid with long-term support funds must be qualified. At the discretion of SPD, providers who have previously been terminated or suspended by any DHS division may not be authorized as providers of service. Providers must meet the following qualifications:

(1) Each independent provider paid as a contractor, a self-employed person, or an employee of a child's parent or guardian to provide the services listed in OAR 411-308-0120 must:

- (a) Be at least 18 years of age;
- (b) Have approval to work based on a criminal history check completed by DHS in accordance with OAR chapter 407, division 007;
- (c) Be legally eligible to work in the United States;
- (d) Not be a parent, adoptive parent, stepparent, foster parent, or other person legally responsible for the child receiving supports;
- (e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the child's Annual Support Plan, with such demonstration confirmed in writing by the child's parent or guardian and including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the child; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child being cared for;

(f) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and

(i) If transporting the child, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation.

(2) Nursing consultants must have a current Oregon nursing license and submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with people with developmental disabilities.

(3) Behavior consultants may include but are not limited to autism specialists, licensed psychologists, or other behavioral specialists who:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention Services behavior intervention system, and have a current certificate; and

(c) Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years experience with individuals who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(4) Provider organizations must hold any current license or certification required by Oregon law to provide services to children. In addition, all persons directed by the provider organization as employees, contractors, or volunteers to provide services paid for with long-term support funds must meet the standards for qualification of independent providers described in section (1) of this rule.

(5) General business providers must hold any current license appropriate to function required by Oregon or federal law or regulation. Services purchased with long-term support funds must be limited to those within the scope of the general business provider's license. Such licenses include but are not limited to:

(a) A license under ORS 443.015 for a home health agency;

(b) A license under ORS 443.315 for an in-home care agency;

(c) A current license and bond as a building contractor as required by either OAR chapter 812, Construction Contractor's Board, or OAR chapter 808, Landscape Contractors Board, as applicable for a provider of environmental accessibility adaptations involving home renovation or new construction;

(d) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual, and developing cost-effective plans to make homes safe and accessible;

(e) Current retail business license for vendors and medical supply companies providing specialized equipment and supplies, including enrollment as Medicaid providers through the Division of Medical Assistance Program if vending medical equipment; and

(f) A current business license for providers of personal emergency response systems.

Stat. Auth.: ORS 409.050, 410.070, & 417.346  
Stats. Implemented: ORS 417.340-417.355, 427.005, 427.007, 430.610 - 430.670  
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

## 411-308-0140

### Quality Assurance

The CDDP must participate in statewide quality assurance, service evaluation, and regulation activities as directed by SPD in OAR 411-320-0045.

Stat. Auth.: ORS 409.050, 410.070, & 417.346  
Stats. Implemented: ORS 417.340-417.355, 427.005, 427.007, 430.610 - 430.670  
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

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## 411-308-0150

### Variations

- (1) Variations may be granted to a CDDP if the CDDP:
  - (a) Lacks the resources needed to implement the standards required in these rules;
  - (b) If implementation of the proposed alternative services, methods, concepts, or procedures would result in services or systems that meet or exceed the standards in these rules; or
  - (c) If there are other extenuating circumstances.
- (2) Variations do not apply to OAR 411-308-0110 and 411-308-0130.
- (3) The CDDP requesting a variation must submit to SPD, a written variance request utilizing SPD Form DHS 60-01 that contains the following:
  - (a) The section of the rule from which the variance is sought;
  - (b) The reason for the proposed variance;
  - (c) The proposed alternative practice, service, method, concept, or procedure;
  - (d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and
  - (e) If the variance applies to a child's service, evidence that the variance is consistent with the child's current Annual Support Plan.
- (4) SPD may approve or deny the variance request.
- (5) SPD's decision shall be sent to the CDDP and to all relevant SPD programs or offices within 30 calendar days of the receipt of the variance request.
- (6) The CDDP may appeal of the denial of a variance request by sending a written request for review to the SPD Assistant Director, whose decision is final.
- (7) SPD shall determine the duration of the variance.
- (8) The CDDP may implement a variation only after written approval from SPD.

Stat. Auth.: ORS 409.050, 410.070, & 417.346  
Stats. Implemented: ORS 417.340-417.355, 427.005, 427.007, 430.610 - 430.670  
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

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**Rule Caption:** Support Services for Adults with Developmental Disabilities.

**Adm. Order No.:** SPD 8-2009

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 411-340-0010, 411-340-0020, 411-340-0030, 411-340-0040, 411-340-0050, 411-340-0060, 411-340-0070, 411-340-0080, 411-340-0090, 411-340-0100, 411-340-0110, 411-340-0120, 411-340-0130, 411-340-0140, 411-340-0150, 411-340-0160, 411-340-0170, 411-340-0180

**Subject:** The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently revising the support services for adults with developmental disabilities rules in OAR chapter 411, division 340 to clarify the benefit level and individual cost limit for support services, revise how case management is provided to brokerage customers, and provide general housekeeping changes.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-340-0010

### Statement of Purpose

- (1) The rules in OAR chapter 411, division 340 prescribe standards, responsibilities, and procedures for support services brokerages for purchase of individual supports with support services funds, and for providers paid with support services funds, to provide services to adults with developmental disabilities so that the adults with developmental disabilities may live in their own homes or in family homes.
- (2) Services provided under these rules are intended to identify, strengthen, expand, and where required, supplement private, public, formal, and informal support available to adults with developmental disabilities so that adults with developmental disabilities may exercise self-determination in the design and direction of their lives.

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 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1750, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0020

### Definitions

- (1) "Abuse" means:

(a) Except for services provided at sites owned or leased by provider organizations listed in section (1)(b) of this rule, one or more of the following:

- (A) Any death caused by other than accidental or natural means or occurring in unusual circumstances;
  - (B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;
  - (C) Willful infliction of physical pain or injury;
  - (D) Sexual harassment or exploitation including but not limited to any sexual contact between an employee of a community facility or community program and an individual; or
  - (E) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well-being.
- (b) Activities described in OAR 411-320-0020(2)(b) through (2)(c)(F) for provider organizations qualifying to be paid with support services funds as:

- (A) Twenty-four hour residential services licensed under OAR chapter 411, division 325;
- (B) Adult foster homes licensed under OAR chapter 411, division 360.
- (C) Employment and alternatives to employment services certified under OAR chapter 411, division 345; or
- (D) Supported living services certified under OAR 309-041-0550 through 309-041-0830.

(2) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse.

(3) "Activities of Daily Living (ADL)" mean those self-care activities that must be accomplished by an individual for continued well-being including mobility, dressing and grooming, bathing and personal hygiene, toileting, bowel and bladder care, and eating.

(4) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group.

(5) "Administration of Medication" means the act of a person responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a provider organization, of placing a medication in, or on, an individual's body.

(6) "Administrative Review" means the formal process that is used when the individual or the individual's legal representative is not satisfied with the decision made by the brokerage about a complaint involving the provision of services or a provider.

(7) "Adult" means an individual 18 years or older with developmental disabilities.

(8) "Assistant Director" means the assistant director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(9) "Basic Benefit" means the type and amount of support services available to each eligible individual, specifically:

(a) Access to the brokerage services listed in OAR 411-340-0120(1); and if required

(b) Access to an amount of support services funds used to assist with the purchase of supports listed in OAR 411-340-0130(6). Either:

(A) An amount when an individual is a Medicaid recipient and is eligible for, and has chosen to receive, services available through the Support Services Waiver; or

(B) An amount of the state's General Fund when an individual is either not eligible for Medicaid or Medicaid waiver services or does not otherwise receive Medicaid benefits.

(10) "Basic Supplement" means an amount of support services funds in excess of the basic benefit to which an individual may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria Inventory, Form DHS 0203.

(11) "Basic Supplement Criteria Inventory (Form DHS 0203)" means the written inventory of an individual's circumstances that is completed and scored by the brokerage to determine whether the individual is eligible for a basic supplement.

(12) "Benefit Level" means the total annual amount of support services funds for which an individual is eligible. The benefit level includes the basic benefit and any exceptions to the basic benefit financial limits.

(13) "Certificate" means a document issued by the Seniors and People with Disabilities Division to a brokerage, or to a provider organization requiring certification under OAR 411-340-0170(2), that certifies the brokerage or provider organization is eligible to receive state funds for support services.

(14) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, providers, goals and activities, and verification of



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satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(15) "Chore Services" mean services needed to maintain a clean, sanitary, and safe environment in an individual's home. Chore services include heavy household chores such as washing floors, windows, and walls, tacking down loose rugs and tiles, and moving heavy items of furniture for safe access and egress.

(16) "Client Process Monitoring System (CPMS)" means the Department of Human Services' computerized system for enrolling and terminating services for individuals with developmental disabilities.

(17) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities according to OAR chapter 411, division 320. A CDDP operates in a specific geographic service area of the state under a contract with the Seniors and People with Disabilities Division, Local Mental Health Authority, or other entity as contracted by the Seniors and People with Disabilities Division.

(18) "Community Living and Inclusion Supports" mean services that facilitate independence and promote community integration by supporting the individual to gain or maintain skills to live as independently as possible in the type of home the individual chooses. Community living and inclusion supports provide support for the individual to participate in activities in integrated settings that promote community inclusion and contribution.

(a) Community living and inclusion supports include supports designed to develop or maintain skills for self-care, ability to direct supports, care of the immediate environment, and may include instruction in skills an individual wishes to acquire, retain, or improve that enhance independence, productivity, integration, or maintain the individual's physical and mental skills. Community living and inclusions supports include supports in the following areas:

(A) Personal skills, which includes eating, bathing, dressing, personal hygiene, and mobility;

(B) Socialization, which includes development or maintenance of self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(C) Community participation, recreation, or leisure, which includes the development or maintenance of skills to use available community services, facilities, or businesses;

(D) Communication, which includes development or maintenance of expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills; and

(E) Personal environmental skills, which includes development or maintenance of skills such as planning and preparing meals, budgeting, laundry, and housecleaning.

(b) Community living and inclusion supports may or may not be work related.

(19) "Complaint" means a verbal or written expression of dissatisfaction with services or providers.

(20) "Comprehensive Services" mean a package of developmental disability services and supports that include one of the following living arrangements regulated by the Seniors and People with Disabilities Division alone or in combination with any associated employment or community inclusion program regulated by the Seniors and People with Disabilities Division:

(a) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(b) In-home supports provided to an individual in the individual or family home costing more than the individual cost limit.

(c) Comprehensive services do not include support services for adults enrolled in brokerages or for children enrolled in long-term supports for children or children's intensive in-home services.

(21) "Crisis Diversion Services" mean the services authorized and provided according to OAR 411-320-0160 that are intended to maintain an individual at home or in the family home while an individual is in emergent status. Crisis diversion services may include short-term residential placement services indicated on an individual's Support Services Brokerage Plan of Care Crisis Addendum, as well as additional support as described in an Individual Support Plan.

(22) "Developmental Disability" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(23) "DHS" means the Department of Human Services.

(24) "Emergent Status" means a temporary, unpredictable situation when an individual enrolled in a brokerage may be allowed to receive Seniors and People with Disabilities Division-paid support exceeding the individual cost limit to remain in the individual's home or family home or to enter a short-term out-of-home residential placement without exiting support services. Individuals are considered in emergent status when the community developmental disability program of the individual's county of residence has determined that the individual meets criteria for crisis diversion services according to OAR 411-320-0160.

(25) "Employer-Related Supports" mean activities that assist individuals and, when applicable, their family members with fulfilling roles and obligations as employers as described in the Individual Support Plan. Supports to the employer include but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as job descriptions;

and

(d) Fiscal intermediary services.

(26) "Entry" means admission to a Seniors and People with Disabilities Division-funded developmental disability service provider.

(27) "Environmental Accessibility Adaptations" mean physical adaptations that are necessary to ensure the health, welfare, and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

(a) Environmental accessibility adaptations include but are not limited to:

(A) Environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke detectors, light fixtures, and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars, and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; or

(R) Modifications to a vehicle to meet the unique needs of the individual (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle).

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, and central air conditioning; and

(B) Adaptations that add to the total square footage of the home.

(28) "Environmental Modification Consultant" means either an independent provider, provider organization, or general business paid with support services funds, to provide advice to an individual, the individual's legal representative, or the individual's personal agent about the environmental accessibility adaptation required to meet the individual's needs.

(29) "Exit" means either termination from a Seniors and People with Disabilities Division-funded developmental disability service provider or transfer from one Seniors and People with Disabilities Division-funded program to another. Exit does not mean transfer within a provider's program within a county.

(30) "Family" for determining individual eligibility for brokerage services as a resident in the family home and for determining who may receive family training, means a unit of two or more persons that include at least one individual with developmental disabilities where the primary caregiver is:

# ADMINISTRATIVE RULES

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with developmental disabilities and the individual with developmental disabilities is related to one of the partners by blood, marriage, or legal adoption.

(31) "Family Training" means training and counseling services for the family of an individual that increase the family's capacity to care for, support, and maintain the individual in the home. Family training includes:

(a) Instruction about treatment regimens and use of equipment specified in the Individual Support Plan;

(b) Information, education, and training about the individual's developmental disability, medical, and behavioral conditions; and

(c) Counseling for the family to relieve the stress associated with caring for an individual with developmental disabilities.

(32) "Fiscal Intermediary" means a person or entity that receives and distributes support services funds on behalf of an individual who employs persons to provide services, supervision, or training in the home or community according to the Individual Support Plan.

(33) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with support services funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(34) "Habilitation Services" mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. Habilitation services include supported employment and community living and inclusion supports.

(35) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. This is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing and contested case hearing.

(36) "Home" means an individual's primary residence that is not under contract with the Department of Human Services to provide services to an individual as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(37) "Homemaker Services" mean the general household activities such as meal preparation and routine household services required to maintain a clean, sanitary, and safe environment in an individual's home.

(38) "Incident Report" means a written report of any unusual incident involving an individual.

(39) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(40) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with support services funds that personally provide services to the individual.

(41) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(42) "Individual Cost Limit" means the maximum annual benefit level available under the Support Services Waiver.

(43) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The Individual Support Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The Individual Support Plan is the individual's plan of care for Medicaid purposes.

(44) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

(b) Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(45) "Legal Representative" means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(46) "Mandatory Abuse Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with developmental disabilities has suffered abuse, or that any person with whom the official comes in contact, while acting in an official capacity, has abused an individual with developmental disabilities. Pursuant to ORS 430.765(2), psychiatrists, psychologists, clergy, and attorneys are not mandatory abuse reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(47) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(48) "Mental Retardation" means significantly sub-average general intellectual functioning existing concurrently with significant impairments in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision.

(49) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(50) "Nursing Care Plan" means a plan developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or family.

(51) "Occupational Therapy" means the services provided by a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(52) "Personal Agent" means a person who works directly with individuals and families to provide or arrange for support services, is a case manager for the provision of waiver case management services, meets the qualifications set forth in OAR 411-340-0150(5), and is:

(a) A trained employee of a brokerage; or

(b) A person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited.

(53) "Personal Emergency Response Systems" mean electronic devices required by certain individuals to secure help in an emergency for safety in the community.

(54) "Person-Centered Planning" means a process, either formal or informal, for gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences;

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(c) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(d) Methods for gathering information vary, but all are consistent with individual needs and preferences ranging from simple interviews with the individual, to informal observations in home and community settings, to formally structured meetings.

(55) "Physical Therapy" means the services provided by a professional licensed under ORS 688.020 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(56) "Plan Year" means 12 consecutive months used to calculate an individual's annual benefit level. Unless otherwise set according to the conditions of OAR 411-340-0120(6)(b), the initial plan year begins on the start date specified on the individual's first authorized Individual Support Plan after enrollment in a brokerage. Subsequent plan years begin on the anniversary of the start date of the initial Individual Support Plan.

(57) "Positive Behavioral Theory and Practice" means a proactive approach to individual behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(58) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(59) "Primary Caregiver" means the person identified in an Individual Support Plan as providing the majority of service and support for an individual in the individual's home.

(60) "Productivity" means:

# ADMINISTRATIVE RULES

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(61) "Provider Organization" means an entity selected by an individual or the individual's legal representative, and paid with support services funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(62) "Provider Organization Director" means the employee of a provider organization, or the employee's designee, responsible for administration and provision of services according to these rules.

(63) "Psychotropic Medication" means a medication whose prescribed intended effect is to affect or alter thought processes, mood, or behavior. Psychotropic medication includes but is not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, the medication's classification depends upon its stated, intended effect when prescribed.

(64) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(65) "Respite" means intermittent services provided on a periodic basis for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(66) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(67) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(68) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual with a developmental disability, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority. The ability for an individual with a developmental disability, with the help of a social support network if needed, to control a certain sum of resources in order to purchase support services;

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that shall assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility. The acceptance of a valued role in an individual's community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for individuals with developmental disabilities.

(69) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(70) "Social Benefit" means a service or financial assistance solely intended to assist an individual with a developmental disability to function in society on a level comparable to that of a person who does not have such a developmental disability.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to persons regardless of developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without developmental disabilities; or

(C) Replace other governmental or community services available to an individual.

(b) Financial assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the individual's home and must be either:

(A) Reimbursement for an expense previously authorized in an Individual Support Plan; or

(B) An advance payment in anticipation of an expense authorized in a previously authorized Individual Support Plan.

(71) "Special Diet" means specially prepared food or particular types of food, ordered by a physician and periodically monitored by a dietician, specific to an individual's medical condition or diagnosis that are needed to sustain an individual in the individual's home. Special diets are supple-

ments and are not intended to meet an individual's complete daily nutritional requirements. Special diets may include:

(a) High caloric supplements;

(b) Gluten-free supplements; and

(c) Diabetic, ketogenic, or other metabolic supplements.

(72) "Specialized Medical Equipment and Supplies" mean devices, aids, controls, supplies, or appliances that enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. Specialized medical equipment and supplies include items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the State Medicaid Plan. Specialized medical equipment and supplies may not include items not of direct medical or remedial benefit to the individual. Specialized medical equipment and supplies must meet applicable standards of manufacture, design, and installation.

(73) "Specialized Supports" mean treatment, training, consultation, or other unique services necessary to achieve outcomes in the Individual Support Plan that are not available through State Medicaid Plan services or other support services listed in OAR 411-340-0130(6). Typical supports include the services of a behavior consultant, a licensed nurse, or a social or sexual consultant to:

(a) Assess the needs of the individual and family, including environmental factors;

(b) Develop a plan of support;

(c) Train caregivers to implement the plan of support;

(d) Monitor implementation of the plan of support; and

(e) Revise the plan of support as needed.

(74) "Speech and Language Therapy" means the services provided by a professional licensed under ORS 681.250 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(75) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(76) "Supported Employment Services" means provision of job training and supervision available to assist an individual who needs intensive ongoing support to choose, get, and keep a job in a community business setting. Supported employment is a service planned in partnership with public vocational assistance agencies and school districts and through Social Security Work Incentives when available.

(77) "Support Services" mean the services of a brokerage listed in OAR 411-340-0120(1) as well as the uniquely determined activities and purchases arranged through the brokerage support services that:

(a) Complement the existing formal and informal supports that exist for an individual living in the individual's own home or family home;

(b) Are designed, selected, and managed by the individual or the individual's legal representative;

(c) Are provided in accordance with an Individual Support Plan; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(78) "Support Services Brokerage" or "Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions listed in OAR 411-340-0120(1) associated with planning and implementation of support services for individuals with developmental disabilities.

(79) "Support Services Brokerage Director" or "Brokerage Director" means the employee of a publicly or privately-operated brokerage, or that person's designee, who is responsible for administration and provision of services according to these rules.

(80) "Support Services Brokerage Plan of Care Crisis Addendum" means the short-term plan that is required by the Seniors and People with Disabilities Division to be added to an Individual Support Plan to describe crisis diversion services an individual is to receive while the individual is in emergent status in a short-term residential placement.

(81) "Support Services Brokerage Policy Oversight Group" or "Policy Oversight Group" means the group that meets the requirements of OAR 411-340-0150(1) that is formed to provide consumer-based leadership and advice to each brokerage regarding issues such as development of policy, evaluation of services, and use of resources.

(82) "Support Services Funds" mean public funds designated by the brokerage for assistance with the purchase of supports according to each Individual Support Plan.

(83) "These Rules" mean the rules in OAR chapter 411, division 340.

(84) "Transportation" means services that allow individuals to gain access to community services, activities, and resources that are not medical in nature.



# ADMINISTRATIVE RULES

(85) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring abuse investigation.

Stat. Auth.: ORS 409.050, 410.070 & 417.346  
Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610-430.695  
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1760, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0030

### Certification of Support Service Brokerages and Provider Organizations

#### (1) CERTIFICATE REQUIRED.

(a) No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, manage, or operate a brokerage without being certified by SPD under this rule.

(b) No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, or operate a provider organization without either certification under this rule or current SPD license or certification as described in OAR 411-340-0170(1).

(c) Certificates are not transferable or assignable and are issued only for the brokerage, or for the provider organization requiring certification under OAR 411-340-0170(2), and persons or governmental units named in the application.

(d) Certificates are issued for a maximum of two years.

(e) SPD shall conduct a review of the brokerage, or the provider organization requiring certification under OAR 411-340-0170(2), prior to the issuance of a certificate.

(2) CERTIFICATION. A brokerage, or a provider organization requiring certification under OAR 411-340-0170(2), must apply for an initial certificate and for a certificate renewal.

(a) The application must be on a form provided by SPD and must include all information requested by SPD.

(b) The applicant requesting certification as a brokerage must identify the maximum number of individuals to be served.

(c) To renew certification, the brokerage or provider organization must make application at least 30 days but not more than 120 days prior to the expiration date of the existing certificate. On renewal of brokerage certification, no increase in the maximum number of individuals to be served by the brokerage may be certified unless specifically approved by SPD.

(d) Application for renewal must be filed no more than 120 days prior to the expiration date of the existing certificate and shall extend the effective date of the existing certificate until SPD takes action upon the application for renewal.

(e) Failure to disclose requested information on the application or providing incomplete or incorrect information on the application may result in denial, revocation, or refusal to renew the certificate.

(f) Prior to issuance or renewal of the certificate, the applicant must demonstrate to the satisfaction of SPD that the applicant is capable of providing services identified in a manner consistent with the requirements of these rules.

(3) CERTIFICATION EXPIRATION, TERMINATION OF OPERATIONS, OR CERTIFICATE RETURN.

(a) Unless revoked, suspended, or terminated earlier, each certificate to operate a brokerage or provider organization shall expire on the expiration date specified on the certificate.

(b) If a certified brokerage or provider organization is discontinued, the certificate automatically terminates on the date operation is discontinued.

(4) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION. The brokerage, or provider organization requiring certification under OAR 411-340-0170(2), must notify SPD in writing of any pending action resulting in a 5 percent or more change in ownership and of any pending change in the brokerage's or provider organization's legal entity, legal status, or management corporation.

(5) NEW CERTIFICATE REQUIRED. A new certificate for a brokerage or provider organization is required upon change in a brokerage's or provider organization's ownership, legal entity, or legal status. The brokerage or provider organization must submit a certificate application at least 30 days prior to change in ownership, legal entity, or legal status.

(6) CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. SPD may deny, revoke, or refuse to renew a certificate when SPD finds the brokerage or provider organization, the brokerage or provider

organization director, or any person holding 5 percent or greater financial interest in the brokerage or provider organization:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized and the brokerage or provider organization fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance;

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this rule, "inspection" means an on-site review of the service site by SPD for the purpose of investigation or certification);

(c) Has been convicted of a felony;

(d) Has been convicted of a misdemeanor associated with the operation of a brokerage or provider organization;

(e) Falsifies information required by SPD to be maintained or submitted regarding services of individuals, program finances, or individuals' funds;

(f) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(g) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(7) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. Following a SPD finding that there is a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in section (6) of this rule has occurred, SPD may issue a notice of certificate revocation, denial, or refusal to renew.

(8) IMMEDIATE SUSPENSION OF CERTIFICATE. When SPD finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, SPD may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the brokerage or provider organization may not continue operation.

(9) HEARING. An applicant for a certificate or a certificate holder may request a hearing pursuant to the contested case provisions of ORS chapter 183 upon written notice from SPD of denial, suspension, revocation, or refusal to renew a certificate. In addition to, or in lieu of a hearing, the applicant or certificate holder may request an administrative review by the SPD Assistant Director. An administrative review does not preclude the right of the applicant or certificate holder to a hearing.

(a) The applicant or certificate holder must request a hearing within 60 days of receipt of written notice by SPD of denial, suspension, revocation, or refusal to renew a certificate. The request for a hearing must include an admission or denial of each factual matter alleged by SPD and must affirmatively allege a short plain statement of each relevant, affirmative defense the applicant or certificate holder may have.

(b) In the event of a suspension pursuant to section (8) of this rule and during the first 30 days after the suspension of a certificate, the brokerage or provider organization may submit a written request to SPD for an administrative review. SPD shall conduct the review within 10 days after receipt of the request for an administrative review. Any review requested after the end of the 30-day period following certificate suspension shall be treated as a request for hearing under section (9)(a) of this rule. If following the administrative review the suspension is upheld, the brokerage or provider organization may request a hearing pursuant to the contested case provisions of ORS chapter 183.

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 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1770, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0040

### Abuse and Unusual Incidents in Support Service Brokerages and Provider Organizations

(1) ABUSE PROHIBITED. No adult or individual as defined in OAR 411-340-0020 shall be abused nor shall any employee, staff, or volunteer of the brokerage or provider organization condone abuse.

(a) Brokerages and provider organizations must have in place appropriate and adequate disciplinary policies and procedures to address instances when a staff member has been identified as an alleged perpetrator in an abuse investigation as well as when the allegation of abuse has been substantiated.

(b) All employees of a brokerage or provider organization are mandatory abuse reporters. The brokerage or provider organization must:

(A) Notify all employees of mandatory reporting status at least annually on forms provided by DHS; and

(B) Provide all employees with a DHS-produced card regarding abuse reporting status and abuse reporting.

# ADMINISTRATIVE RULES

## (2) UNUSUAL INCIDENTS.

(a) A brokerage or provider organization must prepare an incident report at the time of an unusual incident, as defined in OAR 411-340-0020, involving an individual and a brokerage or provider organization employee. The incident report must be placed in the individual's record and must include:

- (A) Conditions prior to or leading to the unusual incident;
- (B) A description of the unusual incident;
- (C) Staff response at the time; and
- (D) Review by the brokerage administration and follow-up to be taken to prevent recurrence of the unusual incident.

(b) A brokerage or provider organization must send copies of all incident reports involving abuse that occurs while an individual is receiving brokerage or provider organization services to the CDDP.

(c) A provider organization must send copies of incident reports of all unusual incidents that occur while the individual is receiving services from a provider organization to the individual's brokerage within five working days of the unusual incident.

(d) The brokerage must immediately report to the CDDP, and the provider organization must immediately report to the CDDP with notification to the brokerage, any incident or allegation of abuse falling within the scope of OAR 411-340-0020(1). When the CDDP has initiated an abuse investigation, the CDDP must ensure that the individual's legal representative is notified. The parent, next of kin, or other significant person may also be notified unless the individual requests the parent, next of kin, or other significant person not be notified about the abuse investigation or protective services, or unless notification has been specifically prohibited by law.

(e) In the case of a serious illness, injury, or death of an individual, the brokerage or provider organization must immediately notify:

- (A) The individual's legal representative, parent, next of kin, designated contact person, or other significant person;
- (B) The CDDP;
- (C) In the case of the provider organization, the individual's brokerage; and
- (D) SPD.

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 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1780, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0050

### Inspections and Investigations in Support Service Brokerages and Provider Organizations

(1) Entities certified under these rules must allow the following types of investigations and inspections:

- (a) Quality assurance and on-site inspections;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) DHS, CDDP, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by this rule must be:

- (a) Open to inspection and investigation by DHS, CDDP, or proper authority; and
- (b) Submitted to DHS within the time allotted.
- (5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, DHS, or CDDP has determined to initiate an investigation, the brokerage or provider organization may not conduct an internal investigation without prior authorization from DHS. For the purposes of this rule, an "internal investigation" is defined as:

(a) Conducting interviews with the alleged victim, witness, the alleged perpetrator, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

- (A) If there is reasonable cause to believe that abuse has occurred;
- (B) If the alleged victim is in danger or in need of immediate protective services;
- (C) If there is reason to believe that a crime has been committed; or
- (D) What, if any, immediate personnel actions must be taken.

(6) DHS or the CDDP shall conduct abuse investigations as set forth in OAR 407-045-0250 through 407-045-0360 and shall complete an abuse investigation and protective services report according to OAR 407-045-0320.

(7) Upon completion of the abuse investigation by DHS, CDDP, or a law enforcement agency, a provider may conduct an investigation without

further DHS approval to determine if any other personnel actions are necessary.

(8) Upon completion of the abuse investigation and protective services report, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate brokerage or provider organization.

(9) The brokerage or provider organization may be required to submit to SPD a plan of improvement for any noncompliance found during an inspection pursuant to section (1)(a) of this rule.

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 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1790, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0060

### Complaints in Support Services Brokerages

(1) COMPLAINTS. Brokerages must develop and implement written policies and procedures regarding individual complaints and a formal complaint process. These policies and procedures must at minimum address:

(a) Receipt of complaints. If a complaint is associated in any way with abuse, the recipient of the complaint must immediately report the issue to the CDDP and notify the brokerage director and, if applicable, the provider organization director. The brokerage must maintain a log of all complaints regarding the brokerage, provider organization, or independent provider that the brokerage receives from individuals, others acting on the behalf of individuals, and from provider organizations acting in accordance with OAR 411-340-0170(2)(a)(C)(v).

(A) The complaint log must, at a minimum, include the following:

- (i) The date the complaint was received;
- (ii) The name of the person taking the complaint;
- (iii) The nature of the complaint;
- (iv) The name of the person making the complaint, if known; and
- (v) The disposition of the complaint.

(B) Brokerage personnel issues and allegations of abuse may be maintained separately from a central complaint log. If a complaint results in disciplinary action against a staff member, the documentation on the complaint must include a statement that disciplinary action was taken.

(b) Informal complaint resolution. An individual or someone acting on behalf of the individual must have an opportunity to informally discuss and resolve any allegation that a brokerage, provider organization, or independent provider has taken action that is contrary to law, rule, policy, or that is otherwise contrary to the interest of the individual and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude an individual or someone acting on behalf of the individual from pursuit of resolution through formal complaint processes.

(c) Investigation of the facts supporting or disproving the complaint.

(d) Taking appropriate actions. The brokerage must take steps to resolve the complaint within five working days following receipt of the complaint. If the complaint cannot be resolved informally, or if the individual making the complaint so chooses at any time, the individual may request a formal resolution of the complaint and, if needed, must be assisted by the brokerage with initiating the formal complaint process.

(e) Review by the brokerage director. If a complaint involves brokerage staff or services and if the complaint is not resolved according to section (1)(b) through (1)(d) of this rule, or if the person making the complaint requests one, a formal review must be completed by the brokerage director and a written response must be provided to the complainant within 30 days following receipt of the complaint.

(f) Agreement to resolve the complaint. Any agreement to resolve a complaint that has been formally reviewed by the brokerage director must be in writing and must be specifically approved by the complainant. The brokerage must provide the complainant with a copy of the agreement.

(g) Administrative review. Unless the complainant is a Medicaid recipient who has elected to initiate the hearing process according to section (3) of this rule, the complaint may be submitted to SPD for administrative review when the complaint cannot be resolved by the brokerage and the complaint involves the provision of service or a provider.

(A) Following a decision by the brokerage director regarding a complaint, the complainant may request an administrative review by the SPD Assistant Director.

(B) The complainant must submit to SPD a request for an administrative review within 15 days from the date of the decision by the brokerage director.

(C) Upon receipt of a request for an administrative review, the SPD Assistant Director shall appoint an Administrative Review Committee and name the chairperson. The Administrative Review Committee shall be comprised of a representative of SPD, a CDDP representative, and a brokerage representative. Committee representatives may not have any direct involve-

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ment in the provision of services to the complainant or have a conflict of interest in the specific case being reviewed.

(D) The Administrative Review Committee must review the complaint and the decision by the brokerage director and make a recommendation to the SPD Assistant Director within 45 days of receipt of the complaint unless the complainant and the Administrative Review Committee mutually agree to an extension.

(E) The SPD Assistant Director shall consider the report and recommendations of the Administrative Review Committee and make a final decision. The decision must be in writing and issued within 10 days of receipt of the recommendation by the Administrative Review Committee. The written decision must contain the rationale for the decision.

(F) The decision of the SPD Assistant Director is final. Any further review is pursuant to the provision of ORS 183.484 for judicial review.

(h) Documentation of complaint. Documentation of each complaint and its resolution must be filed or noted in the complainant's record.

(2) NOTIFICATION. Upon enrollment and annually thereafter, and when a complaint is not resolved according to section (1)(b) through (1)(d) of this rule, the brokerage must inform each individual, or the individual's legal representative, orally and in writing, using language, format, and methods of communication appropriate to the individual's needs and abilities, of the following:

(a) Brokerage grievance policy and procedures, including the right to an administrative review and the method to obtain an administrative review; and

(b) The right of a Medicaid recipient to a hearing as pursuant to section (3) of this rule and the procedure to request a hearing.

(3) DENIAL, TERMINATION, SUSPENSION, OR REDUCTION OF SERVICES FOR INDIVIDUAL MEDICAID RECIPIENTS.

(a) Each time the brokerage takes an action to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the brokerage must notify the individual or the individual's legal representative of the right to a hearing and the method to request a hearing. The brokerage must mail the notice by certified mail, or personally serve the notice to the individual or the individual's legal representative 10 days or more prior to the effective date of an action.

(A) The brokerage must use form SDS 0947, Notification of Planned Action, or a comparable SPD-approved form for such notification.

(B) This notification requirement does not apply if an action is part of, or fully consistent with the ISP, and the individual or the individual's legal representative has agreed with the action by signature to the ISP.

(b) A notice required by section (3)(a) of this rule must include:

(A) The action the brokerage intends to take;

(B) The reasons for the intended action;

(C) The specific Oregon Administrative Rules that support, or the change in federal or state law that requires, the action;

(D) The appealing party's right to request a hearing in accordance with OAR chapter 137, ORS chapter 183, and 42 CFR Part 431, Subpart E;

(E) A statement that the brokerage files on the subject of the hearing automatically becoming part of the hearing record upon default for the purpose of making a prima facie case;

(F) A statement that the actions specified in the notice shall take effect by default if the DHS representative does not receive a request for hearing from the party within 45 days from the date that the brokerage mails the notice of action;

(G) In cases of an action based upon a change in law, the circumstances under which a hearing shall be granted; and

(H) An explanation of the circumstances under which brokerage services shall be continued if a hearing is requested.

(c) If the individual or the individual's legal representative disagrees with a decision or proposed action by the brokerage to deny, terminate, suspend, or reduce an individual's access to services covered under Medicaid, the party may request a hearing as provided in ORS chapter 183. The request for a hearing must be in writing on form DHS 443 and signed by the individual or the individual's legal representative. The signed form (DHS 443) must be received by DHS within 45 days from the date the brokerage mailed the notice of action.

(d) The individual or the individual's legal representative may request an expedited hearing if the individual or the individual's legal representative feels that there is immediate, serious threat to the individual's life or health should the normal timing of the hearing process be followed.

(e) If the individual or the individual's legal representative requests a hearing before the effective date of the proposed action and requests that the existing services be continued, DHS shall continue the services.

(A) DHS must continue the services until whichever of the following occurs first:

(i) The current authorization expires;

(ii) The administrative law judge issues a proposed order and DHS issues a final order; or

(iii) The individual is no longer eligible for Medicaid benefits.

(B) DHS must notify the individual or the individual's legal representative that DHS is continuing the service. The notice must inform the individual or the individual's legal representative that, if the hearing is resolved against the individual, DHS may recover the cost of any services continued after the effective date of the continuation notice.

(f) DHS may reinstate services if:

(A) DHS takes an action without providing the required notice and the individual or the individual's legal representative requests a hearing;

(B) DHS fails to provide the notice in the time required in this rule and the individual or the individual's legal representative requests a hearing within 10 days of the mailing of the notice of action; or

(C) The post office returns mail directed to the individual or the individual's legal representative, but the location of the individual or the individual's legal representative becomes known during the time that the individual is still eligible for services.

(g) DHS must promptly correct the action taken up to the limit of the original authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the individual, or DHS decides in the individual's favor before the hearing.

(h) The DHS representative and the individual or the individual's legal representative may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for DHS and the individual or the individual's legal representative to settle the matter;

(B) Ensure the individual or the individual's legal representative understands the reason for the action that is the subject of the hearing request;

(C) Give the individual or the individual's legal representative an opportunity to review the information that is the basis for that action;

(D) Inform the individual or the individual's legal representative of the rules that serve as the basis for the contested action;

(E) Give the individual or the individual's legal representative and DHS the chance to correct any misunderstanding of the facts;

(F) Determine if the individual or the individual's legal representative wishes to have any witness subpoenas issued; and

(G) Give DHS an opportunity to review its action or the action of the brokerage.

(i) The individual or the individual's legal representative may, at any time prior to the hearing date, request an additional conference with the DHS representative. At the DHS representative's discretion, the DHS representative may grant an additional conference if it facilitates the hearing process.

(j) DHS may provide the individual or the individual's legal representative the relief sought at any time before the final order is issued.

(k) An individual or the individual's legal representative may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal shall be effective on the date DHS or the Office of Administrative Hearings receives it. DHS must issue a final order confirming the withdrawal to the last known address of the individual or the individual's legal representative. The individual or the individual's legal representative may cancel the withdrawal up to 10 working days following the date the final order is issued.

(l) Proposed and final orders.

(A) In a contested case, the administrative law judge must serve a proposed order on the individual and DHS.

(B) If the administrative law judge issues a proposed order that is adverse to the individual, the individual or the individual's legal representative may file exceptions to the proposed order to be considered by DHS. The exception must be in writing and must be received by DHS no later than 10 days after service of the proposed order. The individual or the individual's legal representative may not submit additional evidence after this period unless DHS grants prior approval.

(C) After receiving the exceptions, if any, DHS may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, DHS may issue an amended proposed order.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1800, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

### 411-340-0070

#### Support Services Brokerage and Provider Organization Personnel Policies and Practices

(1) Brokerages and provider organizations must maintain up-to-date written position descriptions for all staff as well as a file available to SPD or CDDP for inspection that includes written documentation of the following for each staff:



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- (a) Reference checks and confirmation of qualifications prior to hire;
  - (b) Written documentation of a background check completed by DHS in accordance with OAR chapter 407, division 007;
  - (c) Satisfactory completion of basic orientation, including instructions for mandatory abuse reporting and training specific to developmental disabilities and skills required to carry out assigned work if the employee is to provide direct assistance to individuals;
  - (d) Written documentation of employee notification of mandatory abuse reporter status;
  - (e) Written documentation of any substantiated abuse allegations;
  - (f) Written documentation of any complaints filed against the staff and the results of the complaint process, including if any, disciplinary action; and
  - (g) Legal eligibility to work in the United States.
- (2) Any employee providing direct assistance to individuals must be at least 18 years of age and capable of performing the duties of the job as described in a current job description signed and dated by the employee.
  - (3) Each brokerage and provider organization regulated by these rules must be a drug-free workplace.

Stat. Auth.: ORS 409.050, 410.070 & 417.346  
Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.670  
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1810, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0080

### Support Service Brokerage and Provider Organization Records

(1) CONFIDENTIALITY. Brokerage and provider organization records of services to individuals must be kept confidential in accordance with ORS 179.505, 45 CFR 205.50, 45 CFR 164.512 Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any DHS rules or policies pertaining to individual service records.

#### (2) DISCLOSURE AND CONFIDENTIALITY.

(a) For the purpose of disclosure from individual medical records under these rules, brokerages, and provider organizations requiring certification under OAR 411-340-0170(2), shall be considered "providers" as defined in ORS 179.505(1), and 179.505 shall be applicable.

(b) Access to records by DHS does not require authorization by the individual or family.

(c) For the purpose of disclosure from non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502(2).

(3) GENERAL FINANCIAL POLICIES AND PRACTICES. The brokerage or provider organization must:

(a) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities.

(b) As a provider organization, or as a brokerage offering services to the general public, establish and revise as needed a fee schedule identifying the cost of each service provided. Billings for Title XIX funds may not exceed the customary charges to private individuals for any like item or service charged by the brokerage or provider organization.

(c) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any DHS rule pertaining to fraud and embezzlement.

(4) RECORDS RETENTION. Records must be retained in accordance with OAR chapter 166, division 150, Secretary of State, Archives Division.

(a) Financial records, supporting documents, statistical records, and all other records (except individual records) must be retained for a minimum of three years after the close of the contract period.

(b) Individual records must be kept for a minimum of seven years.

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

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 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1820, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0090

### Support Services Brokerage and Provider Organization Request for Variance

(1) Variances may be granted to a brokerage or provider organization:

(a) If the brokerage or provider organization lacks the resources needed to implement the standards required in these rules;

(b) If implementation of the proposed alternative services, methods, concepts, or procedures would result in services or systems that meet or exceed the standards in these rules; or

(c) If there are other extenuating circumstances.

(2) Variances may not be granted to OAR 411-340-0130 and 411-340-0140.

(3) The brokerage or provider organization requesting a variance must submit to SPD, in writing, an application that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The proposed alternative practice, service, method, concept, or procedure;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) If the variance applies to an individual's services, evidence that the variance is consistent with an individual's currently authorized ISP.

(4) SPD may approve or deny the variance request. SPD's decision shall be sent to the brokerage or provider organization and to all relevant SPD programs or offices within 45 calendar days of the receipt of the variance request.

(5) The brokerage or provider organization may appeal the denial of a variance request by sending a written request for review to the SPD Assistant Director, whose decision is final.

(6) SPD shall determine the duration of the variance.

(7) The brokerage or the provider organization may implement a variance only after written approval from SPD.

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 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1830, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0100

### Eligibility for Support Service Brokerage Services

(1) NON-DISCRIMINATION. Individuals determined eligible according to section (2) of this rule may not be denied brokerage services or otherwise discriminated against on the basis of age or diagnostic or disability category. Access to service may also not be restricted due to race, color, creed, national origin, citizenship, income, or duration of Oregon residence.

(2) ELIGIBILITY. The CDDP of an individual's county of residence may find the individual eligible for a brokerage when:

(a) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;

(b) The individual is an adult living in the individual's own home or family home and not receiving other SPD-paid in-home or community living support other than State Medicaid Plan services;

(c) The individual is not enrolled in comprehensive services;

(d) At the time of initial enrollment in the brokerage, the individual is not receiving short-term services from SPD because the individual is eligible for, and at imminent risk of, civil commitment under ORS chapter 427.215 through 427.306; and

(e) The individual or the individual's legal representative has chosen to use a brokerage for assistance with design and management of personal supports.

(3) CONCURRENT SERVICES. Individuals are not eligible for service by more than one brokerage unless the concurrent service:

(a) Is necessary to affect transition from one brokerage to another;

(b) Is part of a collaborative plan between the affected brokerages; and

(c) Does not duplicate services and expenditures.

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 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1840, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0110

### Standards for Support Service Brokerage Entry and Exit

(1) The brokerage must make accurate, up-to-date information about the brokerage available to individuals referred for services. This information must include:

(a) A declaration of brokerage philosophy;

(b) A brief description of the services provided by the brokerage, including typical timelines for activities;

(c) A description of processes involved in using the services, including application and referral, assessment, planning, and evaluation;

(d) A declaration of brokerage employee responsibilities as mandatory abuse reporters;

(e) A brief description of individual responsibilities for use of public funds;

(f) An explanation of individual rights, including an individual's right to:

(A) Choose a brokerage from among SPD contracted brokerages in an individual's county of residence that is serving less than the total number of individuals specified in the brokerage's current contract with SPD;

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(B) Choose a personal agent among those available in the selected brokerage;

(C) Select providers among those willing, available, and qualified according to OAR 411-340-0160, 411-340-0170, and 411-340-0180 to provide supports authorized through the ISP;

(D) Direct the services of providers; and

(E) Raise and resolve concerns about brokerage services, including specific rights to notification and hearing for Medicaid recipients according to OAR 411-340-0060(3) when services covered under Medicaid are denied, terminated, suspended, or reduced.

(g) Indication that additional information about the brokerage is available on request. The additional information must include but not be limited to:

(A) A description of the brokerage's organizational structure;

(B) A description of any contractual relationships the brokerage has in place or may establish to accomplish the brokerage functions required by rule; and

(C) A description of the relationship between the brokerage and the brokerage's Policy Oversight Group.

(2) The brokerage must make information required in section (1) of this rule available using language, format, and presentation methods appropriate for effective communication according to individuals' needs and abilities.

(3) ENTRY INTO BROKERAGE SERVICES.

(a) An individual must enter brokerage services within 90 calendar days of the date that:

(A) The CDDP has determined an individual to be eligible for brokerage services according to OAR 411-340-0100(2); and

(B) The individual or the individual's legal representative has chosen to receive services from a selected brokerage.

(b) SPD may implement guidelines that govern enrollments when SPD has determined that such guidelines are prudent and necessary for the continued development and implementation of support services.

(c) The brokerage may not accept individuals for entry beyond the total number of individuals specified in its current contract with SPD.

(4) EXIT FROM A BROKERAGE.

(a) An individual must exit a brokerage:

(A) At the written request of the individual or the individual's legal representative to end the service relationship;

(B) No less than 30 days after the brokerage has served written notice of intent to terminate services, when the individual either cannot be located or has not responded to repeated attempts by brokerage staff to complete ISP development and monitoring activities, and does not respond to the notice of intent to terminate;

(C) Whenever the individual's emergent status exceeds 270 consecutive days;

(D) Upon entry into a comprehensive service; or

(E) When the individual is incarcerated or in a medical hospital, psychiatric hospital, or convalescent center and it is determined that the individual will not return home, or will not return home after 90 consecutive days. The 90 day limit may be exceeded with the permission of SPD.

(b) Each brokerage must have policies and procedures for notifying the CDDP of an individual's county of residence when that individual plans to exit, or exits, brokerage services. Notification method, timelines, and content must be based on agreements between the brokerage and CDDP's of each county in which the brokerage provides services.

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 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1850, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0120

### Support Service Brokerage Services

(1) Each brokerage must provide or arrange for the following services as required to meet individual support needs:

(a) Assistance for individuals to determine needs, plan supports in response to needs, and develop individualized budgets based on available resources;

(b) Assistance for individuals to find and arrange the resources to provide planned supports;

(c) Assistance with development and expansion of community resources required to meet the support needs of individuals served by the brokerage;

(d) Information, education, and technical assistance for individuals to use to make informed decisions about support needs and to direct providers;

(e) Fiscal intermediary services in the receipt and accounting of support services funds on behalf of an individual in addition to making payment to providers with the authorization of the individual;

(f) Employer-related supports; and

(g) Assistance for individuals to effectively put plans into practice, including help to monitor and improve the quality of supports as well as assess and revise plan goals.

(2) SELF-DETERMINATION. Brokerages must apply the principles of self-determination to provision of services required in sections (1) of this rule.

(3) PERSON-CENTERED PLANNING. A brokerage must use a person-centered planning approach to assist individuals to establish outcomes, determine needs, plan for supports, and review and redesign support strategies.

(4) HEALTH AND SAFETY ISSUES. The planning process must address basic health and safety needs and supports including but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the individual or the individual's legal representative regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support to recognize and report abuse.

(5) MEDICAID WAIVERS. The brokerage must assure that individuals who become eligible for Medicaid after entry into the brokerage are offered the choice of home and community-based waiver services, provided a notice of fair hearing rights, and have a completed Title XIX Waiver form that is reviewed annually or at any time there is a significant change.

(6) WRITTEN PLAN REQUIRED.

(a) Unless circumstances allow exception under section (6)(b) of this rule, the personal agent must write an ISP dated within 90 days of an individual's entry into brokerage services and at least annually thereafter. The ISP or attached documents must include:

(A) The individual's name;

(B) A description of the supports required, including the reason the support is necessary;

(C) Projected dates of when specific supports are to begin and end;

(D) Projected costs, with sufficient detail to support estimates;

(E) A list of personal, community, and public resources that are available to the individual and how they shall be applied to provide the required supports;

(F) The providers, or when the provider is unknown or is likely to change frequently, the type of provider (i.e. independent provider, provider organization, or general business provider), of supports to be purchased with support services funds;

(G) Schedule of ISP reviews; and

(H) The signature of the individual or the individual's legal representative or documentation of the reason an individual who does not have a legal representative may be unable to sign the ISP.

(i) Acceptable reasons for an individual without a legal representative not to sign the ISP include physical or behavioral inability to sign the ISP.

(ii) Unavailability of the individual is not an acceptable reason for the individual or the individual's legal representative not to sign the ISP.

(b) The schedule of the support services ISP developed in compliance with section (3) of this rule after an individual enters a brokerage may be adjusted one time for any individual entering a brokerage in certain circumstances. Such an adjustment shall interrupt any plan year in progress and establish a new plan year for the individual beginning on the date the first new ISP is authorized. Circumstances where this adjustment is permitted include:

(A) Brokerages, with the consent of the individual, may designate a new ISP start date.

(i) This adjustment may only occur one time per individual upon ISP renewal.

(ii) The individual's benefit level must be pro-rated based on the shortened plan year in order to not exceed the annual benefit level for which the individual is eligible.

(iii) ISP date adjustments shall be clearly documented on the ISP.

(B) Transition of individuals receiving family support services for children with developmental disabilities regulated by OAR chapter 411, division 305, children's intensive in-home services (CIIS) regulated by OAR chapter 411, division 300, or medically fragile children (MFC) services regulated by OAR chapter 411, division 350, when those individuals are 18 years of age. The date of the individual's first new support services ISP after enrollment in the brokerage may be adjusted to correspond to the expiration date of the individual's Annual Plan of Care in place at the time the individual turns 18 years of age when the Annual Plan of Care, developed while the individual is still receiving family support, CIIS, or MFC services, has been authorized for implementation prior to or upon the individual's enrollment in the brokerage.

(C) Transition of individuals receiving other SPD-paid services who are required by SPD to transition to support services. The date of the individual's first support services ISP may be adjusted to correspond to the

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expiration date of the individual's plan for services when the plan for services:

- (i) Has been developed according to regulations governing SPD-paid services the individual receives prior to transition;
- (ii) Is current at the time designated by SPD for transition to support services; and
- (iii) Is authorized for implementation prior to or upon the individual's enrollment in the brokerage.

## (7) PROFESSIONAL OR OTHER SERVICE PLANS.

(a) A Nursing Care Plan must be attached to the ISP when support services funds are used to purchase services requiring the education and training of a licensed professional nurse.

(b) A Support Services Brokerage Plan of Care Crisis Addendum, or other document prescribed by SPD for use in these circumstances, must be attached when an individual enrolled in a brokerage:

(A) Has been determined by the CDDP of the individual's county of residence as eligible for crisis diversion services according to OAR 411-320-0160; and

(B) Is in emergent status in a short-term out-of-home residential placement as part of the individual's crisis diversion services. This short-term plan must be coordinated by staff of the CDDP of the individual's county of residence.

(8) AUTHORIZATION OF WRITTEN PLAN. Prior to implementation the brokerage must authorize:

(a) Initial and annual ISPs; and

(b) Significant changes in the ISP that include but are not limited to changes in the types of support purchased with support services funds and changes in supports that cause total plan year expenses to exceed the expenses currently authorized by more than 10 percent. Significant changes in the ISP do not include changes in the providers chosen to provide direct assistance to the individual.

(9) PERIODIC REVIEW OF PLAN AND RESOURCES. The personal agent must conduct and document reviews of plans and resources with the individual and the individual's legal representative.

(a) At least quarterly, the personal agent must review and reconcile receipts and records of purchased supports authorized by the ISP.

(b) At least annually and as major activities or purchases are completed, the personal agent must:

(A) Evaluate progress toward achieving the purposes of the ISP, assessing and revising goals as needed;

(B) Record final support services fund costs;

(C) Note effectiveness of purchases based on personal agent observation as well as individual satisfaction; and

(D) Determine whether changing needs or availability of other resources has altered the need for continued use of support services funds to purchase supports.

(10) TRANSITION TO ANOTHER BROKERAGE. At the request of an individual enrolled in brokerage services who has selected another brokerage, the brokerage must collaborate with the receiving brokerage and the CDDP of the individual's county of residence to transition support services.

(a) If SPD has designated and contracted funds solely for the support of the transitioning individual, the brokerage must notify SPD to consider transfer of the funds for the individual to the receiving brokerage.

(b) The ISP in place at the time of request for transfer may remain in effect 90 days after enrollment in the new brokerage while a new ISP is negotiated and authorized.

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 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1860, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0130

### Using Support Services Funds to Purchase Supports

(1) A brokerage may use support services funds to assist individuals to purchase supports in accordance with an ISP when:

(a) Supports are necessary for an individual to live in the individual's own home or in the family home;

(b) Cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual are specified in the ISP;

(c) An individual is receiving crisis diversion services according to OAR 411-320-0160 and:

(A) Crisis diversion services are not allowed by OAR 411-320-0160 to provide the necessary support;

(B) The support was identified as necessary prior to the onset of the crisis;

(C) Support services funds are not expended to such an extent that the support services funds that may be required to purchase the remainder of

necessary supports following the termination of crisis diversion services shall be unavailable; and

(D) Support services funds are used for no more than 90 days following the determination that the individual shall enter a comprehensive service.

(d) The ISP projects the amount of support services funds, if any, that may be required to purchase the remainder of necessary supports that are within the benefit level; and

(e) The ISP has been authorized for implementation.

(2) Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits.

(3) LIMITS OF FINANCIAL ASSISTANCE. Assistance with purchase of individual supports in any plan year is limited to the individual's annual benefit level.

(a) Individuals must have access throughout the plan year to the total annual amount of support services funds for which they are eligible that are determined to be necessary to implement an authorized ISP, even if there is a delay in implementation of the ISP, unless otherwise agreed to in writing by the individual or the individual's legal representative.

(b) SPD may require that annual benefit level amounts be calculated and applied on a monthly basis when an individual's eligibility for Medicaid changes during a plan year, an individual's benefit level changes, or when an individual's ISP is developed and written to be in effect for less than 12 months.

(A) Except in the case of an individual whose benefit level changes as the result of a change in eligibility for the Support Services Waiver, when an individual's benefit level changes, the monthly benefit level shall be 1/12 of the annual benefit level for which the individual would be eligible should the change in benefit level remain in effect for 12 calendar months. The monthly benefit level shall be applied each month for the remainder of the plan year in which the individual's change in benefit level occurred, from the date the change occurred.

(B) In the case of an individual whose Support Services Waiver eligibility changes, the new monthly benefit level is calculated based on the remainder of the General Fund contribution to the individual benefit level being evenly distributed across the remaining months of the plan year. The monthly benefit level shall be applied each month for the remainder of the plan year in which the individual's change in Support Services Waiver eligibility occurred, from the date the change occurred.

(C) In the case of an individual with an ISP developed for a partial plan year, the monthly benefit level shall be 1/12 of the annual benefit level for which the individual would be eligible should the individual's ISP be in effect for 12 calendar months. The monthly benefit level shall be applied each month during which the ISP of less than 12 months' duration is in effect.

(c) Estimates of individual plan costs must be based on the SPD rate guidelines for costs of frequently used services.

(A) SPD rate guidelines notwithstanding, final costs may not exceed local usual and customary charges for these services as evidenced by the brokerage's own documentation.

(B) The brokerage must establish a process for review and approval of all budgets based on estimates exceeding SPD rate guidelines and must monitor the authorized ISP involved for continued cost effectiveness.

(4) EXCEPTIONS TO BASIC BENEFIT FINANCIAL LIMITS. Exceptions to the basic benefit annual support services fund limit may be only as follows.

(a) Individuals with extraordinary long-term need as demonstrated by a score of 60 or greater on the Basic Supplement Criteria Inventory (Form DHS 0203) may have access to a basic supplement in order to purchase necessary supports.

(A) For Medicaid recipients choosing services under the Support Services Waiver, the basic supplement must result in a plan year cost that is not greater than the individual cost limit.

(B) For individuals who are not Medicaid recipients choosing services under the Support Services Waiver, the basic supplement must result in a plan year cost that is not greater than the state's General Fund contribution to the individual cost limit, calculated according to the Medicaid match rate current at the beginning of the plan year, and adjusted annually to correspond to changes in the Medicaid match rates.

(C) The brokerage director, or a designee from brokerage management and administration, must administer the Basic Supplement Criteria Inventory only after receiving SPD-approved training. The brokerage director or designee must score basic supplement criteria according to written and verbal instruction received from SPD.

(D) The trained brokerage director or a designee from a brokerage's management or administration must administer the Basic Supplement Criteria Inventory within 30 calendar days of the documented request of the individual or the individual's legal representative.

(E) The brokerage director or designee must send written notice of findings regarding eligibility for a basic supplement to the individual and



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the individual's legal representative within 45 calendar days of the written request for a basic supplement. This written notice must include:

(i) An offer for the individual and the individual's legal representative to discuss the findings in person with the director and with the individual's personal agent in attendance if desired;

(ii) A notice of the complaint process under OAR 411-340-0060; and

(iii) A notice of planned action.

(F) Annual ISP reviews for recipients of the basic supplement must include a review of circumstances and resources to confirm continued need according to the instructions included with the Basic Supplement Criteria Inventory.

(b) Individuals who have been assessed as in need of, and meeting criteria for, crisis diversion services by the CDDP of the individual's county of residence according to OAR 411-320-0160, may receive short-term assistance with purchase of support in excess of the individual's benefit level. Use of crisis diversion services may only be authorized by the CDDP of the individual's county of residence or by the Regional Crisis Diversion Program responsible for the individual's county of residence.

(A) Length of emergent status may be authorized only by the CDDP of the individual's county of residence, or the Regional Crisis Diversion Program responsible for the individual's county of residence, depending on the source of the crisis diversion funds. Emergent status for an individual shall not exceed 270 consecutive days.

(B) Funds associated with crisis diversion services may be used to pay the difference in cost between the authorized ISP and the supports authorized by either the CDDP of the individual's county of residence or the Regional Crisis Diversion Program responsible for crisis diversion services in the individual's county of residence, depending on the source of crisis diversion services funds required to meet the short-term need.

(C) Although costs for crisis diversion services may bring the individual's total plan year cost temporarily above the individual cost limit, the individual's costs may not exceed the cost of the state's current ICF/MR daily cost per individual nor shall plan year expenses at or above the individual cost limit make the individual eligible for comprehensive services.

(i) Individuals placed in emergent status due to receiving crisis diversion services authorized and provided according to OAR 411-320-0160 may remain enrolled in, and receive support services from, the brokerage while both crisis diversion services and support services are required to stabilize and maintain the individual at home or in the family home. In no case, may the individual remain enrolled in the brokerage under emergent status for more than 270 consecutive days.

(ii) Support services provided during emergent status are subject to all requirements of this rule.

(iii) The individual's personal agent must participate with CDDP or Regional Crisis Diversion Program staff in efforts to stabilize supports and return costs to the individual's benefit level, documenting reviews of effectiveness at least every 90 days while the individual is receiving crisis diversion services.

(c) Individuals whose source of support funds are, in whole or in part, an individual-specific redirection of funds through SPD contract from a SPD-regulated residential, work, or day habilitation service to support services funds, or to comprehensive in-home support funds regulated by OAR chapter 411, division 330 prior to enrollment in a brokerage, may have access to the amount specified in the SPD contract as available for the individual's use. This provision is only applicable when each transition is separate and specific to the individual and the services being converted are not subject to statewide service transitions.

(A) Individual plan year costs must always be less than the individual cost limit; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and the individual's legal representative at least annually and must make budget reductions when allowed by the ISP.

(d) Individuals whose support funds were specifically assigned through SPD contract to self-directed support services prior to the date designated by SPD for transfer of the individual from self-directed support services to a brokerage may have access to the amount specified in the SPD contract as available for the individual's use.

(A) Individual plan year costs must always be less than the individual cost limit; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and the individual's legal representative at least annually and must make budget reductions when allowed by the ISP.

(e) Individuals transferring from SPD's Home and Community-Based Waiver Services for the Aged and Adults with Physical Disabilities who have been determined ineligible for those waiver service funds in accordance with OAR 411-015-0015(4)(c), shall have limited access to support services funds as described in these rules. The amount of support services funds available shall be equal to SPD's previous service costs for the individual for no more than 365 calendar days. The 365 calendar days begins

the date the individual starts receiving support services exclusively through a brokerage.

(f) For Medicaid recipients eligible for and choosing services under the Support Services Waiver, individuals may have access to a basic supplement for ADLs to purchase needed support services under the following conditions:

(A) The individual must have additional assistance needs with ADLs after development of their ISP within the basic benefit, extraordinary long-term need fund limit, or other exceptions provided in this rule. The services include:

(i) Basic personal hygiene;

(ii) Toileting, bowel, and bladder care;

(iii) Mobility, transfers, and comfort;

(iv) Planning and preparing nutritious meals and assuring adequate fluid intake;

(v) Assisting with administration of medications, assuring medication is taken as ordered by physician, observing for reactions, and reminding appropriate persons when prescriptions need to be filled;

(vi) Maintaining clean oxygen equipment and supply; and

(vii) Delegated nursing tasks.

(B) ADL services may include the following activities if they are incidental to the provision of ADLs, essential for the health and welfare of the individual, and provided solely for the individual receiving support services:

(i) Light housekeeping tasks necessary to maintain a healthy and safe environment;

(ii) Arranging for necessary medical appointments;

(iii) Observation of an individual's status and reporting of significant changes to appropriate people;

(iv) First aid and handling emergencies; and

(v) Extra support due to developmental disability.

(C) Activities and goals related to the provision of ADL services must be sufficiently documented in the individual's ISP.

(D) Planned expenses must be based upon the least costly means of providing adequate services and must only be to the extent necessary to meet the documented ADL needs.

(E) The supplement for ADLs may not cause the cost per any plan year to exceed the individual cost limit. There is an exception for individuals receiving both support services under these rules who had a benefit level at the individual cost limit and state plan personal care services under OAR chapter 411, division 034, as of June 30, 2005. These individuals may continue to access the basic supplement and the supplement for ADLs until the individual terminates their receipt of support services or becomes ineligible for one of the supplements. The combined basic benefit, the basic supplement, and supplement for ADLs must remain above the individual cost limit to remain eligible for this exception.

(F) For Medicaid recipients receiving state plan personal care services under OAR chapter 411, division 034 entering support services after June 30, 2005, the Medicaid Personal Care Assessment (Form SDS 0531A) shall serve as the individual's authorized ISP for a period not to exceed 90 days.

(G) The supplemental ADL services are not intended to replace the resources available to an individual receiving support services under these rules from their natural support system of relatives, friends, neighbors, or other available sources of support.

(5) AMOUNT, METHOD, AND SCHEDULE OF PAYMENT.

(a) The brokerage must disburse, or arrange for disbursement of, support services funds to qualified providers on behalf of individuals up to the amount agreed upon in an authorized ISP. The brokerage is specifically prohibited from reimbursement of individuals or individuals' families for expenses related to services and from advancing funds to individuals or individuals' families to obtain services.

(b) The method and schedule of payment must be specified in written agreements between the brokerage and the individual or the individual's legal representative.

(6) TYPES OF SUPPORTS PURCHASED. Supports eligible for purchase with support services funds are:

(a) Chore services. Chore services may be provided only in situations where no one else in the household is capable of either performing or paying for the services and no other relative, caregiver, landlord, community, volunteer agency, or third-party payer is capable of or responsible for providing these services;

(b) Community living and inclusion supports;

(c) Environmental accessibility adaptation;

(d) Family training;

(A) Family training must be provided:

(i) By licensed psychologists, medical professionals, clinical social workers, or counselors as described in OAR 411-340-0160(7); or

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(ii) In organized conferences and workshops that are limited to topics related to the individual's developmental disability, identified support needs, or specialized medical or habilitative support needs.

(B) Family training may not be provided to paid caregivers.

(e) Homemaker services. Homemaker services may be provided only when the person regularly responsible for general housekeeping activities as well as caring for an individual in the home is temporarily absent, temporarily unable to manage the home as well as care for self or the individual in the home, or needs to devote additional time to caring for the individual;

(f) Occupational therapy services;

(g) Personal emergency response systems;

(h) Physical therapy services;

(i) Respite;

(A) Respite may be provided in the individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence.

(B) Respite includes two types of care, neither of which may be characterized as eight-hours-a-day, five-days-a-week services or provided to allow caregivers to attend school or work.

(i) Temporary respite must be provided on less than a 24-hour basis.

(ii) Twenty-four hour overnight care must be provided in segments of 24-hour units that may be sequential but may not exceed 14 consecutive days without permission from SPD.

(j) Special diets. Special diets may not provide or replace the nutritional equivalent of meals and snacks normally required regardless of developmental disability.

(k) Specialized medical equipment and supplies as well as the following provisions:

(A) When specialized medical equipment and supplies are primarily and customarily used to serve a medical purpose, the purchase, rental, or repair of specialized medical equipment and supplies with support services funds must be limited to the types of equipment and supplies permitted under the State Medicaid Plan and specifically those that are not excluded under OAR 410-122-0080.

(B) Support services funds may be used to purchase more of an item than the number allowed under the State Medicaid Plan after the limits specified in the State Medicaid Plan have been reached, requests for purchases have been denied by the State Medicaid Plan or private insurance, and the denial has been upheld in an applicable hearing or private insurance benefit appeals process.

(C) Devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the individual's abilities to perform ADLs or to perceive, control, or communicate with the environment in which the individual lives, may be purchased with support services funds when the individual's developmental disability otherwise prevents or limits the individual's independence in these areas. Equipment and supplies that may be purchased for this purpose must be of direct benefit to the individual and include:

(i) Adaptive equipment for eating, (i.e., utensils, trays, cups, bowls that are specially designed to assist an individual to feed him or herself);

(ii) Positioning devices;

(iii) Specially designed clothes to meet the unique needs of the individual, (e.g., clothes designed to prevent access by the individual to the stoma, etc.);

(iv) Assistive technology items;

(v) Computer software used by the individual to express needs, control supports, plan, and budget supports;

(vi) Augmentative communication devices;

(vii) Environmental adaptations to control lights, heat, stove, etc.; or

(viii) Sensory stimulation equipment and supplies that help an individual calm, provide appropriate activity, or safely channel an obsession (e.g., vestibular swing, weighted blanket, tactile supplies like creams and lotions);

(l) Specialized supports;

(m) Speech and language therapy services;

(n) Supported employment; and

(o) Transportation.

(7) **CONDITIONS OF PURCHASE.** The brokerage must arrange for supports purchased with support services funds to be provided:

(a) In settings and under contractual conditions that allow the individual to freely redirect support services funds to purchase supports and services from another qualified provider;

(A) Individuals who choose to combine support services funds to purchase group services must receive written instruction from the brokerage about the limits and conditions of such arrangements;

(B) Combined support services funds cannot be used to purchase existing, or create new, comprehensive services;

(C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and timekeeping for staff working with more than one individual;

(D) A provider organization resulting from the combined arrangements for community living and inclusion supports or supported employment services must be certified according to these rules; and

(E) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) In a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior:

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(c) In accordance with applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(d) In accordance with applicable state or local building codes in the case of environmental accessibility adaptations to the home;

(e) In accordance with Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; and

(f) In accordance with OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities.

(8) **INDEPENDENT PROVIDER, PROVIDER ORGANIZATION, AND GENERAL BUSINESS PROVIDER AGREEMENTS AND RESPONSIBILITIES.** When support services funds are used to purchase services, training, supervision, or other personal assistance for individuals, the brokerage must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse;

(b) Responsibility to immediately notify the person or persons, if any, specified by the individual or the individual's legal representative of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) Support services fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the individual's family, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program; and

(B) The provider must bill all third party resources before using support services funds unless another arrangement is agreed upon by the brokerage and described in the ISP.

(d) The provisions of section (9) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(9) **SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS, AND GENERAL BUSINESS PROVIDERS.**

(a) A sanction may be imposed on a provider when the brokerage determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with support services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(D) Failed to safely and adequately provide the authorized services;

(E) Had a substantiated allegation of abuse or neglect against him or her;

(F) Failed to cooperate with any DHS or brokerage investigation or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of section (8) of this rule or OAR 411-340-0140; or

(K) Been suspended or terminated as a provider by another division within DHS.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with support services funds;

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the brokerage or SPD, as applicable; or

(C) The brokerage may withhold payments to the provider.

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(c) If the brokerage makes a decision to sanction a provider, the brokerage must notify the provider by mail of the intent to sanction.

(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(A) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the SPD Assistant Director.

(B) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by SPD within 30 days of the date the sanction notice was mailed to the provider.

(e) At the discretion of SPD, providers who have previously been terminated or suspended by any DHS division may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1870, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 10-2004(Temp), f. & cert. ef. 4-30-04 thru 10-25-04; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0140

### Using Support Services Funds for Certain Purchases Is Prohibited

Support services funds may not be used to pay for:

- (1) Services, materials, or activities that are illegal;
- (2) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 411-340-0020;
- (3) Services from persons who engage in verbal mistreatment and subject an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;
- (4) Services that restrict an individual's freedom of movement by seclusion in a locked room under any condition;
- (5) Materials or equipment that have been determined unsafe for the general public by recognized consumer safety agencies;
- (6) Individual or family vehicles;
- (7) Health and medical costs that the general public normally must pay including:
  - (a) Medications;
  - (b) Health insurance co-payments;
  - (c) Dental treatments and appliances;
  - (d) Medical treatments;
  - (e) Dietary supplements including but not limited to vitamins and experimental herbal and dietary treatments; or
  - (f) Treatment supplies not related to nutrition, incontinence, or infection control.
- (8) Ambulance services;
- (9) Legal fees;
- (10) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of developmental disability, and are not strictly required by the individual's need for personal assistance in all home and community settings;
- (11) Individual services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;
- (12) Services, activities, materials, or equipment that are not necessary, cost-effective, or do not meet the definition of support or social benefits as defined in OAR 411-340-0020;
- (13) Educational services for school-age individuals over the age 18, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills, and post-secondary educational services such as those provided through two- or four-year colleges for individuals of all ages;
- (14) Services provided in a nursing facility, correctional institution, or hospital;
- (15) Services, activities, materials, or equipment that may be obtained by the individual or family through other available means such as private or public insurance, or other governmental or public services;
- (16) Unless under certain conditions and limits specified in SPD guidelines, employee wages or contractor charges for time or services when the individual is not present or available to receive services including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;
- (17) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;
- (18) Services when there is sufficient evidence to believe that the individual or the individual's legal representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to accept or delegate record keeping required to use brokerage resources, or

otherwise knowingly misused public funds associated with brokerage services; or

(19) Services that, in the opinion of the individual's personal agent, are characterized by failure to act or neglect that leads to or is in imminent danger of causing physical injury through negligent omission, treatment, or maltreatment of an individual including but not limited to the failure to provide an individual with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of an individual by any other person. However, no individual may be considered neglected for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment.

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 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1880, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0150

### Standards for Support Services Brokerage Administration and Operations

(1) **POLICY OVERSIGHT GROUP.** The brokerage must develop and implement procedures for incorporating the direction, guidance, and advice of individuals and family members of individuals in the administration of the organization.

(a) The brokerage must establish and utilize a Policy Oversight Group, of which the membership majority must be individuals with developmental disabilities and family members of individuals with developmental disabilities.

(b) Brokerage procedures must be developed and implemented to assure the Policy Oversight Group has the maximum authority that may be legally assigned or delegated over important program operational decisions, including such areas as program policy development, program planning and goal setting, budgeting and resource allocation, selection of key personnel, program evaluation and quality assurance, and complaint resolution.

(c) If the Policy Oversight Group is not also the governing body of the brokerage, then the brokerage must develop and implement a written procedure that describes specific steps of appeal or remediation to resolve conflicts between the Policy Oversight Group and the governing body of the brokerage.

(d) A Policy Oversight Group must develop and implement operating policies and procedures.

(2) **FULL-TIME BROKERAGE DIRECTOR REQUIRED.** The brokerage must employ a full-time director who is responsible for daily brokerage operations in compliance with these rules and has authority to make budget, staffing, policy, and procedural decisions for the brokerage.

(3) **DIRECTOR QUALIFICATIONS.** In addition to the general staff qualifications of OAR 411-340-0070(1) through (2), the brokerage director must have:

(a) A minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health, or a related field; or

(b) Six years of experience, including supervision, in the field of developmental disabilities, social services, or mental health.

(4) **FISCAL INTERMEDIARY REQUIREMENTS.**

(a) A fiscal intermediary must:

(A) Demonstrate a practical understanding of laws, rules, and conditions that accompany the use of public resources;

(B) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;

(C) Establish and meet the time lines for payments that meet individuals' needs;

(D) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;

(E) Generate service, management, and statistical information and reports required by the brokerage director and Policy Oversight Group to effectively manage the brokerage and by individuals to effectively manage supports;

(F) Maintain flexibility to adapt to changing circumstances of individuals; and

(G) Provide training and technical assistance to individuals as required and specified in ISPs.

(b) A fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline those employed to provide services described in an authorized ISP.

(c) Fiscal intermediary qualifications.

(A) A fiscal intermediary may not:

(i) Be a provider of support services paid using support funds; or

(ii) Be a family member or other representative of an individual for whom they provide fiscal intermediary services;

(B) The brokerage must obtain and maintain written evidence that:



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(i) Contractors providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities; and

(ii) Employees providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities prior to hire or that the brokerage has provided requisite education, training, and experience.

### (5) PERSONAL AGENT QUALIFICATIONS.

(a) Each personal agent must have:

(A) An undergraduate degree in a human services field and at least one year experience in the area of developmental disabilities; or

(B) Five years of equivalent training and work experience related to developmental disabilities; and

(C) Knowledge of the public service system for developmental disability services in Oregon.

(b) A brokerage must submit a written variance request to SPD prior to employment of a person not meeting the minimum qualifications for a personal agent set forth in section (5)(a) of this rule. The variance request must include:

(A) An acceptable rationale for the need to employ a person who does not meet the qualifications; and

(B) A proposed alternative plan for education and training to correct the deficiencies. The proposal must specify activities, timelines, and responsibility for costs incurred in completing the plan. A person who fails to complete a plan for education and training to correct deficiencies may not fulfill the requirements for the qualifications.

(6) PERSONAL AGENT TRAINING. The brokerage must provide or arrange for personal agents to receive training needed to provide or arrange for brokerage services, including but not limited to:

(a) Principles of self-determination;

(b) Person-centered planning processes;

(c) Identification and use of alternative support resources;

(d) Fiscal intermediary services;

(e) Basic employer and employee roles and responsibilities;

(f) Developing new resources;

(g) Major public health and welfare benefits;

(h) Constructing and adjusting individualized support budgets; and

(i) Assisting individuals to judge and improve quality of personal supports.

(7) INDIVIDUAL RECORD REQUIREMENTS. The brokerage must maintain current, up-to-date records for each individual served and must make these records available to SPD upon request. Individual records must include at minimum:

(a) Application and eligibility information received from the referring CDDP;

(b) An easily-accessed summary of basic information, including the individual's name, family name (if applicable), individual's legal representative (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, individual financial resource information, and plan year anniversary date;

(c) Documents related to determining eligibility for brokerage services and the amount of support services funds available to the individual, including basic supplement criteria if applicable;

(d) Records related to receipt and disbursement of funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, and verification that providers meet the requirements of OAR 411-340-0160 through 411-340-0180;

(e) Documentation, signed by the individual or the individual's legal representative, that the individual or the individual's legal representative has been informed of responsibilities associated with the use of support services funds;

(f) Incident reports;

(g) Assessments used to determine supports required, preferences, and resources;

(h) ISP and reviews. If the individual is unable to sign the ISP, the individual record must document that the individual was informed of the contents of the ISP and that the individual's agreement to the ISP was obtained to the extent possible;

(i) Names of those who participated in the development of the ISP. If the individual was not able to participate in the development of the ISP, the individual record must document the reason;

(j) Written service agreements. A written service agreement must be consistent with the individual's ISP and must describe at minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for the individual's own safety and is missing while in the community under the service of the contractor or provider organization.

(k) A written job description for all services to be delivered by an employee of the individual or the individual's legal representative. The written job description must be consistent with the individual's ISP and must describe at minimum:

(A) Type of service to be provided;

(B) Hours, rates, location, duration of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for the individual's own safety and is missing while in the community under the service of the employee of the individual.

(l) Personal agent correspondence and notes related to resource development and plan outcomes; and

(m) Information about individual satisfaction with personal supports and the brokerage services.

### (8) SPECIAL RECORDS REQUIREMENTS FOR SUPPORT SERVICES FUND EXPENDITURES.

(a) The brokerage must develop and implement written policies and procedures concerning use of support services funds. These policies and procedures must include but may not be limited to:

(A) Minimum acceptable records of expenditures:

(i) Itemized invoices and receipts to record purchase of any single item;

(ii) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(iii) Itemized invoices for any services purchased from independent contractors, provider organizations, and professionals. Itemized invoices must include:

(I) The name of the individual to whom services were provided;

(II) The date of the services; and

(III) A description of the services.

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services; and

(v) Documentation that services provided were consistent with the authorized ISP.

(B) Procedures for confirming the receipt, and securing the use of, specialized medical equipment and environmental accessibility adaptations.

(i) When equipment is obtained for the exclusive use of an individual, the brokerage must record the purpose, final cost, and date of receipt.

(ii) The brokerage must secure use of equipment or furnishings costing more than \$500 through a written agreement between the brokerage and the individual or the individual's legal representative that specifies the time period the item is to be available to the individual and the responsibilities of all parties should the item be lost, damaged, or sold within that time period.

(iii) The brokerage must ensure that projects for environmental accessibility adaptations involving renovation or new construction in an individual's home costing \$5,000 or more per single instance or cumulatively over several modifications:

(I) Are approved by SPD before work begins and before final payment is made;

(II) Are completed or supervised by a contractor licensed and bonded in Oregon; and

(III) That steps are taken as prescribed by SPD for protection of SPD's interest through liens or other legally available means.

(iv) The brokerage must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure.

(b) Any goods purchased with support services funds that are not used according to an ISP or according to an agreement securing the state's use may be immediately recovered. Failure to furnish written documentation upon written request from DHS, the Oregon Department of Justice Medicaid Fraud Unit, Centers for Medicare and Medicaid Services, or their authorized representatives immediately or within timeframes specified in the written request may be deemed reason to recover payments or deny further assistance.

### (9) QUALITY ASSURANCE.

(a) The Policy Oversight Group must develop a Quality Assurance Plan and review this plan at least twice a year. The Quality Assurance Plan must include a written statement of values, organizational outcomes, activities, and measures of progress that:

(A) Uses information from a broad range of consumer, advocate, professional, and other sources to determine community support needs and preferences;

(B) Involves individuals in ongoing evaluation of the quality of their personal supports; and

(C) Monitors:

(i) Customer satisfaction with the services of the brokerage and with individual plans in areas such as individual access to supports, sustaining

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important personal relationships, flexible and unique support strategies, individual choice and control over supports, responsiveness of the broker- age to changing needs, and preferences of individuals; and

(i) Service outcomes in areas such as achievement of personal goals and effective use of resources.

(b) The brokerage must participate in statewide evaluation, quality assurance, and regulation activities as directed by SPD.

## (10) BROKERAGE REFERRAL TO AFFILIATED ENTITIES.

(a) When a brokerage is part of, or otherwise directly affiliated with, an entity that also provides services which an individual may purchase using private or support services funds, brokerage staff may not refer, recommend, or otherwise encourage the individual to utilize this entity to provide services unless:

(A) The brokerage conducts a review of provider options that demonstrates that the entity's services shall be cost-effective and best-suited to provide those services determined by the individual to be the most effective and desirable for meeting needs and circumstances represented in the ISP; and

(B) The entity is freely selected by the individual and is the clear choice by the individual among all available alternatives.

(b) The brokerage must develop and implement a policy that addresses individual selection of an entity of which the brokerage is a part or otherwise directly affiliated to provide services purchased with private or support services funds. This policy must address, at minimum:

(A) Disclosure of the relationship between the brokerage and the potential provider;

(B) Provision of information about all other potential providers to the individual without bias;

(C) A process for arriving at the option for selecting the provider;

(D) Verification of the fact that the providers were freely chosen among all alternatives;

(E) Collection and review of data on services, purchased by an individual enrolled in the brokerage, by an entity of which the brokerage is a part or otherwise directly affiliated; and

(F) Training of personal agents and individuals in issues related to selection of providers.

(11) GENERAL OPERATING POLICIES AND PRACTICES. The brokerage must develop and implement such written statements of policy and procedure in addition to those specifically required by this rule as are necessary and useful to enable the brokerage to accomplish its objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1890, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0160

### Standards for Independent Providers Paid with Support Services Funds

(1) GENERAL INDEPENDENT PROVIDER QUALIFICATIONS. Each independent provider who is paid as a contractor, a self-employed person, or an employee of the individual or the individual's legal representative to provide homemaker, respite, habilitation, transportation, chore, family training, occupational therapy, physical therapy, speech and language, dietician, or specialized supports must:

(a) Be at least 18 years of age;

(b) Have approval to work based on current SPD policy and a background check completed by DHS in accordance with OAR chapter 407, division 007;

(c) Be legally eligible to work in the United States;

(d) Not be a spouse of the individual;

(e) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified on the ISP, with such demonstration confirmed in writing by the individual or the individual's legal representative and including:

(A) Ability and sufficient education to follow oral and written instructions and keep any records required;

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual being cared for.

(f) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(g) Understand requirements of maintaining confidentiality and safeguarding individual information;

(h) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and

(i) If providing transportation, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service.

(2) BEHAVIOR CONSULTANTS. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services, including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have received at least two days of training in the Oregon Intervention Services Behavior Intervention System, and have a current certificate; and

(c) Submit a resume to the brokerage indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years experience with individuals who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant.

(3) SOCIAL OR SEXUAL CONSULTANTS. Social or sexual consultants providing specialized supports must:

(a) Have the education, skills, and abilities necessary to provide social or sexual consultation services; and

(b) Submit a resume to the brokerage indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, social work, counseling, or other behavioral science field and at least one year of experience with individuals; or

(B) Three years experience with individuals who present social or sexual issues and at least one year of that experience must include providing the services of a social or sexual consultant.

(4) NURSING CONSULTANTS. Nursing consultants providing specialized supports must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to the brokerage indicating the education, skills, and abilities necessary to provide nursing services in accordance with state law, including at least one year of experience with individuals.

(5) ENVIRONMENTAL MODIFICATION CONSULTANTS. Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual, and developing cost-effective plans that shall make the home safe and accessible for the individual.

(6) ENVIRONMENTAL ACCESSIBILITY ADAPTATION PROVIDERS. Environmental accessibility adaptation providers must be building contractors licensed as applicable under either OAR chapter 812, Construction Contractor's Board, or OAR chapter 808, Landscape Contractors Board.

(7) FAMILY TRAINING PROVIDERS. Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

(8) DIETICIANS. Dieticians providing special diets must be licensed according to ORS 691.415 through 691.465.

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 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1900, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

## 411-340-0170

### Standards for Provider Organizations Paid with Support Services Funds

(1) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION. A provider organization's license under OAR chapter 411, division 325 for 24-hour residential services, OAR chapter 411, division 360 for adult foster homes, certified under OAR chapter 411, division 345 for employment and alternatives to employment services, or OAR 309-041-0550 through 309-041-0830 for supported living services, may not require additional certification as an organization to provide respite, supported employment, community living and inclusion supports, transportation, specialized supports, chore services, family training, or emergent services.

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(a) Current license or certification may be considered sufficient demonstration of ability to:

- (A) Recruit, hire, supervise, and train qualified staff;
- (B) Provide services according to ISPs; and
- (C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(b) Provider organizations must assure that all persons directed by the provider organization as employees, contractors, or volunteers to provide services paid for with support services funds meet standards for qualification of independent providers described in OAR 411-340-0160.

(c) Provider organizations developing new sites, owned or leased by the provider organization, that are not reviewed as a condition of the current license or certification and where individuals are regularly present and receiving services purchased with support services funds, must meet the conditions of section (2)(f) of this rule in each such site.

(2) PROVIDER ORGANIZATIONS REQUIRING CERTIFICATION. A provider organization without a current license or certification as described in section (1) of this rule must be certified as a provider organization according to OAR 411-340-0030 prior to selection for providing services listed in OAR 411-340-0130(c) and paid for with support services funds.

(a) The provider organization must develop and implement policies and procedures required for administration and operation in compliance with these rules, including but not limited to:

(A) Policies and procedures required in OAR 411-340-0040, OAR 411-340-0050, OAR 411-340-0070, OAR 411-340-0080, and OAR 411-340-0090 related to abuse and unusual incidents, inspections and investigations, personnel policies and practices, records, and variances.

(B) Individual rights. The provider organization must have and implement written policies and procedures that:

(i) Provide for individual participation in selection, training, and evaluation of staff assigned to provide the individual's services;

(ii) Protect individuals during hours of service from financial exploitation that may include but is not limited to:

(I) Staff borrowing from or loaning money to individuals;

(II) Witnessing wills in which the staff or provider organization is beneficiary; or

(III) Adding the staff member or provider organization name to the individual's bank account or other personal property without approval of the individual or the individual's legal representative.

(C) Complaints. The provider organization must implement written policies and procedures for individuals' complaints. These policies and procedures must, at a minimum, provide for:

(i) Receipt of complaints from an individual or others acting on the individual's behalf. If the complaint is associated in any way with abuse or the violation of the individual's rights, the recipient of the complaint must immediately report the issue to the provider organization director and the CDDP;

(ii) Investigation of the facts supporting or disproving the complaint;

(iii) Taking appropriate actions on complaints within five working days following receipt of the complaints;

(iv) Submission to the provider organization director. If the complaint is not resolved, the complaint must be submitted to the provider organization director for review. The provider organization director must complete a review and provide a written response to the complainant within 15 days of request for review;

(v) Submission to the brokerage. All complaints received from an individual or others acting on the individual's behalf must be reported to the appropriate brokerage; and

(vi) Notification. Upon entry into the program and annually thereafter, the provider organization must inform each individual, or the individual's legal representative, orally and in writing, using language, format, and methods of communication appropriate for the individual's needs and abilities, of the provider organization's complaint policy and procedures.

(D) Policies and procedures appropriate to scope of service including but not limited to those required to meet minimum standards set forth in sections (2)(f) through (2)(k) of this rule and consistent with written service agreements for individuals currently receiving services.

(b) The provider organization must deliver services according to the written service agreement.

(c) The provider organization must maintain a current record for each individual receiving services. The record must include:

(A) The individual's name, current home address, and home phone number;

(B) Current written service agreement signed and dated by the individual or the individual's legal representative;

(C) Contact information for the individual's legal representative and any other persons designated by the individual or the individual's legal representative to be contacted in case of incident or emergency;

(D) Contact information for the brokerage assisting the individual to obtain services; and

(E) Records of service provided, including type of services, dates, hours, and personnel involved.

(d) Staff, contractors, or volunteers who provide services to individuals must meet independent provider qualifications in OAR 411-340-0160. Additionally, those staff, contractors, or volunteers must have current CPR and first aid certification obtained from a recognized training agency prior to working alone with an individual.

(e) The provider organization must ensure that employees, contractors, and volunteers receive appropriate and necessary training.

(f) Provider organizations that own or lease sites, provide services to individuals at those sites, and regularly have individuals' present and receiving services at those sites must meet the following minimum requirements:

(A) A written emergency plan must be developed and implemented and must include instructions for staff and volunteers in the event of fire, explosion, accident, or other emergency including evacuation of individuals served.

(B) Posting of emergency information.

(i) The telephone numbers of the local fire, police department, and ambulance service, or "911" must be posted by designated telephones; and

(ii) The telephone numbers of the provider organization director, and other persons to be contacted in case of emergency, must be posted by designated telephones.

(C) A documented safety review must be conducted quarterly to ensure that the service site is free of hazards. Safety review reports must be kept in a central location by the provider organization for three years.

(D) The provider organization must train all individuals when they begin attending the service site to leave the site in response to an alarm or other emergency signal and to cooperate with assistance to exit the site.

(i) Each provider organization must conduct an unannounced evacuation drill each month when individuals are present.

(ii) Exit routes must vary based on the location of a simulated fire.

(iii) Any individual failing to evacuate the service site unassisted within the established time limits set by the local fire authority for the site must be provided specialized training or support in evacuation procedures.

(iv) Written documentation must be made at the time of the drill and kept by the provider organization for at least two years following the drill. The written documentation must include:

(I) The date and time of the drill;

(II) The location of the simulated fire;

(III) The last names of all individuals and staff present at the time of the drill;

(IV) The amount of time required by each individual to evacuate if the individual needs more than the established time limit; and

(V) The signature of the staff conducting the drill.

(v) In sites providing services to individuals who are medically fragile or have severe physical limitations, requirements of evacuation drill conduct may be modified. The modified plan must:

(I) Be developed with the local fire authority, the individual or the individual's legal representative, and the provider organization director; and

(II) Be submitted as a variance request according to OAR 411-340-0090.

(E) The provider organization must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(F) At least once every three years, the provider organization must conduct a health and safety inspection.

(i) The inspection must cover all areas and buildings where services are delivered to individuals, administrative offices, and storage areas.

(ii) The inspection must be performed by:

(I) The Oregon Occupational Safety and Health Division;

(II) The provider organization's worker's compensation insurance carrier; or

(III) An appropriate expert such as a licensed safety engineer or consultant as approved by the SPD; and

(IV) The DHS Public Health Division, when necessary.

(iii) The inspection must cover:

(I) Hazardous material handling and storage;

(II) Machinery and equipment used by the service;

(III) Safety equipment;

(IV) Physical environment; and

(V) Food handling, when necessary.

(iv) The documented results of the inspection, including recommended modifications or changes, and documentation of any resulting action taken must be kept by the provider for five years.

(G) The provider organization must ensure that each service site has received initial fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or



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changes and documentation of any resulting action taken, must be kept by the provider for five years.

(H) Direct service staff must be present in sufficient number to meet health, safety, and service needs specified in the individual written agreements of the individuals present. When individuals are present, staff must have the following minimum skills and training:

- (i) At least one staff member on duty with CPR certification at all times;
- (ii) At least one staff member on duty with current First Aid certification at all times;
- (iii) At least one staff member on duty with training to meet other specific medical needs identified in the individual service agreement; and
- (iv) At least one staff member on duty with training to meet other specific behavior intervention needs as identified in individual service agreements.

(g) Provider organizations providing services to individuals that involve assistance with meeting health and medical needs must:

(A) Develop and implement written policies and procedures addressing:

- (i) Emergency medical intervention;
- (ii) Treatment and documentation of illness and health care concerns;
- (iii) Administering, storing, and disposing of prescription and non-prescription drugs including self administration;
- (iv) Emergency medical procedures including the handling of bodily fluids; and

(v) Confidentiality of medical records;

(B) Maintain a current written record for each individual receiving assistance with meeting health and medical needs that includes:

- (i) Health status;
- (ii) Changes in health status observed during hours of service;
- (iii) Any remedial and corrective action required and when such actions were taken if occurring during hours of service; and
- (iv) A description of any restrictions on activities due to medical limitations.

(C) If providing medication administration when the individual is unable to self-administer medications and there is no other responsible person present who may lawfully direct administration of medications, the provider organization must:

(i) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription or non-prescription, is administered;

(ii) Administer medications per written orders;

(iii) Administer medications from containers labeled as specified per physician written order;

(iv) Keep medications secure and unavailable to any other individual and stored as prescribed;

(v) Record administration on an individualized Medication Administration Record (MAR), including treatments and PRN, or "as needed", orders;

(vi) Not administer unused, discontinued, outdated, or recalled drugs; and

(vii) Not administer PRN psychotropic medication. PRN orders may not be accepted for psychotropic medication.

(D) Maintain a MAR (if required). The MAR must include:

(i) The name of the individual;

(ii) The brand name or generic name of the medication including the prescribed dosage and frequency of administration as contained on physician order and medication;

(iii) Times and dates the administration or self-administration of the medication occurs;

(iv) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(v) Method of administration;

(vi) Documentation of any known allergies or adverse reactions to a medication;

(vii) Documentation and an explanation of why a PRN, or "as needed", medication was administered and the results of such administration; and

(viii) An explanation of any medication administration irregularity with documentation of administrative review by the provider organization director.

(E) Provide safeguards to prevent adverse medication reactions including:

(i) Maintaining information about the effects and side-effects of medications the provider organization has agreed to administer;

(ii) Communicating any concerns regarding any medication usage, effectiveness, or effects to the individual, individual's designee, or the individual's legal representative; and

(iii) Prohibiting the use of one individual's medications by another.

(F) Maintain a record of visits to medical professionals, consultants, or therapists if facilitated or provided by the provider organization.

(h) Provider organizations that own or operate vehicles that transport individuals must:

(A) Maintain the vehicles in safe operating condition;

(B) Comply with Department of Motor Vehicles laws;

(C) Maintain insurance coverage on the vehicles and all authorized drivers;

(D) Carry in vehicles a fire extinguisher and first aid kit; and

(E) Assign drivers who meet applicable Department of Motor Vehicles requirements to operate vehicles that transport individuals.

(i) If assisting with management of funds, the provider organization must have and implement written policies and procedures related to the oversight of the individual's financial resources that include:

(A) Procedures that prohibit inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's funds for staff's own benefit, commingling an individual's personal funds with the provider organization or another individual's funds, or the provider organization becoming an individual's legal representative; and

(B) The provider organization's reimbursement to the individual of any funds that are missing due to theft or mismanagement on the part of any staff of the provider organization, or of any funds within the custody of the provider organization that are missing. Such reimbursement must be made within 10 working days of the verification that funds are missing.

(j) Additional standards for assisting individuals to manage difficult behavior.

(A) The provider organization must have and implement a written policy concerning behavior intervention procedures. The provider organization must inform the individual and the individual's legal representative of the behavior intervention policy and procedures prior to finalizing the written service agreement.

(B) Any intervention to alter an individual's behavior must be based on positive behavioral theory and practice and must be:

(i) Approved in writing by the individual or the individual's legal representative; and

(ii) Described in detail in the individual's record.

(C) Psychotropic medications and medications for behavior must be:

(i) Prescribed by physician through a written order; and

(ii) Monitored by the prescribing physician for desired responses and adverse consequences.

(k) Additional standards for supports that involve restraints.

(A) The provider organization must only employ physical restraint:

(i) As part of an ISP;

(ii) As an emergency measure, but only if absolutely necessary to protect the individual or others from immediate injury; or

(iii) As a health-related protection prescribed by a physician, but only if necessary for individual protection during the time that a medical condition exists.

(B) Provider organization staff members who need to apply restraint under an individual's service agreement must be trained by a SPD-approved trainer and documentation of the training must be maintained in the staff members' personnel file.

(C) Physical restraints in emergency situations must:

(i) Be only used until the individual is no longer a threat to self or others;

(ii) Be authorized by the provider organization director or the individual's physician;

(iii) Be authorized within one hour of application of restraint;

(iv) Result in the immediate notification of the individual's legal representative; and

(v) Prompt a review of the written service agreement, initiated by the provider organization, if used more than three times in a six month period.

(D) Physical restraint must be designed to avoid physical injury to the individual or others and to minimize physical and psychological discomfort.

(E) All use of physical restraint must be documented and reported according to procedures described in OAR 411-340-0040. The report must include:

(i) The name of the individual to whom the restraint is applied;

(ii) The date, type, and length of time of restraint application;

(iii) The name and position of the person authorizing the use of the restraint;

(iv) The name of the staff member applying the restraint; and

(v) Description of the incident.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1910, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

# ADMINISTRATIVE RULES

## 411-340-0180

### Standards for General Business Providers Paid with Support Services Funds

(1) General business providers providing services to individuals and paid with support services funds must hold any current license appropriate to function required by the State of Oregon or federal law or regulation including but not limited to:

- (a) A license under ORS 443.015 for a home health agency;
- (b) A license under ORS 443.315 for an in-home care agency;
- (c) A current license and bond as a building contractor as required by either OAR chapter 812, Construction Contractor's Board or OAR chapter 808, Landscape Contractors Board, as applicable, for a provider of environmental accessibility adaptations;

(d) Public transportation providers must be regulated according to established standards and private transportation providers must have business licenses and drivers licensed to drive in Oregon;

(e) Current retail business license for vendors and medical supply companies providing specialized medical equipment and supplies, including enrollment as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment;

(f) A current business license for providers of personal emergency response systems; and

(g) Retail business licenses for vendors and supply companies providing special diets.

(2) Services provided and paid for with support services funds must be limited to those within the scope of the general business provider's license.

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 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1920, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09

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**Rule Caption:** Community Developmental Disability Programs.

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**Subject:** The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently modifying the community developmental disability program (CDDP) rules in OAR chapter 411, division 320 to:

- Allow the provision of SPD to operate a CDDP;
- Remove language and associated responsibilities regarding support specialists;
- Add qualifications and responsibilities for new required CDDP positions;
- Add CDDP responsibilities associated with the implementation of entitlement for support services for individuals 18 years and older and not in comprehensive services;
- Clarify quality assurance responsibilities;
- Clarify the responsibilities of the CDDP and services coordinators to establish consistency with the family support services rules in OAR chapter 411, division 305;
- Clarify developmental disability eligibility;
- Clarify the complaint and hearing process for eligibility determination decisions;
- Add new definitions to provide clarity throughout the rules and remove definitions no longer applicable;
- Allow the provision of crisis diversion services to individuals with a developmental disability other than mental retardation who are enrolled in developmental disability services;
- Clarify expectations for monitoring and record-keeping of crisis diversion services; and
- Provide general housekeeping to reflect current practice, improve readability, and establish consistency with other SPD rules.

**Rules Coordinator:** Christina Hartman—(503) 945-6398

## 411-320-0010

### Statement of Purpose

The rules in OAR chapter 411, division 320 prescribe general administrative standards for operation of a community developmental disability program (CDDP).

(1) All CDDP contractors providing developmental disability services under a contract with the Seniors and People with Disabilities Division are required to meet the basic management, programmatic, health, safety, and human rights regulations in the management of the community service system for individuals with developmental disabilities.

(2) These rules prescribe the standards by which the Seniors and People with Disabilities Division provides services operated by the CDDP including but not limited to eligibility determination, case management, adult protective services, and crisis diversion services.

Stat. Auth.: ORS 410.070 & 409.050  
Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.695  
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0020

### Definitions

(1) "24-Hour Residential Program" means a comprehensive residential program licensed by the Seniors and People with Disabilities Division under ORS 443.410 to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) Abuse of a child as defined in ORS 419B.005 and includes but is not limited to:

(A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(B) Any physical injury including but not limited to bruises, welts, burns, cuts, broken bones, sprains, or bites, that are deliberately inflicted;

(C) Neglect including but not limited to failure to provide food, shelter, or medicine, to such a degree that a child's health and safety are endangered;

(D) Sexual abuse and sexual exploitation including but not limited to any sexual contact in which a child is used to sexually stimulate another person. Sexual abuse and sexual exploitation may include rape, fondling, or involving a child in pornography;

(E) Threat of harm including but not limited to any action, statement, or written or non-verbal message that is serious enough to make a child believe he or she is in danger of being abused;

(F) Mental injury including but not limited to a continuing pattern of rejecting, terrorizing, ignoring, isolating, or corrupting a child, resulting in serious damage to the child; or

(G) Child selling including but not limited to buying, selling, or trading for legal or physical custody of a child.

(b) Abuse of an adult. Except for those additional circumstances listed in section (2)(c) of this rule, abuse of an adult means one or more of the following:

(A) Any death caused by other than accidental or natural means, or occurring in unusual circumstances;

(B) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(C) Willful infliction of physical pain or injury;

(D) Sexual harassment or exploitation including but not limited to any sexual contact between an employee of a community facility or community program and an individual; or

(E) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well-being.

(c) Abuse in other circumstances including but not limited to the following when the Seniors and People with Disabilities Division directly operates any licensed 24-hour residential program, or the community developmental disability program or support services brokerage purchases or contracts for services from a program licensed or certified as a 24-hour residential program, an adult foster home, an employment or community inclusion program, or a supported living program:

(A) A failure to act or neglect that results in the imminent danger of physical injury or harm through negligent omission, treatment, or maltreatment. Failure to act or neglect includes but is not limited to the failure by a service provider or staff to provide adequate food, clothing, shelter, medical care, supervision, or tolerating or permitting abuse of an individual by any other person. However, no individual shall be deemed neglected or abused for the sole reason that the individual voluntarily relies on treatment through prayer alone instead of medical treatment.

(B) Verbal mistreatment by subjecting an individual to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation of such a nature as to threaten significant physical or emotional harm or the withholding of services or supports, including implied or direct threat of termination of services.

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(C) Placing restrictions on an individual's freedom of movement by restriction to an area of the residence or program or from access to ordinarily accessible areas of the residence or program, unless agreed to by the Individual Support Plan team and included in an approved Behavior Support Plan.

(D) An inappropriate or unauthorized physical intervention that results in injury.

(i) A physical intervention is inappropriate if the physical intervention:

(I) Is applied without a functional assessment of the behavior justifying the need for the intervention;

(II) Is used for behaviors not addressed in a Behavior Support Plan;

(III) Uses procedures outside the parameters described in a Behavior Support Plan; or

(IV) Does not use procedures consistent with the Oregon Intervention System.

(ii) A physical intervention is not authorized if:

(I) There is not a written physician's order when intervention is used as a health related protection; or

(II) The physical intervention is applied without Individual Support Plan team approval as identified on the Individual Support Plan or as described in a formal written Behavior Support Plan.

(iii) Physical intervention is not abuse if the physical intervention is:

(I) Used as an emergency measure;

(II) Absolutely necessary to protect the individual or others from immediate injury; and

(III) Only used for the least amount of time necessary.

(E) Financial exploitation that may include but is not limited to an unauthorized rate increase, staff borrowing from or loaning money to an individual, witnessing a will in which the program or a staff is a beneficiary, or adding the program's name to an individual's bank account or other titles for personal property without approval of the individual or the individual's legal representative and notification of the Individual Support Plan team.

(F) Inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's personal funds for the program's or staff's own benefit, commingling an individual's funds with the program's or another individual's funds, or the program becoming the individual's guardian.

(d) Abuse of an adult described in section (2)(b) of this rule also applies to homes or facilities licensed to provide 24-hour residential services for children with developmental disabilities or to agencies licensed or certified by the Seniors and People with Disabilities Division to provide proctor foster care for children with developmental disabilities.

(e) Abuse in other circumstances described in section (2)(c) of this rule also applies to the staff of community mental health and developmental disability programs or support services brokerages.

(3) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse.

(4) "Accident" means an event that results in injury or has the potential for injury even if the injury does not appear until after the event.

(5) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group. Other terms used to describe adaptive behavior include but are not limited to adaptive impairment, ability to function, daily living skills, and adaptive functioning. Adaptive behaviors are everyday living skills including but not limited to walking (mobility), talking (communication), getting dressed or toileting (self-care), going to school or work (community use), and making choices (self-direction).

(a) Adaptive behavior is measured by a standardized test administered by a psychologist, social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration, and test interpretation of adaptive behavior scales for individuals with developmental disabilities.

(b) "Significant impairment" in adaptive behavior means a composite score of at least two standard deviations below the norm or two or more areas of functioning that are at least two standard deviations below the norm including but not limited to communication, mobility, self-care, socialization, self-direction, functional academics, or self-sufficiency as indicated on a standardized adaptive test.

(6) "Administrative Review" means the formal process that is used by the Seniors and People with Disabilities Division when an individual or an individual's representative is not satisfied with:

(a) A developmental disability services eligibility determination; or

(b) The decision made by the community developmental disability program or support services brokerage about a complaint involving the provision of services or a service provider.

(7) "Adult" means an individual 18 years or older with developmental disabilities.

(8) "Advocate" means a person other than paid staff who has been selected by the individual, or by the individual's legal representative, to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(9) "Annual Plan" means:

(a) A written summary the services coordinator completes for an individual 18 years or older who is not receiving support services or comprehensive services; or

(b) The written details of the supports, activities, costs, and resources required for a child receiving family support services.

(10) "Assistant Director" means the assistant director of the Department of Human Services, Seniors and People with Disabilities Division, or that person's designee.

(11) "Care" means supportive services including but not limited to provision of room and board, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. The term "care" is synonymous with "services".

(12) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment, or to modify behavior, in place of a meaningful behavior or treatment plan.

(13) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(14) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(15) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Seniors and People with Disabilities Division or a local mental health authority.

(16) "Community Mental Health and Developmental Disability Program (CMHDDP)" means an entity that operates or contracts for all services for individuals with mental or emotional disturbances, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems under the county financial assistance contract with the Department of Human Services.

(17) "Complaint" means a verbal or written expression of dissatisfaction with services or service providers.

(18) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(19) "Comprehensive Services" mean a package of developmental disability services and supports that include one of the following living arrangements regulated by the Seniors and People with Disabilities Division alone or in combination with any associated employment or community inclusion program regulated by the Seniors and People with Disabilities Division:

(a) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(b) In-home supports provided to an adult in the individual or family home costing more than the individual cost limit for support services.

(c) Comprehensive services do not include support services for adults enrolled in support services brokerages or for children enrolled in long-term supports for children or children's intensive in-home services.

(20) "County of Origin" means the individual's county of residence, unless a minor, then county of origin means the county where the jurisdiction of the child's guardianship exists.

(21) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that would result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(22) "Crisis Diversion Services" mean short-term services provided for up to 90 days, or on a one-time basis, directly related to resolving a crisis, and provided to, or on behalf of, an individual eligible to receive crisis services.

(23) "Crisis Plan" means the community developmental disability program or regional crisis diversion program generated document, serving as the justification for, and the authorization of crisis supports and expenditures pertaining to an individual receiving crisis services provided under these rules.

(24) "Current Documentation" means documentation relating to an individual's developmental disability in regards to the individual's functioning within the last three years. Current documentation may include but is not limited to annual plans, behavior support plans, educational records,



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medical assessments related to the developmental disability, psychological evaluations, and adaptive behavior assessments.

(25) "Developmental Disability (DD)" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(26) "DHS" means the Department of Human Services.

(27) "DHS Quality Management Strategy" means the Department of Human Services' Quality Assurance Plan that includes the quality assurance strategies for SPD ([http://www.oregon.gov/DHS/spd/qa/app\\_h\\_qa.pdf](http://www.oregon.gov/DHS/spd/qa/app_h_qa.pdf)).

(28) "Eligibility Determination" means a decision by a community developmental disability program or by the Seniors and People with Disabilities Division regarding a person's eligibility for developmental disability services pursuant to OAR 411-320-0080 and is either a decision that a person is eligible or ineligible for developmental disability services.

(29) "Eligibility Specialist" means an employee of the community developmental disability program or other agency that contracts with the county or Seniors and People with Disabilities Division to determine developmental disability eligibility.

(30) "Entry" means admission to a Seniors and People with Disabilities Division-funded developmental disability service provider.

(31) "Exit" means either termination from a Seniors and People with Disabilities Division-funded developmental disability service provider or transfer from one Seniors and People with Disabilities Division-funded program to another. Exit does not mean transfer within a service provider's program within a county.

(32) "Family Member" means husband or wife, domestic partner, natural parent, child, sibling, adopted child, adoptive 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 first cousin.

(33) "Guardian" means a parent for individuals under 18 years of age, or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(34) "Health Care Provider" means a person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession.

(35) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(36) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. This is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing, Contested Case Hearing, and Administrative Hearing.

(37) "Home" means an individual's primary residence that is not under contract with the Department of Human Services to provide services to an individual as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(38) "Imminent Risk" means:

(a) An adult who is in crisis and shall be civilly court-committed to the Department of Human Services under ORS 427.215 to 427.306 within 60 days without the use of crisis diversion services; or

(b) A child who is in crisis and shall require out-of-home placement within 60 days without the use of crisis diversion services.

(39) "Incident Report" means a written report of any unusual incident involving an individual.

(40) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(41) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(42) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(43) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The Individual Support Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The Individual Support Plan is the individual's plan of care for Medicaid purposes.

(44) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and may include family or other persons requested to develop the Individual Support Plan or requested by the individual.

(45) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

(b) Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(46) "Intellectual Functioning" means functioning as assessed by a qualified professional using one or more individually administered general intelligence tests.

(47) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(48) "Local Mental Health Authority (LMHA)" means:

(a) The county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program;

(b) The tribal council in the case of a Native American reservation;

(c) The board of directors of a public or private corporation if the county declines to operate or contract for all or part of a community mental health and developmental disability program; or

(d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the Seniors and People with Disabilities Division.

(49) "Majority Agreement" means for the purpose of entry, exit, transfer, and annual Individual Support Plan team meetings, that no one member of the Individual Support Plan team has the authority to make decisions for the team unless so authorized by the team process. Service providers, families, community developmental disability programs, advocacy agencies, or individuals are considered as one member of the Individual's Support Plan team for the purpose of reaching majority agreement.

(50) "Management Entity" means the community developmental disability program or private corporation that operates the regional crisis diversion program, including acting as the fiscal agent for regional crisis diversion funds and resources.

(51) "Mandatory Abuse Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an individual with developmental disabilities has suffered abuse, or that any person with whom the official comes in contact, while acting in an official capacity, has abused an individual with developmental disabilities. Pursuant to ORS 430.765(2), psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(52) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the individual's body.

(53) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(54) "Mental Retardation" means significantly sub-average general intellectual functioning defined as intelligence quotient's (IQ's) under 70 as measured by a qualified professional and existing concurrently with significant impairments in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have mental retardation if there is also significant impairment of adaptive behavior as diagnosed and measured by a qualified professional. The adaptive behavior must be directly related to the issues of mental retardation. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision.

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(a) Mild mental retardation is used to describe the degree of retardation when intelligence test scores are 50 to 69. Individuals with IQ's in the 70-75 range may be considered as having mental retardation if there is significant impairment in adaptive behavior as described in OAR 411-320-0020(5)(b).

(b) Moderate mental retardation is used to describe the degree of retardation when intelligence test scores are 35 to 49.

(c) Severe mental retardation is used to describe the degree of retardation when intelligence test scores are 20 to 34.

(d) Profound mental retardation is used to describe the degree of retardation when intelligence test scores are below 20.

(55) "Monitoring" means the periodic review of the implementation of services identified in the Individual Support Plan or annual summary, and the quality of services delivered by other organizations.

(56) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(57) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(58) "Physical Restraint" means any manual physical holding of, or contact with an individual that restricts the individual's freedom of movement.

(59) "Physician" means a person licensed under ORS chapter 677 to practice medicine and surgery.

(60) "Physician Assistant" means a person licensed under ORS 677.505 to 677.525.

(61) "Plan of Care" means a written document developed for each individual by the support team using a person-centered approach that describes the supports, services, and resources provided or accessed to address the needs of the individual.

(62) "Productivity" means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(63) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(64) "Psychologist" means:

(a) A person possessing a doctorate degree in psychology from an accredited program with course work in human growth and development, tests, and measurement; or

(b) A state certified school psychologist.

(65) "Psychotropic Medication" means a medication whose intended effect is to affect or alter thought processes, mood, or behavior. Psychotropic medication includes but is not limited to anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. Because a medication may have many different effects, the medication's classification depends upon its stated, intended effect when prescribed.

(66) "Qualified Professional" means a:

(a) Licensed clinical psychologist (Ph.D., Psy.D.) or school psychologist;

(b) Medical doctor (MD); or

(c) Doctor of osteopathy (DO).

(67) "Region" means a group of Oregon counties defined by the Seniors and People with Disabilities Division that have a designated management entity to coordinate regional crisis and backup services and be the recipient and administration of funds for those services.

(68) "Regional Crisis Diversion Program" means the regional coordination of the management of crisis diversion services for a group of designated counties that is responsible for the management of the following developmental disability services:

(a) Crisis intervention services;

(b) Evaluation of requests for new or enhanced services for certain groups of individuals eligible for developmental disability services; and

(c) Other developmental disability services that the counties comprising the region agree shall be delivered more effectively or automatically on a regional basis.

(69) "Respite" means short-term care and supervision provided to an individual on a periodic or intermittent basis because of the temporary absence of, or need for relief of, the primary care giver.

(70) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(71) "Review" means a request for reconsideration of a decision made by a service provider, community developmental disability program, support services brokerage, or the Seniors and People with Disabilities Division.

(72) "Service Element" means a funding stream to fund program or services including but not limited to foster care, 24-hour residential, case management, supported living, support services, crisis diversion services, in-home comprehensive services, or family support.

(73) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Seniors and People with Disabilities Division, or other appropriate agency, to provide these services. The term "provider" or "program" is synonymous with "service provider."

(74) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Seniors and People with Disabilities Division, who is selected to plan, procure, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities. The term "case manager" is synonymous with "services coordinator".

(75) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(76) "State Training Center" means the Eastern Oregon Training Center.

(77) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(78) "Support Services Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with developmental disabilities.

(79) "Support Team" means a group, composed of members as determined by an individual receiving services or the individual's legal guardian, that participates in the development of the individual's plan of care.

(80) "These Rules" mean the rules in OAR chapter 411, division 320.

(81) "Transfer" means movement of an individual from a service site to another service site within a county, administered by the same service provider that has not been addressed within the Individual Support Plan.

(82) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan is developed and approved by the Individual Support Plan team. The transition plan includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the Individual Support Plan development.

(83) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring abuse investigation.

(84) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Seniors and People with Disabilities Division, upon written application by the community developmental disability program.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0030

### Organization and Program Management

(1) ORGANIZATION AND INTERNAL MANAGEMENT. Each service provider of community developmental disability services funded by SPD must have written standards governing the operation and management of the program. Such standards must be up to date, available upon request, and include:

(a) An up-to-date organization chart showing lines of authority and responsibility from the LMHA to the CDDP manager and the components and staff within the agency;

(b) Position descriptions for all staff providing community developmental disability services;

(c) Personnel policies and procedures concerning:

(A) Recruitment and termination of employees;

(B) Employee compensation and benefits;

(C) Employee performance appraisals, promotions, and merit pay;

(D) Staff development and training;

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(E) Employee conduct (including the requirement that abuse of an individual by an employee, staff, or volunteer of the CDDP is prohibited and is not condoned or tolerated); and

(F) Reporting of abuse (including the requirement that any employee of the CDDP is to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse). Notification of mandatory reporting status must be made at least annually to all employees and documented on forms provided by SPD.

(2) **MANAGEMENT PLAN.** The CDDP must maintain a current plan assigning responsibility for the developmental disabilities program management functions and duties described in this rule. The management plan must assure that the functions and duties are assigned to people who have the knowledge and experience necessary to perform them, as well as ensuring that these functions shall be implemented.

(3) **PROGRAM MANAGEMENT.** Staff delivering developmental disability services must be organized under the leadership of a designated CDDP manager and receive clerical support services sufficient to perform their required duties.

(a) The LMHA, public entity, or the public or private corporation operating the CDDP must designate a full-time employee who must, on at least a part-time basis, be responsible for management of developmental disability services within a specific geographic service area.

(b) In addition to other duties as may be assigned in the area of developmental disability services, the CDDP must at a minimum develop and assure:

(A) Implementation of plans as may be needed to provide a coordinated and efficient use of resources available to serve individuals;

(B) Maintenance of positive and cooperative working relationships with families, advocates, service providers, support service brokerages, SPD, local government, and other state and local agencies with an interest in developmental disability services;

(C) Implementation of programs funded by SPD to encourage pursuit of defined program outcomes and monitor the programs to assure service delivery that is in compliance with related contracts and applicable local, state, and federal requirements;

(D) Collection and timely reporting of information as may be needed to conduct business with SPD including but not limited to information needed to license foster homes, collect federal funds supporting services, and investigate complaints related to services or suspected abuse; and

(E) Use of procedures that attempt to resolve complaints involving individuals or organizations that are associated with developmental disability services.

(4) **QUALIFIED STAFF.** Only qualified staff shall provide developmental disability services. Each CDDP must provide a qualified CDDP manager, services coordinator, eligibility specialist, quality assurance coordinator, and abuse investigator specialist for adults with developmental disabilities, or have an agreement with another CDDP to provide a qualified eligibility specialist, quality assurance coordinator, and abuse investigator specialist for adults with developmental disabilities. Staff must have an approved criminal history check in accordance with OAR chapter 407, division 007.

(a) CDDP manager.

(A) The CDDP manager must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree in behavioral, social, health science, special education, public administration, or human service administration AND a minimum of four years experience, with at least two of those years of experience in developmental disability services that provided recent experience in program management, fiscal management, and staff supervision; or

(ii) Six years of experience in supervision or six years of experience in staff technical or professional level work related to developmental disability services.

(B) On an exceptional basis, the CDDP may hire a person who does not meet the qualifications in section (4)(a)(A) of this rule if the county and SPD have mutually agreed on a training and technical assistance plan that assures that the person shall quickly acquire all needed skills and experience.

(C) When the position of CDDP manager becomes vacant, an interim CDDP manager must be appointed to serve until a permanent CDDP manager is appointed. The CDDP must request a variance as described in section (5) of this rule if the person appointed as interim CDDP manager does not meet the qualifications in section (4)(a)(A) of this rule and the term of the appointment totals more than 180 days.

(b) The CDDP supervisor (when available) must have knowledge of the public service system for developmental disability services in Oregon and at least:

(A) A bachelor's degree or equivalent course work in a field related to management such as business or public administration, or a field related to developmental disability services, may be substituted for up to three years required experience; or

(B) Five years of experience in supervision or five years of experience in staff technical or professional level work related to developmental disability services.

(c) The services coordinator must have knowledge of the public service system for developmental disability services in Oregon and at least:

(A) A bachelor's degree in behavioral science, social science, or a closely related field; or

(B) A bachelor's degree in any field AND one year of human services related experience; or

(C) An associate's degree in a behavioral science, social science, or a closely related field AND two years human services related experience; or

(D) Three years of human services related experience.

(d) The eligibility specialist must have knowledge of the public service system for developmental disability services in Oregon and at least:

(A) A bachelor's degree in behavioral science, social science, or a closely related field; or

(B) A bachelor's degree in any field AND one year of human services related experience; or

(C) An associate's degree in a behavioral science, social science, or a closely related field AND two years human services related experience; or

(D) Three years of human services related experience.

(e) The quality assurance coordinator must have knowledge of the public service system for developmental disability services in Oregon and at least:

(A) A bachelor's degree in business or public administration, behavioral or social sciences, finance, political science, or any degree demonstrating the capacity for the knowledge and skills AND two years professional level evaluative, analytical, and planning work; or

(B) Any combination of experience and education equivalent to five years of experience that typically supports the knowledge and skills for the classification.

(f) The abuse investigator specialist must have at least:

(A) A bachelor's degree in human, social, behavioral, or criminal science AND two years human services, law enforcement, or investigative experience; or

(B) An associate's degree in the human, social, behavioral, or criminal science AND four years human services, law enforcement, or investigative experience.

(5) **VARIANCE.** The CDDP must submit a written variance request to SPD prior to employment of a person not meeting the minimum qualifications in section (4) of this rule. The written variance request must include:

(a) An acceptable rationale for the need to employ a person who does not meet the minimum qualifications in section (4) of this rule; and

(b) A proposed alternative plan for education and training to correct the deficiencies.

(A) The proposal must specify activities, timelines, and responsibility for costs incurred in completing the alternative plan.

(B) A person who fails to complete the alternative plan for education and training to correct the deficiencies may not fulfill the requirements for the qualifications.

(6) **STAFF DUTIES.**

(a) The duties of the services coordinator must be specified in the employee's job description and at a minimum include:

(A) The delivery of case management services to individuals as listed in OAR 411-320-0090(4);

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(b) The duties of the eligibility specialist must be specified in the employee's job description and at a minimum include:

(A) Completing intake and eligibility determination for persons applying for developmental disability services;

(B) Completing eligibility redetermination for individuals requesting continuing developmental disability services; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(c) The duties of the quality assurance coordinator must be specified in the employee's job description and at a minimum include:

(A) Assisting the CDDP manager in the coordination of the CDDP's quality assurance system;

(B) Developing and coordinating the CDDP's annual quality assurance plan;

(C) Assisting the CDDP manager in monitoring the performance of the CDDP;

(D) Performing quality assurance coordinator responsibilities as described in OAR 411-320-0045;

(E) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and



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(F) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(d) The duties of the abuse investigator specialist must be specified in the employee's job description and at a minimum include:

(A) Conducting abuse investigation and protective services for adult individuals with developmental disabilities enrolled in, or previously eligible and voluntarily terminated, developmental disability services;

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(7) STAFF TRAINING. Qualified staff of the CDDP must maintain and enhance their knowledge and skills through participation in education and training. DHS provides training materials and the provision of training may be conducted by SPD or CDDP staff, depending on available resources.

(a) The CDDP manager must participate in a basic training sequence and be knowledgeable of the duties of the staff they supervise and the developmental disability services they manage. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new CDDP manager.

(A) The orientation provided by the CDDP to a new CDDP manager must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of SPD's rules governing the CDDP;

(iii) An overview of SPD's licensing and certification rules for service providers;

(iv) An overview of the enrollment process and required documents needed for enrollment into SPD payment and reporting systems;

(v) A review and orientation of Medicaid, Supplemental Security Income (SSI), Social Security Administration (SS), home and community-based waiver services, the Oregon Health Plan (OHP), and the individual support planning processes; and

(vi) A review (prior to having contact with individuals) of the CDDP manager's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The CDDP manager must attend the following trainings endorsed or sponsored by SPD within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The CDDP manager must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities of the staff they supervise.

(i) Each CDDP manager must participate in a minimum of 20 hours per year of additional SPD-sponsored or other training in the area of developmental disabilities.

(ii) Each CDDP manager must attend trainings to maintain a working knowledge of system changes in the area the CDDP manager is managing or supervising.

(b) The CDDP supervisor (when designated) must participate in a basic training sequence and be knowledgeable of the duties of the staff they supervise and of the developmental disability services they manage. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new CDDP supervisor.

(A) The orientation provided by the CDDP to a new CDDP supervisor must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of SPD's rules governing the CDDP;

(iii) An overview of SPD's licensing and certification rules for service providers;

(iv) An overview of the enrollment process and required documents needed for enrollment into SPD payment and reporting systems;

(v) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning processes; and

(vi) A review (prior to having contact with individuals) of the CDDP supervisor's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The CDDP supervisor must attend the following trainings endorsed or sponsored by SPD within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The CDDP supervisor must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disabili-

ty services and the skills, knowledge, and responsibilities of the staff they supervise.

(i) Each CDDP supervisor must participate in a minimum of 20 hours per year of additional SPD-sponsored or other training in the area of developmental disabilities.

(ii) Each CDDP supervisor must attend trainings to maintain a working knowledge of system changes in the area the CDDP supervisor is managing or supervising.

(c) The services coordinator must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new services coordinator.

(A) The orientation provided by the CDDP to a new services coordinator must include:

(i) An overview of the role and responsibilities of a services coordinator;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of SPD's rules governing the CDDP;

(iv) An overview of SPD's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into SPD payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning processes for the services they coordinate; and

(vii) A review (prior to having contact with individuals) of the services coordinator's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The services coordinator must attend the following trainings endorsed or sponsored by SPD within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training (for services coordinators providing services to individuals in comprehensive services).

(C) The services coordinator must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities necessary to perform the position. Each services coordinator must participate in a minimum of 20 hours per year of SPD-sponsored or other training in the area of developmental disabilities.

(d) The eligibility specialist must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new eligibility specialist.

(A) The orientation provided by the CDDP to a new eligibility specialist must include:

(i) An overview of eligibility criteria and the intake process;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of SPD's rules governing the CDDP;

(iv) An overview of SPD's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into SPD payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, and OHP; and

(vii) A review (prior to having contact with individuals) of the eligibility specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The eligibility specialist must attend and complete eligibility core competency training within the first year of entering into the position and demonstrate competency after completion of core competency training. Until completion of eligibility core competency training, or if competency is not demonstrated, the eligibility specialist must consult with another trained eligibility specialist or consult with a SPD diagnosis and evaluation coordinator when making eligibility determinations.

(C) The eligibility specialist must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position.

(i) Each eligibility specialist must participate in SPD-sponsored trainings for eligibility on an annual basis.

(ii) Each eligibility specialist must participate in a minimum of 20 hours per year of SPD-sponsored or other training in the area of developmental disabilities.

(e) The quality assurance coordinator must participate in a basic training sequence. The basic training sequence is not a substitute for the normal

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procedural orientation that must be provided by the CDDP to the new quality assurance coordinator.

(A) The orientation provided by the CDDP to a new quality assurance coordinator must include:

(i) An overview of the Centers for Medicare and Medicaid Services six quality assurances and the DHS Quality Assurance Plan;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of SPD's rules governing the CDDP;

(iv) An overview of SPD's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into SPD payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning process; and

(vii) A review (prior to having contact with individuals) of the quality assurance coordinator's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The quality assurance coordinator must attend the following trainings endorsed or sponsored by SPD within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The quality assurance coordinator must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position.

(i) Each quality assurance coordinator must participate in a minimum of 20 hours per year of SPD-sponsored or other training in the area of developmental disabilities.

(ii) Each quality assurance coordinator must participate in regularly scheduled SPD-sponsored meetings relevant to specific job responsibilities.

(f) The abuse investigator specialist must participate in core competency training. Training materials shall be provided by the DHS Office of Investigations and Training. The core competency training is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new abuse investigator specialist.

(A) The orientation provided by the CDDP to a new abuse investigator specialist must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of SPD's rules governing the CDDP;

(iii) An overview of SPD's licensing and certification rules for service providers;

(iv) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning processes; and

(v) A review (prior to having contact with individuals) of the abuse investigator specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The abuse investigator specialist must attend and pass core competency training within the first year of entering into the position and demonstrate competency after completion of core competency training. Until completion of core competency training, or if competency is not demonstrated, the abuse investigator specialist must consult with the DHS Office of Investigations and Training prior to completing the abuse investigation and protective services report.

(C) The abuse investigator specialist must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position. Each abuse investigator specialist must participate in quarterly meetings held by the DHS Office of Investigations and Training. At a minimum, one meeting per year must be attended in person.

(g) The CDDP manager must assure the attendance of the CDDP supervisor, services coordinator, eligibility specialist, abuse investigator specialist, or quality assurance coordinator at SPD-mandated training.

(h) The CDDP must keep documentation of required training in the personnel files of the individual employees including the CDDP manager, CDDP supervisor, services coordinator, eligibility specialist, abuse investigator specialist, quality assurance coordinator, and other employees providing services to individuals.

(8) **ADVISORY COMMITTEE.** Each CDDP must have an advisory committee.

(a) The advisory committee must meet at least quarterly.

(b) The membership of the advisory committee must be broadly representative of the community, with a balance of age, sex, ethnic, socioeconomic, geographic, professional, and consumer interests represented.

Membership must include advocates for individuals as well as individuals and their families.

(c) The advisory committee must advise the LMHA, the CMHDDP director, and the CDDP manager on community needs and priorities for services, and must assist in planning and in review and evaluation of services.

(d) When SPD or a private corporation is operating the CDDP, the advisory committee must advise the CDDP director and the CDDP manager on community needs and priorities for services, and must assist in planning and in review and evaluation of services.

(e) The advisory committee may function as the disability issues advisory committee as described in ORS 430.625 if so designated by the LMHA.

(f) The advisory committee may function as the CDDP's quality assurance committee.

(9) **NEEDS ASSESSMENT, PLANNING, AND COORDINATION.** Upon SPD's request, the CDDP must assess local needs for services to individuals and must submit planning and assessment information to SPD.

(10) **CONTRACTS.**

(a) If the CDDP, or any of the CDDPs services as described in the DHS contract with the LMHA, is not operated by the LMHA, there must be a contract between the LMHA and the organization operating the CDDP or the services, or a contract between SPD and the operating CDDP. The contract must specify the authorities and responsibilities of each party and conform to the requirements of DHS rules pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(b) The CDDP may purchase certain services for an individual from a qualified service provider without first providing an opportunity for competition among other service providers if the service provider is selected by the individual, the individual's family, or the individual's guardian or legal representative.

(A) The service provider selected must also meet SPD certification or licensing requirements to provide the type of service to be contracted. This is in keeping with the principles of family support expressed in ORS 417.342 and notwithstanding ORS 430.670(2) or ORS 291.047(3).

(B) There must be a contract between the service provider and the CDDP that specifies the authorities and responsibilities of each party and conforms to the requirements of DHS rules pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(c) When a CDDP contracts with a public agency or private corporation for delivery of developmental disability services, the CDDP must include in the contract only terms that are substantially similar to model contract terms established by DHS. The CDDP may not add contractual requirements, including qualifications for contractor selection that are nonessential to the services being provided under the contract. The CDDP must specify in contracts with service providers that disputes arising from these limitations must be resolved according to the complaint procedures contained in OAR 411-320-0170. For purposes of this rule, the following definitions apply:

(A) "Model contract terms established by DHS" means all applicable material terms and conditions of the omnibus contract, as modified to appropriately reflect a contractual relationship between the service provider and CDDP and any other requirements approved by SPD as local options under procedures established in these rules.

(B) "Substantially similar to model contract terms" means that the terms developed by the CDDP and the model contract terms require the service provider to engage in approximately the same type activity and expend approximately the same resources to achieve compliance.

(C) "Nonessential to the services being provided" means requirements that are not substantially similar to model contract terms developed by DHS.

(d) The CDDP may, as a local option, impose on a public agency or private corporation delivering developmental disability services under a contract with the CDDP, a requirement that is in addition to or different from requirements specified in the omnibus contract if all of the following conditions are met:

(A) The CDDP has provided the affected contractors with the text of the proposed local option as it would appear in the contract. The proposed local option must include:

(i) The date upon which the local option would become effective and a complete written description of how the local option would improve individual independence, productivity, or integration; or

(ii) How the local option would improve the protection of individual health, safety, or rights;

(B) The CDDP has sought input from the affected contractors concerning ways the proposed local option impacts individual services;

(C) The CDDP, with assistance from the affected contractors, has assessed the impact on the operations and financial status of the contractors if the local option is imposed;

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(D) The CDDP has sent a written request for approval of the proposed local option to the SPD Assistant Director that includes:

- (i) A copy of the information provided to the affected contractors;
- (ii) A copy of any written comments and a complete summary of oral comments received from the affected contractors concerning the impact of the proposed local option; and
- (iii) The text of the proposed local option as it would appear in contracts with service providers, including the proposed date upon which the requirement would become effective.

(E) SPD has notified the CDDP that the new requirement is approved as a local option for that program; and

(F) The CDDP has advised the affected contractors of their right and afforded them an opportunity to request mediation as provided in these rules before the local option is imposed.

(e) The CDDP may add contract requirements that the CDDP considers necessary to ensure the siting and maintenance of residential facilities in which individual services are provided. These requirements must be consistent with all applicable state and federal laws and regulations related to housing.

(f) The CDDP must adopt a dispute resolution policy that pertains to disputes arising from contracts with service providers funded by SPD and contracted through the CDDP. Procedures implementing the dispute resolution policy must be included in the contract with any such service provider.

## (11) FINANCIAL MANAGEMENT.

(a) There must be up-to-date accounting records for each developmental disability service accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities. The accounting records must be consistent with generally accepted accounting principles and conform to the requirements of OAR 309-013-0120 to 309-013-0220.

(b) There must be written statements of policy and procedure as are necessary and useful to assure compliance with any DHS administrative rules pertaining to fraud and embezzlement and financial abuse or exploitation of individuals.

(c) Billing for Title XIX funds must in no case exceed customary charges to private pay individuals for any like item or service.

(12) POLICIES AND PROCEDURES. There must be such other written and implemented statements of policy and procedure as necessary and useful to enable the CDDP to accomplish its service objectives and to meet the requirements of the contract with DHS, these rules, and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0040

### Community Developmental Disability Program Responsibilities

The CDDP must ensure the provision of the following services and system supports.

#### (1) ACCESS TO SERVICES.

(a) In accordance with the Civil Rights Act of 1964 (codified as 42 USC 2000d et seq.), community developmental disability services must not be denied any person on the basis of race, color, creed, sex, national origin, or duration of residence. CDDP contractors must comply with Section 504 of the Rehabilitation Act of 1973 (codified as 29 USC 794 and as implemented by 45 CFR Section 84.4) that states in part, "No qualified person must, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance".

(b) Any individual determined eligible for developmental disability services by a CDDP must also be eligible for other community developmental disability services unless admission to the service is subject to diagnostic or developmental disability category or age restrictions based on pre-determined criteria or contract limitations.

(2) COORDINATION OF COMMUNITY SERVICES. Planning and implementation of services for individuals served by the CDDP must be coordinated between components of the CDDP, other local and state human service agencies, and any other service providers as appropriate for the needs of the individual.

(3) CASE MANAGEMENT SERVICES. The CDDP must provide case management services to individuals who are eligible for and desire services.

(a) The CDDP may provide case management to individuals who are waiting for a determination of eligibility and reside in the county at the time they apply.

(b) Case management may be provided directly by the CDDP or under a contract between the CMHDDP and a service provider of case management services.

(c) If an individual is receiving services in more than one county, the county of origin must be responsible for case management services unless otherwise negotiated and documented in writing with the mutually agreed upon conditions.

(d) Case management services require an impartial point of view to fulfill the necessary functions of planning, procuring, monitoring, and investigating. Except as allowed under section (3)(e) of this rule, the case management program must be provided under an organizational structure that separates case management from other direct services for individuals. This separation may take one of the following forms:

(A) The CDDP may provide case management and subcontract for delivery of other direct services through one or more different organizations; or

(B) The CDDP may subcontract for delivery of case management through an unrelated organization and directly provide the other services, or further subcontract these other direct services through organizations that are not already under contract to provide case management services.

(e) A CDDP or other organization that provides case management services may also provide other direct services under the following circumstances:

(A) The CDDP coordinates the delivery of family support services for children under 18 years of age living at home with their family or comprehensive in-home supports for adults.

(B) The CDDP determines that an organization providing direct services is no longer able to continue providing services, or the organization providing direct service is no longer willing or able and no other organization is able or willing to continue operations on 30 days notice.

(C) In order to develop new or expanded direct services for geographic service areas or populations because other local organizations are unwilling or unable to provide appropriate services.

(f) If a CDDP intends to perform a direct service, a variance must be prior authorized by SPD.

(A) It is assumed that the CDDP shall provide family support services or comprehensive in-home supports described in section (3)(e)(A) of this rule. If the CDDP does not provide one or both of these services, the CDDP must submit a written variance request to SPD for prior approval that describes how the services shall be provided.

(B) If the circumstance described in section (3)(e)(B) of this rule exist, the CDDP must propose a plan to SPD for review including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(C) If a CDDP providing case management services delivers other services as allowed under section (3)(e)(C) of this rule, the organization must submit a written variance request to SPD for prior approval that includes the action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(g) If an organization providing case management services delivers other services as allowed under section (3)(e) of this rule, the organization must solicit other organizations to assume responsibility for delivery of these other services through a request for proposal (RFP) at least once every two years. When a RFP is issued, a copy must be sent to SPD. SPD must be notified of the results of the solicitation, including the month and year of the next solicitation if there are no successful applicants.

(h) If the CDDP wishes to continue providing case management and other direct services without conducting a solicitation as described in section (3)(g) of this rule, the CDDP must submit a written variance request to SPD for prior approval that describes how conflict of roles shall be managed within the CDDP.

(i) If the CDDP also operates a support services brokerage, the CDDP must submit a written variance request to SPD for prior approval that includes the mechanism for addressing potential conflict of interest.

(4) FAMILY SUPPORT. The CDDP must ensure the availability of a program for family support services in accordance with OAR chapter 411, division 305.

(5) ABUSE AND PROTECTIVE SERVICES. The CDDP must assure that abuse investigations for adults with developmental disabilities are appropriately reported and conducted by trained staff according to statute and administrative rules. When there is reason to believe a crime has been committed, there must be a report to law enforcement. Any suspected or observed abuse of children must be reported directly to DHS or local law enforcement, when appropriate.

(6) FOSTER HOMES. The CDDP must recruit foster home applicants and maintain forms and procedures necessary to license or certify foster homes. The CDDP must maintain copies of the following records:

(a) Initial and renewal applications to be a foster home;

(b) All inspection reports completed by the CDDP (including required annual renewal inspection and any other inspections);

(c) General facility information;



## ADMINISTRATIVE RULES

(d) Documentation of references, classification information, credit check (if necessary), criminal history check, and training for service providers and substitute caregivers.

(e) Documentation of foster care exams for adult foster home caregivers;

(f) Correspondence;

(g) Any meeting notes;

(h) Financial records;

(i) Annual agreement or contract;

(j) Legal notices and final orders for rule violations, conditions, denials, or revocations (if any); and

(k) Copies of the annual license or certificate.

(7) CONTRACT MONITORING. The CDDP must monitor all community developmental disability subcontractors to assure that:

(a) Services are provided as specified in the contract with DHS; and

(b) Services are in compliance with these rules and other applicable DHS administrative rules.

(8) INFORMATION AND REFERRAL. The CDDP must provide information and referral services to individuals, individuals' families, and interested others.

(9) AGENCY COORDINATION. The CDDP must assure coordination with other agencies to develop and manage resources within the county or region to meet the needs of individuals.

(10) MAINTENANCE OF CENTRALIZED WAIT LIST. The CDDP must maintain a current unduplicated central wait list in accordance with OAR 411-320-0090(4)(k) of eligible individuals 18 years and older living within the geographic service area of the CDDP who are enrolled in case management services and who are not receiving comprehensive services for adults.

(11) SERVICE DELIVERY COMPLAINTS. The CDDP must implement procedures to address individual or family complaints regarding service delivery that have not been resolved using the CDDP subcontractor's complaint procedures (informal or formal). Such procedures must be consistent with the requirements in OAR 411-320-0170.

(12) COMPREHENSIVE IN-HOME SUPPORTS. The CDDP must ensure the availability of comprehensive in-home supports for those individuals for whom SPD has funded such services. Comprehensive in-home services must be in compliance with OAR chapter 411, division 330.

(13) EMERGENCY PLANNING. The CDDP must ensure the availability of a written emergency procedure and disaster plan for meeting all civil or weather emergencies and disasters. The emergency procedure and disaster plan must be immediately available to the CDDP manager and employees. The emergency procedure and disaster plan must:

(a) Be integrated with the county emergency preparedness plan where appropriate;

(b) Include provisions on coordination with all developmental disability service provider agencies in the county and any DHS agencies, as appropriate;

(c) Include provisions for identifying individuals most vulnerable; and

(d) Include any plans for health and safety checks, emergency assistance, and any other plans that are specific to the type of emergency.

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

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

### 411-320-0045

#### Quality Assurance Responsibilities

Each CDDP must implement and maintain a local quality assurance (QA) system in accordance with these rules. The local QA system is a set of policies and procedures developed by each CDDP that includes activities designed to measure and evaluate the CDDP service delivery system, produce measurable outcomes, and improve the general quality of service delivery.

(1) QUALITY ASSURANCE SYSTEM. The local QA system must:

(a) Ensure the development and implementation of a QA system by:

(A) Providing direct support to SPD in implementation of the DHS Quality Management Strategy for developmental disability services; and

(B) Improving the general quality of services by evaluating service delivery outcomes and adjusting local planning and performance where needed.

(b) Include all SPD-funded developmental disability services provided within the county, including services that are operated or subcontracted by the CDDP, state operated community programs for developmental disabilities, and those developmental disability services operating under a direct contract with DHS. This includes participation in support services brokerages' systems improvement planning.

(c) Include at a minimum the quality indicators and all activities that are to be carried out at the local level in compliance with the DHS Quality Management Strategy.

(d) Include development of CDDP policies and procedures needed to implement the local QA plan.

(e) Include the implementation of the activities defined in the local QA plan.

(f) Include management actions, as needed, to improve service quality or to correct deficiencies.

(g) Include maintenance of records that document:

(A) The CDDP's performance of the activities described in the local QA plan or as directed by SPD; and

(B) The CDDP's findings, corrective actions, and the impact of the CDDP's corrective actions that have been reviewed at a policy level within the CDDP's department structure.

(h) Include performance requirements that meet or exceed the minimum performance requirements established for all CDDP's in the DHS Quality Management Strategy.

(A) The CDDP must collect and analyze information concerning performance and outcomes of the activities represented in the local QA plan, in compliance with the DHS Quality Management Strategy where applicable.

(B) Data concerning the CDDP's performance must be sent to SPD upon request in the format and within the timelines established by SPD. Data must include but not be limited to:

(i) Minutes from local quality assurance committee meetings;

(ii) Results of customer satisfaction surveys administered by the CDDP; and

(iii) Results of case file reviews.

(i) Include implementation of corrective actions. The CDDP must act to correct deficiencies and substandard performance through management actions.

(A) Deficiencies and substandard performance found in services that are operated or subcontracted by the county must be resolved through direct action by the CDDP, or when appropriate, through collaboration between the CDDP and SPD.

(B) Deficiencies and substandard performance found in services that are operated by the state or through direct state contracts must be resolved through collaboration with SPD.

(C) Deficiencies and substandard performance found in services provided through a region must be resolved through collaboration between the regional management entity and the affected CDDPs.

(D) Deficiencies and substandard performance found in services provided in support services brokerages must be resolved through collaboration between the support services brokerage and SPD.

(j) Include establishment of a local QA committee. The CDDP must utilize a committee of stakeholders to assist in the development and review of local QA plans and activities.

(A) Committee membership must include individuals, advocates of individuals or family members of individuals, service providers, local agencies and organizations that serve individuals, and services coordinators.

(B) The CDDP advisory committee, as described in OAR 411-320-0030(8), may function as the local QA committee.

(C) Activities of the local QA committee must include providing review and comment on:

(i) CDDP plans for local QA plan activities;

(ii) Data gathering instruments and methods;

(iii) The results of information gathered by the CDDP; and

(iv) Proposed corrective actions and the effectiveness of corrective actions.

(k) Utilize CDDP allocated resources to implement the local QA plan. One person within the CDDP must be identified as the QA coordinator, or the CDDP must have a written agreement with another CDDP to provide QA functions. At a minimum, the QA coordinator must:

(A) Meet the qualifications described in OAR 411-320-0030(4)(e); and

(B) Participate in training as described in OAR 411-320-0030(7)(e).

(2) QUALITY ASSURANCE COORDINATOR. The purpose of the QA coordinator is to facilitate the CDDP's quality assurance system process through activities such as the following:

(a) Participate in SPD-sponsored activities such as planning and training that are intended to assist in development and implementation of the DHS Quality Management Strategy requirements, compliance, monitoring procedures, corrective action plans, and other similar activities consistent with job responsibilities.

(b) Draft local QA plans that meet QA requirements established by DHS and consider the unique organizational structure, policies, and procedures of the CDDP.

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(c) Coordinate activities within the CDDP such as preparation of materials and training of county staff as needed to implement the local QA plan.

(d) Monitor the implementation of the local QA plan to determine the level of county compliance with SPD's requirements for CDDP service delivery.

(e) Keep CDDP administrative staff informed about compliance issues and need for corrective actions.

(f) Coordinate delivery of information requested by SPD, such as the Serious Event Review Team (SERT).

(g) Coordinate compliance reviews of DHS' requirements around individual health and welfare, level of care determination, service plans, and developmental disability service delivery by collecting and evaluating data including but not limited to:

(A) Case file reviews;

(B) Customer satisfaction surveys administered at least every two years;

(C) Service provider file reviews;

(D) Analysis of SERT data which may include:

(i) Review by service provider, location, reason, status, outcome, and follow-up;

(ii) Identification of trends; and

(iii) Review of timely reporting of abuse allegations, completion of investigation, and follow-up.

(h) Analysis of collected data, identify trends and issues, and make outcome-based recommendations to CDDP management.

(i) Coordinate with the QA coordinator in support services brokerages on a regular basis to:

(A) Discuss systems and communications;

(B) Identify strategic opportunities;

(C) Enhance QA and improvement;

(D) Review and strategize individual customer situations; and

(E) Collaborate on SPD level activities.

(3) LOCAL QA PLAN. Each CDDP must develop and maintain a local QA plan that describes the significant or substantial activities to be performed by the CDDP, including the timelines for those activities. The local QA plan must:

(a) Contain goals and objectives consistent with the DHS Quality Management Strategy.

(b) Include all significant or substantial activities that are to be carried out at the local level and include:

(A) The responsible party;

(B) Timelines;

(C) A report of progress or outcomes of the previous year's local QA plan;

(D) What is to be assessed or measured; and

(E) Outcomes.

(c) Include data collection methods.

(d) Be updated annually or whenever substantive changes are made, and submitted to SPD at least annually.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

Hist.: SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0050

### Management of Regional Services

(1) INTERGOVERNMENTAL AGREEMENT. The management entity for a group of counties to deliver crisis diversion services, community training, quality assurance activities, or other services, must have an intergovernmental agreement with each affiliated CDDP.

(2) REGIONAL PLAN. The CDDP or private corporation, acting as the management entity for the region, must prepare in conjunction with affiliated CDDP's, a plan detailing the services that shall be administered regionally. The regional plan must be updated when needed and submitted to SPD for approval. The regional plan must include:

(a) A description of how services shall be administered;

(b) An organizational chart and staffing plan; and

(c) A detailed budget, on forms provided by SPD.

(3) IMPLEMENTATION. The CDDP or private corporation, acting as the management entity for the region, must work in conjunction with its affiliated CDDP's to implement the regional plan as approved by SPD, within available resources.

(4) MANAGEMENT STANDARDS. The region, through the management entity and its CDDP partners, must maintain compliance with management standards outlined in OAR 411-320-0030 and this rule.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0060

### Rights of the Individual Receiving Developmental Disability Services

(1) CIVIL RIGHTS. The rights described in this rule are in addition to and do not limit any other statutory and constitutional rights that are afforded all citizens including but not limited to the right to vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents unless specifically prohibited by law in the case of children under 18 years of age.

(2) RIGHTS OF INDIVIDUALS RECEIVING SERVICES. Each agency providing any community developmental disability service must have written policies and procedures to provide for and assure individuals the following rights while receiving services:

(a) The right to a humane service environment that affords reasonable protection from harm, affords reasonable privacy, and ensures that individuals:

(A) Are not abused or neglected, nor is abuse or neglect tolerated by any employee, staff, or volunteer of the program;

(B) Are free to report any incident of abuse without being subject to retaliation;

(C) Have the freedom to choose whether or not to participate in religious activity and for children, according to parent or guardian preference;

(D) Have contact and visits with family members, friends, advocates (except where prohibited by court order), and legal and medical professionals;

(E) Have access to and communicate privately with any public or private rights protection program advocate, services coordinator, or CDDP representative;

(F) Be free from unauthorized mechanical restraint or physical restraint; and

(G) Are not subject to any chemical restraint and assured that medication is administered only for the individual's clinical needs as prescribed by a health care provider.

(b) The right to choose from available services those that are appropriate and consistent with the plan, developed in accordance with section (2)(c) and (2)(d) of this rule. Services must promote independence, dignity, and self-esteem and reflect the age and preferences of the individual. The services must be provided in a setting and under conditions that are least restrictive to the individual's liberty, that are least intrusive to the individual, and that provide for decision-making and control of personal affairs appropriate to the individual's age.

(c) The right to a written and individualized service plan, services delivered according to the plan, and periodic review and reassessment of service needs.

(d) The right to an ongoing opportunity to participate in planning of services in a manner appropriate to the individual's capabilities, including the right to participate in the development and periodic revision of the plan described in section (2)(c) of this rule, and the right to be provided with a reasonable explanation of all service considerations.

(e) The right to informed voluntary written consent prior to receiving services except in a medical emergency or as otherwise permitted by law.

(f) The right to informed voluntary written consent prior to participating in any experimental programs.

(g) The right to prior notice of any involuntary termination or transfer from services and notification of available sources of necessary continued services and exercise of a complaint procedure.

(h) The right to reasonable and lawful compensation for performance of labor, except personal housekeeping duties.

(i) The right to exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to DHS.

(j) The right to be informed at the start of services and periodically thereafter of the rights guaranteed by this rule and the procedures for reporting abuse and to have these rights and procedures prominently posted in a location readily accessible to the individual and made available to the individual's guardian and any representative designated by the individual.

(k) The right to be informed of and have the opportunity to assert complaints with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial procedure.

(l) The right to have the freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(m) The right to have the individual or the individual's guardian and any representative designated by the individual be informed that a family member has contacted SPD to determine the location of the individual and to be informed of the name and contact information, if known, of the family member.

(n) The right to courteous, fair, and dignified treatment by DHS personnel and to file a complaint with DHS about staff conduct or customer service to the extent provided in OAR 407-005-0100 to 407-005-0120.

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(o) The right to file a complaint with DHS about discrimination or unfair treatment as provided in OAR 407-005-0030.

(3) **ASSERT RIGHTS.** The rights described in this rule may be asserted and exercised by the individual, the individual's guardian, and any legal representative designated by the individual.

(4) **CHILDREN.** Nothing in this rule shall be construed to alter any legal rights and responsibilities between parent and child.

(5) **ADULTS WITH GUARDIANS.** Guardians are appointed for an adult only as is necessary to promote and protect the well being of the protected individual. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the protected individual and may be ordered only to the extent necessitated by the individual's actual mental and physical limitations. An adult protected individual for whom a guardian has been appointed is not presumed to be incompetent. A protected individual retains all legal and civil rights provided by law except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the individual include but are not limited to the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 409.050, 410.070, 430.640  
Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695  
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0070

### Records of Service

(1) **CONFIDENTIALITY.** Records of services to individuals must be kept confidential in accordance with ORS 179.505, ORS 192.515 to 192.518, 45 CFR 205.50, 45 CFR 164.512, Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any DHS administrative rules or policies pertaining to individual service records.

(2) **INFORMATION SHARING.** Pertinent clinical, financial eligibility, and legal status information concerning an individual supported by the CDDP must be made available to other CDDP's responsible for the individual's services, consistent with state statutes and federal laws, and regulations concerning confidentiality and privacy.

(3) **RECORD REQUIREMENT.** In order to meet SPD and federal record documentation requirements, the CDDP, through its employees, must maintain a record for each individual who receives services from the CDDP.

(a) Information contained in the record for all individuals receiving services from a services coordinator must include:

(A) Documentation of any initial referral to the CDDP for services;

(B) An application for developmental disability services. The application for developmental disability services must be completed prior to an eligibility determination and must be on the application form required by SPD or transferred onto CDDP letterhead;

(C) Sufficient documentation to conform to SPD eligibility requirements including notices of eligibility determination;

(D) Documentation of an initial intake interview or home assessment, as well as any subsequent social service summaries;

(E) Documentation of initial review and discussion of support services and options for support services brokerages within the CDDP's geographic service area, and at minimum annually thereafter if the individual declines support services;

(F) Documentation of the individual's request for support services and the individual's selection of an available support services brokerage within the CDDP's geographic service area;

(G) Referral information or documentation of referral materials sent to a service provider or another CDDP;

(H) Progress notes written by a services coordinator;

(I) Medical information, as appropriate;

(J) Admission and exit meeting documentation into any comprehensive service including any transition plans, crisis diversion plans, or other plans developed as a result of the meeting;

(K) ISP or Annual Plans including documentation that the plan is authorized by a services coordinator;

(L) Copies of any incident reports initiated by a CDDP representative for any incident that occurred at the CDDP or in the presence of the CDDP representative;

(M) Documentation of a review of unusual incidents received from service providers. Documentation of a review of unusual incidents must be made in progress notes and a copy of the incident report must be placed in the individual's file. If applicable, information must be electronically entered into the SERT system and referenced in progress notes;

(N) Initial and annual review of Title XIX waiver forms;

(i) For individuals receiving children's intensive in-home services, or children's residential services, the CDDP must maintain a current copy of the annual review of Title XIX waiver forms or reflect documentation of attempts to obtain a current copy.

(ii) Once the individual is enrolled in a support services brokerage, the CDDP must maintain a copy of the initial Title XIX waiver form completed by the CDDP and any annual reviews completed by the CDDP.

(O) Documentation of Medicaid eligibility, if applicable; and

(P) Legal records, such as guardianship papers, civil commitment records, court orders, and probation and parole information, as is appropriate to the individual in question.

(b) An information sheet or reasonable alternative must be kept current and reviewed at least annually for each individual enrolled in comprehensive services, family support services, or living with family or independently and not enrolled in a support services brokerage and receiving case management services from the program. Information must include:

(A) The individual's name, current address, date of entry into the program, date of birth, sex, marital status (for individuals 18 or older), religious preference, preferred hospital, medical prime number and private insurance number (where applicable), and guardianship status; and

(B) The names, addresses, and telephone numbers of:

(i) The individual's guardian or other legal representative, family, advocate or other significant person, and for children, the child's parent or guardian, and education surrogate, if applicable;

(ii) The individual's physician and clinic;

(iii) The individual's dentist;

(iv) The individual's school, day program, or employer, if applicable;

(v) Other agency representatives providing services to the individual;

and

(vi) Any court ordered or guardian authorized contacts or limitations from contact for anyone living in a foster home, supported living program, or 24-hour residential program.

(c) A current information sheet or reasonable alternative must be maintained for each individual enrolled in a support services brokerage. The current information must include the information listed in section (3)(b) of this rule.

(4) **PROGRESS NOTES.** Progress notes must include documentation of the delivery of service by a services coordinator to support each case service provided. Progress notes must be recorded chronologically and documented consistent with CDDP policies and procedures. All late entries must be appropriately documented. Progress notes must at a minimum include:

(a) The month, day, and year the services were rendered and the month, day, and year the entry was made if different from the date service was rendered;

(b) The name of the person receiving service;

(c) The name of the CDDP, the person providing the service (i.e., the services coordinator's signature and title), and the date the entry was recorded and signed;

(d) The specific services provided and actions taken or planned, if any;

(e) Place of service. Place of service means the county where the CDDP or agency providing case management services is located, including the address. The place of service may be a standard heading on each page of the progress notes; and

(f) The names of other participants (including titles and agency representation, if any) in notes pertaining to meetings with or discussions about the individual.

(5) **RETENTION OF RECORDS.** The CDDP must have a record retention plan for all records relating to the CDDP's provision of and contracts for services that is consistent with this rule and OAR 166-150-0055. The record retention plan must be made available upon request of the public or SPD.

(a) Financial records, supporting documents, and statistical records must be retained for a minimum of three years after the close of the contract period, or until the conclusion of the financial settlement process with SPD, whichever is longer.

(b) Individual service records must be kept for seven years after date of death, if known. If the case is closed, inactive, or death date is unknown, the individual service record must be kept for 70 years.

(c) Copies of annual ISPs must be kept for 10 years.

(6) **TRANSFER OF RECORDS.** In the event an individual moves from one county to another county in Oregon, the complete individual record as described in section (3) of this rule must be transferred to the receiving CDDP within 30 days of transfer. The sending CDDP must ensure that the records required by this rule are maintained in permanent record and transferred to the CDDP having jurisdiction for services. The sending CDDP shall retain information necessary to document that services were provided to the individual while enrolled in CDDP services. This includes:

(a) Documentation of eligibility for developmental disability services received while enrolled in services through the CDDP including waiver eligibility;



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- (b) Service enrollment and termination forms, including comprehensive services wait list enrollment date if applicable;
- (c) CDDP progress notes;
- (d) Documentation of services provided to the individual by the CDDP; and
- (e) Any required documentation necessary to complete the financial settlement with the state.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 409.050, 410.070, 430.640  
Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695  
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0080

### Diagnosis and Eligibility Determination

(1) **ELIGIBILITY SPECIALIST.** Each CDDP must identify at least one qualified eligibility specialist who has met performance qualifications and training expectations for determining developmental disability eligibility according to OAR 411-320-0030.

(2) **QUALIFIED PROFESSIONAL DIAGNOSIS.** For the purpose of this rule, diagnosis and evaluation information must be completed by professionals qualified to make a diagnosis of developmental disabilities in accordance with the American Association on Mental Deficiency, 1977.

#### (3) ELIGIBILITY FOR MENTAL RETARDATION.

(a) A history demonstrating mental retardation must be in place by the individual's 18th birth date. Diagnosing mental retardation is done by measuring intellectual functioning and adaptive behavior as assessed by standardized tests administered by a qualified professional as described in section (2) of this rule.

(A) Mental retardation is defined as IQ's under 70 with significant impairments in adaptive behavior directly related to mental retardation. Individuals with an IQ pattern of 70 to 75 with significant impairments to adaptive behavior as defined in OAR 411-320-0020 directly related to the issues of mental retardation may be considered as having mental retardation.

(B) For individuals who have a consistent pattern of IQ results of 65 and under, no adaptive behavior assessment as, described in section (10) of this rule, may be needed if current documentation continues to support eligibility.

(C) Verification of mental retardation for individuals with IQ patterns of 66-75 require an adaptive behavior assessment as described in section (10) of this rule indicating significant impairment in adaptive behavior as defined in OAR 411-320-0020.

(b) Eligibility for mental retardation must include all historical information and requires documentation of significant impairment in adaptive behavior as defined in OAR 411-320-0020.

(A) The adaptive impairments cannot be primarily attributed to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(B) The condition or impairment must be expected to last indefinitely.

#### (4) ELIGIBILITY FOR OTHER DEVELOPMENTAL DISABILITIES.

(a) A history of a developmental disability other than mental retardation must be in place prior to the individual's 22nd birth date. IQ scores are not used in verifying the presence of a non-mental retardation developmental disability. Diagnosing a developmental disability requires a medical or clinical diagnosis of a developmental disability with significant impairments in adaptive behavior, as defined in OAR 411-320-0020, related to the diagnosis.

(A) The disability must have originated in and directly affect the brain; and

(B) The individual must require supports similar to those required by individuals with mental retardation.

(b) Eligibility for developmental disabilities must include all historical information and requires documentation of significant impairment in adaptive behavior as defined in OAR 411-320-0020(5)(b).

(A) The adaptive impairments must be primarily related to the developmental disability and cannot be primarily attributed to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(B) The condition or impairment must be expected to last indefinitely.

(5) **ELIGIBILITY FOR CHILDREN 5 YEARS OF AGE OR YOUNGER.** Eligibility for children 5 years of age or younger is always provisional. This means eligibility may change in the future when new information is obtained. Eligibility documentation for children 5 years of age or younger must be no more than three years old and must include:

(a) Standardized testing that demonstrates at least two standard deviations below the norm in two or more of the following areas including but not limited to :

- (A) Self-care;
- (B) Receptive and expressive language;
- (C) Learning;
- (D) Mobility; and
- (E) Self-direction; OR

(b) A medical statement by a licensed medical practitioner of a neurological condition or syndrome that originates in and directly affects the brain and causes or is likely to cause significant impairments in at least two or more of the following areas:

- (A) Self-care;
- (B) Receptive and expressive language;
- (C) Learning;
- (D) Mobility; and
- (E) Self-direction.

(c) The condition or syndrome must not be primarily attributed to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(d) The condition or impairment must be expected to last indefinitely.

(6) **ELIGIBILITY FOR CHILDREN 6 YEARS OF AGE AND OLDER.** Eligibility for children 6 years of age and older is always provisional. This means eligibility may change in the future when new information is obtained. Eligibility documentation for children 6 years of age and older must be based on school age documents that are no more than three years old and must include:

(a) Documentation of mental retardation as described in section (3) of this rule; or

(b) A diagnosis and documentation of a developmental disability as described in section (4) of this rule

(7) **ELIGIBILITY FOR ADULTS.** Eligibility determination for individuals under 21 years of age must be based on information no more than three years old. Eligibility determination for individuals 21 years of age or older must be based on information obtained after the individual's 17th birth date. At or after age 18, adult evaluation instruments must be used to determine eligibility for adults. Eligibility for adults must include:

(a) Documentation of mental retardation as described in section (3) of this rule; or

(b) A diagnosis and documentation of a developmental disability as described in section (4) of this rule.

#### (8) ABSENCE OF DATA IN DEVELOPMENTAL YEARS.

(a) In the absence of sufficient data during the developmental years, current data may be used if:

- (A) There is no evidence of head trauma;
- (B) There is no evidence or history of significant mental or emotional disorder; or
- (C) There is no evidence or history of substance abuse.

(b) If there is evidence or a history of head trauma, significant mental or emotional disorder, or substance abuse, then a clinical impression by a qualified professional regarding how the individual's adaptive functioning may be impacted by the identified condition must be obtained in order to determine if the individual's need for support is directly related to a developmental disability and not primarily related to a head trauma, significant mental or emotional disorder, or substance abuse.

#### (9) REDETERMINATION OF PROVISIONAL ELIGIBILITY.

(a) Eligibility for school age children must be redetermined no later than age 7.

(b) Eligibility for adult services must be redetermined by age 18 for mental retardation and by age 22 for developmental disabilities other than mental retardation.

(c) Eligibility must be redetermined using the criteria established in this rule.

#### (10) ADAPTIVE BEHAVIOR ASSESSMENT.

(a) For individuals who have a consistent pattern of IQ results of 65 and under, no adaptive behavior assessment may be needed if current documentation continues to support eligibility. However, there may be a need for an adaptive behavior assessment to verify mental retardation if there is an inconsistent IQ pattern, mental or emotional issues, sensory impairments, or substance abuse that may have an affect on cognitive functioning.

(b) IQ patterns of 66-75 require an adaptive behavior assessment indicating significant impairment in adaptive behavior as defined in OAR 411-320-0020.

(c) An informal adaptive behavior assessment may be completed for individuals who have been diagnosed with a developmental disability, who obviously have a significant impairment in adaptive behavior, and who require an adaptive behavior assessment to redetermine eligibility.

(A) A services coordinator or a trained eligibility specialist with at least two years experience working with individuals with developmental

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disabilities may record their observations of the adaptive behavior impairments in the individual's progress notes.

(B) A standardized measurement of adaptive behavior such as a Vineland Adaptive Behavior Scale or Adaptive Behavior Assessment System may be administered and scored by a psychologist, social worker, or other professional with a graduate degree and specific training and experience in individual assessment, administration, and test interpretation of adaptive behavior scales for individuals with developmental disabilities.

(11) SECURING EVALUATIONS. In the event that the services coordinator has exhausted all local resources to secure the necessary evaluations for an eligibility determination, SPD shall assist in obtaining additional testing if required to complete the eligibility determination.

(12) PROCESSING ELIGIBILITY DETERMINATION. The CDDP in the county of origin is responsible for making the eligibility determination.

(a) The CDDP must process eligibility for developmental disability services in the following time frames.

(A) The CDDP must begin the process to determine eligibility within 10 working days after receiving an application for services from an individual or the individual's representative.

(B) The CDDP must make an eligibility determination within 15 working days of receipt of information from which eligibility may be determined.

(C) The CDDP must complete an eligibility determination within 90 calendar days of application except in unusual circumstances, for example:

(i) The CDDP cannot make an eligibility determination because the individual or the individual's representative fails to complete an action;

(ii) There is an emergency beyond the CDDP's control; or

(iii) More time is needed to obtain additional records by the CDDP, the individual, or the individual's representative.

(b) The CDDP must make an eligibility determination unless the following applies and is documented in the individual's progress notes:

(A) The individual or the individual's representative voluntarily withdraws the individual's application;

(B) The individual dies; or

(C) The individual cannot be located.

(c) The process of making an eligibility determination may be extended 90 calendar days by mutual agreement among all parties with written notice sent to the individual or the individual's representative. The CDDP must document the reason for the delay in the individual's record.

(d) The CDDP may not use the time frames established in section (12)(a) of this rule as:

(A) A waiting period before determining eligibility; or

(B) A reason for denying eligibility.

(13) FINANCIAL STATUS. The services coordinator must verify the financial status of individuals during the eligibility or intake process. All sources of income are to be identified. Adults with no unearned income benefits must be referred to Social Security for a determination of financial eligibility. Children or their custodial parent or legal guardian (if not a state agency), must be referred to the appropriate resources if it appears that the child or the child's parent or legal guardian may be eligible for financial assistance.

(14) NOTICE OF ELIGIBILITY DETERMINATION. Within 10 working days of making an eligibility determination or re-determination, the CDDP, based upon a review of the documentation used to determine eligibility, must issue a written notice of the eligibility determination to the individual or the individual's representative. The notice must be on forms prescribed by SPD. The notice must include:

(a) The eligibility determination;

(b) The rationale for the eligibility determination, including what reports, documents, or other information that were relied upon in making the eligibility determination;

(c) Notice that the documents relied upon may be reviewed by the individual or the individual's representative;

(d) The specific rules that were used in making the eligibility determination; and

(e) Notice of the right to request a review of an eligibility determination, including:

(A) The timeline for requesting a review;

(B) Where and how to request a review or hearing; and

(C) The right to receive assistance from the CDDP in completing and submitting a request for review.

(15) ELIGIBILITY REVIEW PROCESS. A request for a review of an eligibility determination must be submitted in writing to the CDDP, on a form prescribed by SPD, within 45 calendar days from the date of the notice of eligibility determination. The CDDP must assist individuals requiring assistance in preparing a written request for review.

(a) When a request for a review includes new information, the CDDP has 30 calendar days from the date of receipt of the written request for review to:

(A) Review the eligibility determination;

(B) Consider any new documentation submitted with the request for review; and

(C) Respond to the individual or the individual's representative in writing with a decision.

(b) The review process may be extended by mutual agreement between the parties. A written confirmation of the agreement to extend the time and resolution must be sent to the individual or the individual's representative.

(c) When a request for review includes no new information and the CDDP continues to uphold the eligibility determination decision, the CDDP has five working days from the date of receipt of the written request for review to refer the file to SPD for an administrative review.

(16) ADMINISTRATIVE REVIEW FOR ELIGIBILITY. Within 30 calendar days of receipt of the file and written request for review from the CDDP, SPD must, based upon a review of the documentation used to determine eligibility and any new information submitted by the individual or the individual's representative, issue a written notice of eligibility determination to the individual or the individual's representative. The notice must include:

(a) The eligibility determination;

(b) The rationale for the eligibility determination, including what reports, documents, or other information that were relied upon in making the eligibility determination;

(c) Notice that the documents relied upon may be reviewed by the individual or the individual's representative;

(d) The specific rules that were used in making the eligibility determination; and

(e) Notice that if the individual or the individual's representative disagrees with the SPD eligibility determination, the individual or the individual's representative has the right to request a hearing on the individual's behalf, as provided in ORS chapter 183 and OAR 411-320-0175. Notice must include:

(A) The timeline for requesting a hearing;

(B) Where and how to request a hearing; and

(C) The right to receive assistance from the CDDP in completing and submitting a request for hearing.

(f) The review process may be extended by mutual agreement between the parties. A written confirmation of the agreement to extend the time and resolution must be sent to the individual or the individual's representative.

(17) CONTINUING SERVICES DURING ELIGIBILITY REVIEW. If an individual is determined no longer eligible following a redetermination of their eligibility, the individual has the right to request continuing services and supports during the review process. If the review is not in the individual's favor, the individual may be required to pay back any benefits received during the review process.

(a) The CDDP must issue a notice of eligibility determination to the individual in accordance with section (14) of this rule. The notice must also include:

(A) Notification of the individual's right to receive continuing services at the same level during the eligibility review and at the request of the individual;

(B) Notification of the time frame within which the individual must request continuing services;

(C) Notification of how and where the individual must submit a request for continuing services;

(D) Notification that an overpayment shall be written for the benefits and the individual may be required to pay back any benefits if the eligibility determination is upheld following a review process or final order; and

(E) Notification of the effective date of the action proposed.

(b) Upon receiving the notice of eligibility determination, the individual may request a review of the eligibility determination and request continuing services during the review process.

(A) The individual must submit a written request for review and continuing services on a form prescribed by SPD within 45 calendar days from the date of the notice of eligibility determination. The CDDP must assist individuals requiring assistance in completing the written request for review and continuing services.

(B) The individual must indicate in the written request for review if they are requesting continuing services during the review.

(C) The CDDP must respond in writing to the individual or the individual's representative regarding the request for continuing services and review of the eligibility determination in accordance with section (15) of this rule.

(18) TRANSFERABILITY OF ELIGIBILITY DETERMINATION. An eligibility determination made by one CDDP must be honored by another CDDP when an individual moves from one county to another. If the receiving county has reason to question the eligibility determination and cannot resolve it between the two CDDPs, the receiving CDDP must

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promptly refer the matter to SPD for review and consultation of the eligibility determination. The receiving county must continue services for the individual while the review is occurring. The receiving CDDP must complete any eligibility determination activities as required by SPD. If the individual is not eligible for developmental disability services, the CDDP that determined the individual was eligible for developmental disability services may be responsible for the services authorized on the basis of that eligibility determination.

Stat. Auth.: ORS 409.050, 410.070, 430.640  
Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695  
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0090 Developmental Disabilities Case Management Program Responsibilities

(1) AVAILABILITY. As required by these rules, the CDDP must assure the availability of a services coordinator to meet the service needs of an individual and any emergencies or crisis. The assignment of the services coordinator must be appropriately documented in individual service records and the CDDP must accurately report enrollment in SPD payment and reporting systems.

(2) POLICIES AND PROCEDURES. The CDDP must adopt written procedures to assure that the delivery of services meet the standards in section (4) of this rule.

(a) The CDDP must have procedures for ongoing involvement of individuals and family members in the planning and review of consumer satisfaction with the delivery of case management or direct services provided by the CDDP.

(b) Copies of the procedures for planning and review of case management services, consumer satisfaction, and complaints must be maintained on file at the CDDP offices. The procedures must be available to:

(A) CDDP employees who work with individuals;

(B) Individuals who are receiving services from the CDDP and the individuals' families;

(C) Individuals' legal representatives, advocates, and service providers; and

(D) SPD.

(3) NOTICE OF SERVICES. The CDDP must inform the individuals, family members, legal representatives, and advocates of the minimum case management services that are set out in section (4) of this rule.

(4) MINIMUM STANDARDS FOR CASE MANAGEMENT SERVICES.

(a) The CDDP must ensure that eligibility for services is determined by a trained eligibility specialist in accordance with OAR 411-320-0030.

(b) An Annual Plan for an individual must be developed and reviewed in accordance with OAR 411-320-0120(1).

(A) The services coordinator must assure that there is an Annual Plan. The services coordinator must attend the annual plan meeting and participate in the development of the plan for individuals enrolled in comprehensive services. The services coordinator is responsible for the development of the Annual Plan, on the form provided by SPD, for children receiving family support services in coordination with the child and the family.

(B) An Annual Plan must be completed for each individual that is not enrolled in any SPD-funded service other than case management.

(c) Program services must be authorized in accordance with OAR 411-320-0120(3).

(d) Services coordinators must monitor services and supports for all individuals enrolled in case management in accordance with the standards described in OAR 411-320-0130.

(e) Entry, exit, and transfers from comprehensive program services must be in accordance with OAR 411-320-0110.

(f) Crisis diversion services must be assessed, identified, planned, monitored, and evaluated by the services coordinator in accordance with OAR 411-320-0160.

(g) Abuse investigations and provision of protective services for adults must be provided as described in OAR 407-045-0250 to 407-045-0360 and include investigating complaints of abuse, writing investigation reports, and monitoring for implementation of report recommendations.

(h) Civil commitment services must be provided in accordance with ORS 427.215 to 427.306.

(i) The services coordinator must provide information and timely referral for individuals and their families regarding developmental disability services available within the county and services available from other agencies or organizations within the county.

(A) For individuals 18 years and older, information and referral must specifically include information necessary to inform the individual of the comprehensive services wait list and support services. When more than one support services brokerage is available within the CDDP's geographic serv-

ice area, the CDDP must also provide impartial information about the brokerages available to the individual.

(B) For individuals 18 years and older, information and referral must be provided initially and at minimum annually thereafter if the individual declines the comprehensive services wait list or support services. Documentation of the initial referral and subsequent annual discussion must be documented in the individual's CDDP file.

(C) For individuals enrolled in the support services brokerage but not enrolled in the comprehensive services wait list, the CDDP must coordinate with the support services brokerage to ensure that wait list information is provided annually.

(j) The services coordinator must assist individuals and their families in accessing services and resources.

(A) For individuals 18 years and older who decline support services, annual information and referral about support services must include informing the individual of the individual's right to access support services at any time.

(B) For individuals 18 years and older who decline support services, the services coordinator must ensure access at anytime to support services within 90 days of the individual's request for support services and selecting a support services brokerage from those available as per OAR 411-340-0110(1)(f).

(C) For individuals 18 years and older who decline the comprehensive services wait list and who are not enrolled in a support services brokerage, annual information and referral about the comprehensive services wait list must include informing the individual of the individual's right to access the wait list at any time.

(D) For individuals 18 years and older who decline the comprehensive services wait list, the services coordinator must ensure access at anytime to the comprehensive services wait list upon the individual's request to be enrolled on the wait list.

(k) The services coordinator must enroll individuals in the comprehensive services wait list who meet the following criteria:

(A) The individual is age 18 or older;

(B) The individual is enrolled in case management services or a support services brokerage;

(C) The individual has requested to be enrolled in the comprehensive services wait list; and

(D) The individual is not enrolled in comprehensive services as an adult.

(l) An individual who moves between CDDP's and whose case management or support services do not lapse for more than a period of 12 months shall retain the wait list enrollment date assigned or continued by the CDDP in which case management services were previously received. If an individual did not receive case management services in any county in Oregon for a period exceeding 12 calendar months, a new wait list enrollment date shall be assigned. The new wait list enrollment date must be the date the individual first meets all the criteria described in section (4)(k) of this rule.

(m) When funding and resources are available, the CDDP must facilitate selection of individuals from the comprehensive services wait list using the date of enrollment on the comprehensive services wait list. An individual in crisis according to OAR 411-320-0160(2) and in need of service must be given first consideration for comprehensive services regardless of the date of enrollment on the comprehensive services wait list.

(n) The services coordinator may remove an individual from the comprehensive services wait list for the following reasons:

(A) The individual requests to be removed;

(B) The individual is placed in comprehensive services; or

(C) The individual has exited or been terminated from case management services or a support services brokerage.

(o) The CDDP must inform the individual of the CDDP's intent to remove the individual from the comprehensive services wait list.

(p) Services coordinators must coordinate services with the child welfare (CW) caseworker assigned to a child to ensure the provision of required supports from the CDDP, SPD, and CW.

(q) Services coordinators may attend IEP planning meetings or other transition planning meetings for children when the services coordinator is invited by the family or guardian to participate.

(A) The services coordinator may, to the extent resources are available, assist the family in accessing those critical non-educational services that the child or family may need.

(B) Upon request and to the extent possible, the services coordinator may act as a proponent for the child or family at IEP meetings.

(C) The services coordinator must participate in transition planning by attending IEP meetings or other transition planning meetings of students 16 years of age or older, or until the student is enrolled in the support services brokerage, to discuss the individual's transition to adult living and work situations unless such attendance is refused by the child's parent or legal guardian, or the individual if the individual is 18 years or older.



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(r) The CDDP must ensure that individuals eligible for and receiving developmental disability services are enrolled in SPD payment and reporting systems. The county of origin must enroll the individual into the SPD payment and reporting systems for all developmental disability service providers except in the following circumstances:

(A) SPD shall complete the enrollment or termination form for children entering or leaving a licensed 24-hour residential program that is directly contracted with SPD.

(B) SPD shall complete the SPD payment and reporting systems enrollment, termination, and billing forms for children entering or leaving the children's intensive in-home services (CIIS) program.

(C) SPD shall complete the enrollment, termination, and billing forms as part of an interagency agreement for purposes of billing for crisis diversion services by a region.

(s) Services coordinators must facilitate referrals to nursing homes when appropriate as determined by OAR 411-070-0043.

(t) The services coordinator must coordinate and monitor the specialized services provided to an eligible individual living in a nursing home in accordance with OAR 411-320-0150.

(u) If an adult is not enrolled in services other than case management and requires more than occasional services, or requires services that are available through a support services brokerage, the individual must be referred to a brokerage, unless the individual refuses. Referrals to the support services brokerage must be in accordance with OAR chapter 411, division 340.

(v) The services coordinator must ensure that all serious events related to an individual are reported to SPD using the SERT system. The CDDP must ensure that there is monitoring and follow-up on both individual events and system trends.

(w) When the services coordinator completes the Title XIX waiver form, the services coordinator must ensure that Medicaid eligible individuals are offered the choice of home and community-based waiver services, provided a notice of hearing rights, and have a completed Title XIX waiver form that is reviewed annually or at anytime there is a significant change. For individuals who are expected to enroll in support services, the services coordinator must complete the initial Title XIX waiver form after the individual's 18th birth date and no more than 30 days prior to enrollment into the support services brokerage. The support services brokerage staff must assess the individual's level of care annually thereafter for continued Title XIX waiver eligibility or at anytime there are significant changes.

(x) The services coordinator must participate in the appointment of a health care representative per OAR chapter 411, division 365.

(y) The services coordinator must coordinate with other state, public, and private agencies regarding services to individuals.

(z) The CDDP must ensure that a services coordinator is available to provide or arrange for comprehensive in-home supports for adults, long term supports for children, or family supports, as required, to meet the support needs of eligible individuals. This includes:

(A) Providing assistance in determining needs and planning supports;

(B) Providing assistance in finding and arranging resources and supports;

(C) Providing education and technical assistance to make informed decisions about support need and direct support service providers;

(D) Arranging fiscal intermediary services;

(E) Arranging employer-related supports; and

(F) Providing assistance with monitoring and improving the quality of supports.

(5) **SERVICE PRIORITIES.** If it becomes necessary for the CDDP to prioritize the availability of case management services, the CDDP must request and have approval of a variance prior to implementation of any alternative plan. If the reason for the need for the variance could not have been reasonably anticipated by the CDDP, the CDDP has 15 working days to submit the variance request to SPD. The variance request must:

(a) Document the reason the service prioritization is necessary (including any alternatives considered);

(b) Detail the specific service priorities being proposed; and

(c) Provide assurances that the basic health and safety of individuals shall continue to be addressed and monitored.

(6) **FAMILY RECONNECTION.** The CDDP and the services coordinator must provide assistance to SPD when a family member is attempting to reconnect with an individual who was previously discharged from Fairview Training Center or Eastern Oregon Training Center or the individual is currently receiving developmental disability services.

(a) If a family member contacts a CDDP for assistance in locating a family member they shall be referred to SPD. A family member may contact SPD directly.

(b) SPD shall send the family member an SPD form requesting further information to be used in providing notification to the individual. The form shall include the following information:

(A) Name of requestor;

(B) Address of requestor and other contact information;

(C) Relationship to individual;

(D) Reason for wanting to reconnect; and

(E) Last time the family had contact.

(c) SPD shall determine if the individual was previously a resident of Fairview Training Center or Eastern Oregon Training Center and also determine:

(A) If the individual is deceased or living;

(B) Whether the individual is currently or previously enrolled in DHS services; and

(C) The county in which services are being provided, if applicable.

(d) Within 10 working days of receipt of the request, SPD shall notify the family member if the individual is enrolled or no longer enrolled in DHS services.

(e) If the individual is enrolled in DHS services, SPD shall send the completed family information form to the individual or the individual's guardian and the individual's services coordinator.

(f) If the individual is deceased, SPD shall follow the process for identifying the personal representative of the deceased as provided for in ORS 192.526.

(A) If the personal representative and the requesting family member are the same, the family member shall be informed that the person is deceased.

(B) If the personal representative is different from the requesting family member, the personal representative shall be contacted for permission to share the information to the requesting family member. In the event of this situation, SPD must make a good faith effort at finding the personal representative and obtaining a decision concerning the sharing of information as soon as practicable.

(g) When an individual is located, the services coordinator when the individual is enrolled in case management, or the CDDP in conjunction with the support services brokerage when the individual is enrolled in a support services brokerage, must facilitate a meeting with the individual or the individual's guardian to discuss and determine if the individual wishes to have contact with the family member.

(A) The services coordinator when the individual is enrolled in case management, or the CDDP in conjunction with the support services brokerage when the individual is enrolled in a support services brokerage, must assist the individual or the individual's guardian in evaluating the information to make a decision regarding initiating contact including providing the information from the form and any relevant history with the family member that might support contact or present a risk to the individual.

(B) If the individual does not have a guardian or is unable to express his or her wishes, the ISP team must be convened to review factors and choose the best response for the individual after evaluating the situation.

(h) If the individual or the individual's guardian wishes to have contact, the individual or ISP team designee may directly contact the family member to make arrangements for the contact.

(i) If the individual or the individual's guardian does not wish to have contact, the services coordinator must notify SPD with the information and SPD shall inform the family member in writing that no contact is requested.

(j) The notification to the family member regarding the decision of the individual or the individual's guardian must be within 60 business days of the receipt of the information form from the family member.

(k) The decision by the individual or the individual's guardian is not appealable.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0100

### Assignment of Services Coordinator

(1) **INITIAL DESIGNATION OF SERVICES COORDINATOR.** For individuals determined eligible for developmental disability services, a services coordinator must be designated within 10 working days after an eligibility determination. In the instance of an adult moving into the county with an existing eligibility determination, a services coordinator must be assigned within 10 days of application, or if the individual is already enrolled in a support services brokerage, the individual must be enrolled in SPD's payment and reporting systems. A written notice that includes the name, telephone number, and location of the services coordinator or CDDP if already enrolled in a support services brokerage, must be sent to the individual requesting services and the individual's legal representative. Notice must be sent to the individual's family or advocate if the individual does not object.

(2) **CHANGE OF SERVICES COORDINATOR.** The CDDP must keep changes of services coordinators to a minimum.

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(a) If the CDDP changes services coordinator assignments, the CDDP must notify the individual, the individual's legal representative, and all current service providers within 10 working days of the designation. The notification must be in writing and include the name, telephone number, and address of the new services coordinator.

(b) The individual receiving services or the individual's legal guardian may request a new services coordinator within the same CDDP. The CDDP must develop standards and procedures for evaluating and acting upon requests for change of services coordinators. If another services coordinator is assigned by the CDDP, as the result of a request by the individual or the individual's legal representative, the CDDP must notify the individual, the individual's legal representative, and all current service providers within 10 working days of the change. The notification must be in writing and include the name, telephone number, and address of the new services coordinator.

### (3) TERMINATION OF CASE MANAGEMENT SERVICES.

(a) A services coordinator retains responsibility for providing case management services to the individual until the responsibility is terminated in accordance with this rule, until another services coordinator is designated, or until the individual is enrolled in support services. The CDDP must terminate case management services when any of the following occur:

(A) The individual or the individual's legal representative delivers a signed written request that case management services be terminated or such a request by telephone is documented in the individual's file. An individual, an individual's legal guardian, or the parent or legal guardian of a child in SPD-funded services may refuse contact by a services coordinator, as well as the involvement of a services coordinator at the ISP meeting, except if the services are mandatory as described in section (5) of this rule.

(B) The individual dies.

(C) The individual is determined to be ineligible in accordance with OAR 411-320-0080.

(D) The individual moves out of state or to another county in Oregon. If an individual moves to another county, case management services must be referred and transferred to the new county, unless an individual requests otherwise and both the referring CDDP and the CDDP in the new county mutually agree. In the case of a child moving into a foster home or 24-hour residential home, the county of parental residency or court jurisdiction must retain case management responsibility.

(E) An individual cannot be located after repeated attempts by letter and telephone.

(b) If an individual is determined ineligible or cannot be located, then the CDDP must issue a written notification of intent to terminate services in 30 days as well as notification of the individual's right to a hearing.

(4) TERMINATION FROM SPD PAYMENT AND REPORTING SYSTEMS. A CDDP retains responsibility for maintaining enrollment in SPD payment and reporting systems for individuals enrolled in support services until the responsibility is terminated in accordance with section (3) of this rule. The CDDP must terminate individuals in SPD payment and reporting systems when:

(a) The individual or the individual's legal representative delivers a signed written request to the support services brokerage requesting brokerage services be terminated. Individuals who decline support services but wish to continue receiving developmental disability services through the CDDP shall be terminated from the support services brokerage but shall not be terminated from developmental disability services;

(b) The individual dies;

(c) The individual is determined to be ineligible in accordance with OAR 411-320-0080;

(d) The individual moves out of state or to another county in Oregon. If an individual moves to another county, developmental disability services must be referred and transferred to the new county, unless an individual requests otherwise and both the referring CDDP and the CDDP in the new county mutually agree; or

(e) Notification from the support services brokerage that an individual cannot be located after repeated attempts by letter and telephone.

(5) MANDATORY SERVICES. An individual in developmental disability services must accept the following services:

(a) Case management or support services;

(b) Abuse investigations;

(c) Services coordinator presence, when applicable, at SPD-funded program entry, exit, or transfer meetings, or transition planning meetings required for entry or exit to adult services, including support services and in-home comprehensive services for adults;

(d) Monitoring of service provider programs, when applicable; and

(e) Services coordinator access to individual files.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

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## 411-320-0110

### Entry and Exit Requirements

(1) ADMISSION TO A SPD-FUNDED DEVELOPMENTAL DISABILITY PROGRAM.

(a) SPD staff must authorize entry into children's residential services, children's proctor care, children's intensive in-home supports, state operated community programs, and state training centers. The services coordinator must make referrals for admission and participate in all entry meetings for these programs.

(b) The services coordinator must ensure that individuals are appropriately referred to a support services brokerage and enrolled within 90 days of requesting support services and selecting a support services brokerage from those available as per OAR 411-340-0110(1)(f).

(c) Admissions to all other SPD-funded programs for individuals must be coordinated and authorized by the services coordinator in accordance with these rules.

(2) WRITTEN INFORMATION REQUIRED. The services coordinator, or the services coordinator's designee, must provide available and sufficient written information to service providers including information that is current and necessary to meet the individual's support needs in comprehensive services prior to admission.

(a) This written information must be provided in a timely manner and include:

(A) A copy of the individual's eligibility determination decision;

(B) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device, and the ability to adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges including supervision and support needs;

(D) A medical history and information on health care supports that includes, where available:

(i) The results of a physical exam (if any) made within 90 days prior to the entry;

(ii) Results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(F) If applicable, copies of protocols, the risk tracking record, and any support documentation;

(G) Copies of documents relating to guardianship, conservatorship, health care representative, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual, when applicable;

(H) Written documentation why preferences or choices of the individual cannot be honored at that time;

(I) Written documentation that the individual is participating in out-of-residence activities including school enrollment for individuals under the age of 21; and

(J) A copy of the most recent functional assessment, Behavior Support Plan, ISP, and IEP, if applicable.

(b) If the individual is being admitted from the individual's family home and entry information is not available due to a crisis, the services coordinator must ensure that the service provider assesses the individual upon entry for issues of immediate health or safety and the services coordinator must document a plan to secure the information listed in section (2)(a) this rule no later than 30 days after admission. The documentation must include a written description as to why the information is not available. A copy of the information and plan must be given to the service provider at the time of entry.

(c) If the individual is being admitted from comprehensive service, the information must be made available prior to the admission.

(3) ENTRY MEETING. Prior to an individual's date of entry into a SPD-funded comprehensive service, the ISP team must meet to review referral material in order to determine appropriateness of placement. The ISP team participants shall be determined according to OAR 411-320-0120(1)(b). The findings of the entry meeting must be recorded in the individual's file and distributed to the ISP team members. The documentation of the entry meeting must include at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the entry meeting and the date determined to be the date of entry;

(c) The names and role of the participants at the entry meeting;

(d) Documentation of the pre-entry information required by section (2)(a) of this rule;

(e) Documentation of the decision to serve or not serve the individual requesting service, with reasons;

(f) If the decision was made to enter the individual, a written transition plan to include all medical, behavior, and safety supports needed by the

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individual, to be provided to the individual for no longer than 60 days after admission; and

(g) Documentation of the participants included in the entry meeting.

(4) **CRISIS DIVERSION SERVICES.** For a period not to exceed 30 days, section (3)(d) of this rule does not apply if an individual is temporarily admitted to a program for crisis diversion services.

(5) **EXIT FROM SPD-FUNDED PROGRAMS.** All exits from SPD-funded developmental disability services must be authorized by the CDDP. All exits from SPD direct-contracted service for children's 24-hour residential and from state-operated community programs, must be authorized by SPD staff. Prior to an individual's exit date, the ISP team must meet to review the appropriateness of the move and to coordinate any services necessary during or following the transition. The ISP team participants must be determined according to OAR 411-320-0120(1)(b).

(6) **EXIT STAFFING.** The exit plan must be distributed to all ISP team members. The exit plan must include:

(a) The name of the individual considered for exit;

(b) The date of the exit meeting;

(c) Documentation of the participants included in the exit meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of the strategies to prevent an exit from service, unless the individual, the individual's legal guardian or, for a child, the child's parent or guardian, is requesting the exit;

(f) Documentation of the decision regarding exit including verification of majority agreement of the exit meeting participants regarding the decision; and

(g) The written plan for services for the individual after exit.

(7) **TRANSFER MEETING.** All transfers within a county between service site by a comprehensive service provider agency must be authorized by the CDDP, except for transfers between SPD direct contracted services for children in 24-hour residential programs and in state operated community programs. Transfers between SPD direct contracted services for children in 24-hour residential programs and state operated community programs must be coordinated by SPD staff. A transfer meeting of the ISP team must precede any decision to transfer an individual. Findings of such a transfer meeting must be recorded in the individual's file and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the transfer meeting;

(c) Documentation of the participants included in the transfer meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, the individual's legal representative, or family members may not be honored;

(g) Documentation of the decision regarding transfer including verification of majority agreement of the transfer meeting participants regarding the decision; and

(h) The written plan for services for the individual after transfer.

(8) **ENTRY TO SUPPORT SERVICES.**

(a) Referrals of eligible individuals to a support services brokerage must be made in accordance with OAR 411-340-0110(3). Referrals must be made using the SPD mandated application and referral form in accordance with SPD guidelines.

(b) The CDDP of an individual's county of origin must find the individual eligible for services from a support services brokerage when:

(A) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;

(B) The individual is an adult living in his or her own home or family home and not receiving other SPD-paid in-home or community living support other than state Medicaid plan services;

(C) The individual is not enrolled in comprehensive services;

(D) At the time of initial enrollment in the support services brokerage, the individual is not receiving crisis diversion services from SPD because the individual does not meet one or more of the crisis risk factors listed in OAR 411-320-0160(2); and

(E) The individual, or the individual's legal representative, has chosen to use a support service brokerage for assistance with design and management of personal supports.

(c) The individual must be referred for enrollment within 90 days of:

(A) Being determined eligible for developmental disability services;

(B) The individual's 18th birth date;

(C) Requesting support services; and

(D) Selecting an available support services brokerage within the CDDP's geographic service area.

(d) The services coordinator must communicate with the support services brokerage staff and provide all relevant information upon request

and as needed to assist support services brokerage staff in developing an ISP that best meets the individual's support needs including:

(A) A current application or referral on the SPD mandated application or referral form;

(B) A completed Title XIX waiver form;

(C) A copy of the eligibility statement for developmental disability services;

(D) Copies of financial eligibility information;

(E) Copies of any legal documents such as guardianship papers, conservatorship, civil commitment status, probation and parole, etc.;

(F) Copies of relevant progress notes; and

(G) A copy of any current plans.

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

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0120

### Service Planning

(1) **PRINCIPLES FOR PLANNING.** These rules prescribe standards for the development and implementation of plans for individuals. As such, plans for individuals must be developed in a manner that address issues of independence, integration and productivity, enhance the quality of life of the individual with developmental disabilities, and consistent with the following principles:

(a) **Personal Control and Family Participation.** While the service system reflects the value of family member participation in the planning process, adult individuals have the right to make informed choices about the level of participation by family members. It is the intent of this rule to fully support the provision of education about personal control and decision-making to individuals who are receiving services.

(b) **Choice and Preferences.** The planning process is critical in determining the individual's and the family's preferences for services and supports. The preferences of the individual and family must serve to guide the ISP team. The individual's active participation and input must be facilitated throughout the planning process.

(c) **Barriers.** The planning process is designed to identify the types of services and supports necessary to achieve the individual's and family's preferences, identify the barriers to providing those preferred services, and develop strategies for reducing the barriers.

(d) **Health and Safety.** The planning process must also identify strategies to assist the individual in the exercise of the individual's rights. This may create tensions between the freedom of choice and interventions necessary to protect the individual from harm. The ISP team must carefully nurture the individual's exercise of rights while being equally sensitive to protecting the individual's health and safety.

(e) **Children in Alternate Living Situations.** When planning for children in 24-hour residential or foster care services, maintaining family connections is an important consideration. The following must apply:

(A) Unless contraindicated there must be a goal for family reunification;

(B) The number of moves or transfers must be kept to a minimum; and

(C) If the placement is distant from the family, the services coordinator must continue to seek a placement that would bring the child closer to the family.

(2) **RESPONSIBILITY FOR ANNUAL ISP OR ANNUAL PLAN.** Individuals enrolled in SPD-funded services must have an annual ISP or Annual Plan. Plans must be developed, implemented, and authorized as follows:

(a) **Persons in Foster Care, 24-Hour Residential Services, and Related Employment or Alternatives to Employment Services.** A services coordinator, or the services coordinator's qualified designee, must attend and assure that an annual ISP meeting is held. The services coordinator, or the services coordinator's qualified designee, must participate in the development of the ISP for individuals enrolled in comprehensive services. ISP's for children in SPD direct contracted children's 24 hour residential services must be coordinated by SPD staff.

(A) The services coordinator must ensure that the plan for individuals in foster care or 24-hour residential services is developed and updated in accordance with state guidelines. The services coordinator must track the plan timelines and coordinate the resolution of complaints and conflicts arising from ISP discussions.

(B) At a minimum, the ISP team for an individual in services described in section (2)(a)(A) of this rule must include the individual, the individual's guardian, representatives from the 24-hour residential program, a representative from the employment or alternatives to employment program (if any), the services coordinator, any person requested by the indi-



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vidual, and any treatment professional requested by the individual or the ISP team on behalf of the individual.

(b) **Supported Living Services.** The services coordinator for an adult in supported living services and any associated employment or alternative to employment program must ensure the development of an annual ISP. The services coordinator must attend such ISP meetings and participate in the development of an ISP in conformance with the ISP content described in section (3) of this rule.

(c) **Family Support.** The services coordinator must coordinate with the individual's family or the individual's legal guardian in the development of the Annual Plan for a child receiving family support services. The Annual Plan must be in accordance with OAR 411-305-0080.

(d) **Comprehensive In-Home Supports.** The services coordinator must coordinate with the individual, the individual's family, or the individual's legal guardian, in the development of the annual In-Home Support Plan for the individual enrolled in comprehensive in-home supports in accordance with OAR 411-330-0050(3).

(e) **Long-Term Supports for Children.** The services coordinator must coordinate with the individual, the individual's family, or the individual's legal guardian, in the development of the child's Annual Support Plan in accordance with OAR chapter 411, division 308.

(f) **Annual Plan.** For individuals not enrolled or not yet enrolled in any other SPD-funded developmental disability service, the services coordinator must ensure the completion of an Annual Plan. The Annual Plan must be completed within 60 days of enrollment into case management services, and annually thereafter if not enrolled in any other SPD-funded developmental disability service.

(A) For an adult, a written Annual Plan must be documented in the individual's record as an Annual Plan or as a comprehensive progress note and consist of:

- (i) A review of the individual's current living situation;
- (ii) A review of any personal health, safety, or behavioral concerns;
- (iii) A summary of support needs of the individual; and
- (iv) Actions to be taken by the services coordinator and others.

(B) For a child, the services coordinator must ensure the completion of a child's Annual Plan in accordance with OAR 411-305-0080.

(3) **PLAN CONTENT.** The services coordinator must ensure that individual plans conform to the requirements of this rule.

(a) The services coordinator must ensure that a plan for an individual in SPD-funded comprehensive services is developed and documents a person centered process that identifies what is important to and for an individual, and also identifies the supports necessary to address issues of health, behavior, safety, and financial supports. There must be documentation of an action plan or discussion record resulting from the ISP team's discussion addressing issues of conflict between personal preferences and issues of health and safety.

(b) The services coordinator must ensure that a plan developed for a child receiving SPD-funded family support services conforms to requirements of OAR chapter 411, division 305.

(c) The services coordinator must ensure that an In-Home Support Plan for adults conforms to the requirements described in OAR 411-330-0050(3).

(d) The services coordinator must ensure that a child's Annual Support Plan for long-term support conforms to the requirements in OAR 411-308-0080.

(4) **PLAN FORMATS.** The ISP, Annual Plan, or In-Home Support Plan developed at the annual or update meeting must be conducted in a manner specified by and on forms required by SPD. In the absence of a SPD-mandated form, the CDDP with the affected service providers may develop an ISP format that conforms to the licensing or certification service provider rule and provides for an integrated plan across the funded developmental disability service settings.

(5) **PLAN UPDATES.** Plans for individuals must be kept current. The services coordinator or the SPD Residential Services Coordinator for children in SPD directed contracted 24-hour residential services must ensure that a current plan for individuals enrolled in comprehensive services, long-term supports for children, or in family support services is authorized and maintained.

- (a) The plan must be kept in the individual's record.
- (b) Plan updates must occur as required by this rule and any rules governing the operation of the service.
- (c) When there is a significant change the plan must be updated.

(6) **TEAM PROCESS IN COMPREHENSIVE SERVICES.** Except in comprehensive in-home supports or long-term supports for children, the following applies to ISPs developed for individuals in comprehensive services:

(a) ISPs must be developed by an ISP team. The ISP team assigns responsibility for obtaining or providing services to meet the identified needs.

(A) Membership on ISP teams must at a minimum conform to this rule and any relevant service provider rules.

(B) Unless refused by the adult individual, family participation must be encouraged.

(C) The individual may also suggest additional participants, friends, or significant others.

(D) The individual may raise an objection to a particular person. When an individual raises objections to a person, the ISP team must attempt to accommodate the objection while allowing participation by agency representatives.

(b) Plans developed by an ISP team must utilize a team approach and work toward consensus for a meaningful plan for the individual.

(A) No one member of the ISP team has the authority to make decisions for the team except as agreed to on the ISP.

(B) When consensus cannot be achieved, majority agreement shall prevail. For purposes of the ISP team process and for the reaching majority agreement, representatives from each service provider agency, the individual's family, the CDDP, or advocacy agencies shall be considered as one member.

(C) The individual or the individual's legal representative retains the right to consent to treatment and training or to note any specific areas of the plan that they object to and wish to file a complaint.

(D) The ISP team members must keep the team informed whenever there are significant needs or changes, or there is a crisis or potential for a crisis. The services coordinator must be notified in all such instances.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0130

### Site Visits and Monitoring of Services

(1) **VISITS TO SPD LICENSED OR CERTIFIED RESIDENTIAL SERVICE PROVIDER SITES.** The CDDP must ensure that regular visits responding to SPD questions are conducted at each child or adult foster home and each 24-hour residential program site licensed or certified by SPD to serve individuals. Visits must focus on areas addressing health and safety, behavior support, and financial services to individuals.

(a) The CDDP must establish a review schedule based on the number of individuals served in each home. Visits must be scheduled to occur as follows:

(A) Homes or sites actively serving one or two individuals must be visited at least quarterly.

(B) Homes or sites actively serving three or more individuals must be visited at least ten months each year.

(C) The CDDP must develop a procedure for the conduct of the visits to these homes.

(D) For homes or sites visited at least ten months each year, there must never be two consecutive months when a residential site is not visited.

(E) In the months the home is not visited, the CDDP may conduct a visit to an employment site or attend a school IEP meeting as a substitute for an employment visit for children who are still in school.

(F) If there are no SPD-funded individuals residing in the home, a visit by the CDDP is not required.

(b) When the service provider is a SPD-contracted and licensed 24-hour residential program for children or is a child foster proctor agency and a SPD Children's Residential Services Coordinator is assigned to monitor services, the SPD Children's Residential Services Coordinator and CDDP staff shall coordinate who shall visit the home. If the visit is made by SPD staff, SPD staff shall provide the results of the monitoring to the local services coordinator.

(c) The CDDP must document visits to the residential service and provide information concerning such visits to SPD upon request.

(2) **SERVICE DELIVERY.** The services coordinator must monitor the delivery of services for individuals enrolled in case management services at least annually.

(a) Every individual enrolled in case management services and not enrolled in any other funded developmental disability service must have at least an annual contact with a services coordinator.

(A) Whenever possible, annual contact must be made in person. If annual contact is not made in person, the progress note must document how contact was achieved.

(B) The services coordinator must document annual contact in an Annual Plan in accordance with OAR 411-320-0120(2)(f).

(C) If the individual has any identified high-risk medical issue including but not limited to risk of death due to aspiration, seizures, constipation, dehydration, diabetes, or significant behavioral issues, the services coordinator must maintain contact in accordance with planned actions described in the Annual Plan.

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(D) Any follow-up must be documented in progress notes.

(E) The services coordinator may, to the extent resources are available, monitor the Annual Plan of other individuals.

(b) The services coordinator must monitor services for individuals enrolled in SPD-funded comprehensive services or for children enrolled in long-term supports for children. For individuals residing in 24-hour residential programs or foster care, this service monitoring may be combined with the monthly site visits as described in section (1) of this rule. For individuals receiving supported living services, service monitoring shall whenever possible occur at least once annually in the individual's home. The services coordinator must determine if services are in accordance with the ISP, In-Home Support Plan, or the child's Annual Plan and take appropriate actions to ensure services.

(A) The review of plans for individuals must include the following:

(i) Consideration of any serious events and unusual incident reports and the results of any monthly monitoring visits conducted in residential programs;

(ii) A semi-annual review of the process by which an individual accesses and utilizes funds according to standards specified in OAR 411-325-0380 for 24-hour residential services or OAR 411-360-0170 for adult foster care. The services coordinator must report any misuse of funds to the CDDP and SPD. SPD shall determine whether a referral to the Medicaid Fraud Control Unit is warranted; and

(iii) Review of the ISP document to determine if the goals and objectives or actions to be taken by the service provider, the services coordinator, or others are implemented. The review must include a discussion of the following:

(I) Are services being provided as described in the plan document and do they result in the achievement of the identified action plans;

(II) Are the personal, civil, and legal rights of the individual protected in accordance with this rule;

(III) Are the personal desires of the individual, the individual's legal representative, or family addressed; and

(IV) Do the services provided for in the plan continue to meet what is important to and for the individual.

(B) The frequency of the monitoring must be determined by the needs of the individual. At a minimum, the results of the ISP for individuals enrolled in comprehensive services must be reviewed at least once within the first six months of the plan year and again in preparation for the annual ISP process. The frequency with which individuals presenting with serious health, safety, or behavioral risks are monitored must be based on ISP team decisions and CDDP policy. For individuals receiving supported living services, monitoring of services shall whenever possible occur at least once annually in the individual's home. Scheduled visits must be negotiated between the services coordinator, the individual, and the service provider.

(C) In monitoring the plan, the services coordinator must document his or her findings and any resulting actions in the individual's CDDP record.

(3) MONITORING FOLLOW-UP. The services coordinator and the CDDP are responsible for ensuring the appropriate follow-up to monitoring of services, except in the instance of children in a SPD direct contract 24-hour residential service when SPD may conduct the follow-up.

(a) If the services coordinator determines that comprehensive services are not being delivered as agreed in the plan, or that an individual's service needs have changed since the last review, the services coordinator must initiate action to update the plan.

(b) If there are concerns regarding the service provider's ability to provide services, the CDDP, in consultation with the services coordinator, must determine the need for technical assistance or other follow-up activities. This may include coordination or provision of technical assistance, referral to the CDDP manager for consultation or corrective action, requesting assistance from SPD for licensing or other administrative support, or meeting with the service provider executive director or board of directors. In addition to conducting abuse or other investigations as necessary, the CDDP must notify SPD when:

(A) A service provider demonstrates substantial failure to comply with any applicable licensing or certification rules for SPD-funded programs;

(B) The CDDP finds a serious and current threat endangering the health, safety, or welfare of individuals in a program for which an immediate action by SPD is required; or

(C) Any individual receiving SPD-funded developmental disability services dies. Notification must be made to SPD's Medical Director or his or her designee within one working day of the death.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0140

### Abuse Investigations and Protective Services

(1) GENERAL DUTIES OF THE CDDP. For the purpose of conducting abuse investigations and provision of protective services for adults, the CDDP is the designee of SPD. Each CDDP must conduct abuse investigations and provide protective services or arrange for the conduct of abuse investigations and the provision of protective services through cooperation and coordination with other CDDPs. If determined necessary or appropriate, SPD may conduct an investigation itself rather than allow the CDDP to investigate the alleged abuse. Under such circumstances, the CDDP must receive authorization from SPD before conducting a separate investigation.

(2) ELIGIBILITY FOR PROTECTIVE SERVICES. Unless otherwise directed by SPD, the CDDP must investigate allegations of abuse of individuals who are developmentally disabled and are:

(a) Eighteen years of age or older; and

(b) Receiving case management services; or

(c) Receiving any SPD-funded services for individuals; or

(d) Adults previously determined eligible for developmental disability services and voluntarily terminated from services in accordance with OAR 411-320-0100(3) and (4).

(3) ABUSE INVESTIGATIONS. The CDDP must have and implement written protocols that describe the conduct of an investigation, a risk assessment, implementation of any actions, and the report writing process. Investigations must be conducted in accordance with OAR 407-045-0250 to 407-045-0360.

(4) COORDINATION WITH OTHER AGENCIES. The CDDP must cooperate and coordinate investigations and protective services with other agencies that have authority to investigate allegations of abuse for adults or children.

(5) INITIAL COMPLAINTS. Initial complaints must immediately be submitted electronically, using SPD's system for reporting serious events.

(6) CONFLICT OF INTEREST. The CDDP must develop and implement procedures to ensure a thorough and unbiased investigation that is timely and avoids actual or potential conflicts of interest where a services coordinator or CDDP employee may fall within the scope of the investigation or the perception of bias on the part of the investigator or CDDP.

(7) NOTIFICATION. Upon the initiation of an investigation of an alleged abuse, the CDDP must assure the immediate notification of the individual and the individual's legal guardian or representative. The parent, next of kin, or other significant person may also be notified unless the individual requests the parent, next of kin, or other significant person not be notified about the investigation or protective services, unless specifically prohibited by rule or statute.

(8) REPORTS. SPD, or its designee, must complete an abuse investigation and protective service report according to OAR 407-045-0320. Abuse investigations and protective service reports must be maintained by the CDDP. The sections of a report that are not exempt from disclosure under the public record's law or subject to confidentiality laws must be provided to any service provider organization involved in the allegation. The CDDP must ensure that any actions to prevent further abuse listed in the report are implemented within the deadlines listed.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0150

### Specialized Services in a Nursing Home

Individuals residing in nursing homes and determined to require specialized services as described in OAR 411-070-0043 must have an annual plan for specialized services incorporated with the plan of care by the nursing home.

(1) PLAN FOR SPECIALIZED SERVICES IN A NURSING HOME. The services coordinator must coordinate with the individual, the individual's legal guardian, the staff of the nursing facility, and other service providers, as appropriate, to provide or arrange the specialized services. The plan for specialized services must include:

(a) The name of the service provider;

(b) A description of the specialized services to be provided;

(c) The number of hours of service per month;

(d) A description of how the services shall be tracked; and

(e) A description of the process of communication between the specialized service provider and the nursing facility in the event of unusual incidents, illness, absence, and emergencies.

(2) REVIEW OF PLAN. The services coordinator must complete an annual review of the plan for specialized services or when there has been a significant change in the individual's level of functioning. The review must conform to OAR 411-320-0130(2)(b).

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

# ADMINISTRATIVE RULES

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## 411-320-0160

### Crisis/Diversion Services

(1) **CRISIS DIVERSION SERVICES.** The CDDP, in conjunction with its regional partners, provide crisis diversion services for adults and children with developmental disabilities who are enrolled in developmental disability services and are eligible for crisis diversion services as described in section (3) of this rule and experiencing a crisis risk factor.

(2) **CRISIS RISK FACTORS.** An individual is in crisis when one or more of the following risk factors are present:

- (a) An individual is not receiving necessary supports to address life-threatening safety skill deficits;
- (b) An individual is not receiving necessary supports to address life-threatening issues resulting from behavioral or medical conditions;
- (c) An individual currently engages in self-injurious behavior serious enough to cause injury that requires professional medical attention;
- (d) An individual undergoes, or is at imminent risk of undergoing, loss of caregiver due to caregiver inability to provide supports;
- (e) An individual experiences a loss of home due to a protective service action; or
- (f) An individual is not receiving the necessary supports to address significant safety risks to others, including but not limited to:
  - (A) A pattern of physical aggression serious enough to cause injury;
  - (B) Fire-setting behaviors; or
  - (C) Sexually aggressive behaviors or a pattern of sexually inappropriate behaviors.

(3) **ELIGIBILITY FOR CRISIS DIVERSION SERVICES.** The CDDP must ensure the determination of the eligibility of individuals to receive crisis diversion services, and must ensure eligibility information is made available to support team members upon request, and to regional crisis diversion programs upon each referral. An individual is eligible for crisis diversion services when:

- (a) A crisis exists as described in section (2) of this rule;
- (b) There are no appropriate alternative resources available;
- (c) The crisis is not primarily related to a significant mental or emotional disorder or substance abuse; and
- (d) An individual meets at least one of the following criteria:
  - (A) The individual is enrolled in developmental disability services.
  - (B) The adult is court committed to DHS under ORS 427.215 through 427.306.
  - (C) The adult meets one of the crisis risk factors as described in section (2) of this rule.
  - (D) The child with developmental disabilities is at imminent risk of out of home placement.
  - (E) The child with developmental disabilities is in need of out of home placement.
  - (F) The child with developmental disabilities requires supports to return home from out of home placement.

(4) **FUNDS FOR CRISIS DIVERSION SERVICES.**

- (a) Funds for crisis diversion services must not supplant existing funding.
- (b) Purchased goods or services must only be those necessary to resolve the crisis.
- (c) Crisis diversion services must only be used when no appropriate alternative resources are available to resolve the crisis situation. The CDDP or the regional crisis diversion program administering the crisis diversion service, in consultation with the individual ISP team, must determine the appropriateness of alternative resources based on consideration of individual support needs, proximity to the individual's actively involved family members, access to other necessary resources, and cost effectiveness.

(5) **ALLOWABLE SHORT-TERM EXPENDITURES.** Allowable crisis diversion services include but are not limited to:

- (a) Professional consultation, assessment, or evaluation;
- (b) Adaptive equipment;
- (c) Respite;
- (d) Adaptations to the eligible individual's residence to increase accessibility or security;
- (e) Short-term residential or vocational services;
- (f) Added staff supervision; or
- (g) Crisis diversion rates for direct care staff, respite providers, and professional consultants. Crisis diversion rates must be paid within SPD's wage and rate guidelines.

(6) **SERVICE LIMITATIONS.** The following must not be purchased with crisis diversion services funds:

- (a) Household appliances;
- (b) Services covered under existing service provider contracts with the CDDP or SPD;

(c) Health care services covered by Medicaid, Medicare, or private medical insurance; and

(d) Services provided by the parent of a child or the spouse of an adult.

(7) **SERVICE AUTHORIZATION.** The CDDP or regional crisis diversion program must authorize the utilization of crisis diversion services.

(a) To assure that crisis diversion services are utilized only when no appropriate alternative resources are available, the CDDP or the regional crisis diversion program must document the individual's eligibility for crisis diversion services, the alternative resources considered, and why those resources were not appropriate or available, prior to initiating any crisis diversion services.

(b) For services that exceed 90 days duration, authorization must be made by the CDDP or the regional crisis diversion program, and must be documented in writing within the individual's case file.

(c) For services that exceed \$5,000 for adaptation or alteration of fixed property, authorization must be made by SPD based upon the recommendation of the CDDP or the regional crisis diversion program.

(d) SPD may, at its discretion, exercise authority under ORS 427.300 to direct any individual who is court committed to DHS under ORS 427.290 to the facility best able to treat and train the individual. SPD shall consult with any CDDP, the regional crisis diversion program, or service provider affected by this decision, prior to placement of the individual.

(8) **ADMINISTRATION OF CRISIS DIVERSION SERVICES.** The CDDP and the regional crisis diversion program must operate under policies and procedures that assure internal management control of expenditures. Policies and procedures must be written and include at least the following:

(a) Identification of persons or positions within the organization authorized to approve expenditures;

(b) Description of limits on those authorities and procedures for management reviews; and

(c) Description of procedures to disburse and account for funds.

(9) **MONITORING OF CRISIS DIVERSION SERVICES.**

(a) The CDDP must monitor the delivery of crisis diversion services as specified in the crisis plan and the individual's plan of care. Monitoring must be done through contact with the individual, any service providers, and the individual's family. The monitoring contact must include the collection of information regarding supports provided and progress toward outcomes that are identified in the crisis plan. Monitoring must be documented in the individual's case file.

(b) The CDDP must coordinate with service providers or other support team members to evaluate the impact of crisis diversion services upon the individual and must ensure needed changes are recommended to the individual's support team.

(c) SPD may monitor crisis diversion services through reports received pursuant to section (10) and (11) of this rule and OAR 411-320-0180.

(10) **RECORD KEEPING AND REPORTING PROCEDURES.**

(a) The CDDP or the regional crisis diversion program must ensure the crisis plan is developed in partnership with the individual's support team, and the following written information is maintained within the crisis plan:

(A) Identifying information about the individual including name, address, age, and name of parent or guardian;

(B) Description of the circumstances for which crisis diversion services were requested, to clearly specify how the individual is eligible to receive crisis diversion services;

(C) Description of resources used or alternatives considered prior to the request for crisis funds, and why the resources or alternatives were not appropriate or were not available in meeting the individual's needs in addressing the crisis;

(D) Description of the goods and services requested to be purchased or provided specific to addressing the crisis, to include:

(i) The frequency of the provision or purchase of goods or services;

(ii) The duration of the provision or purchase of goods or services;

and

(iii) The costs of the goods or services to be provided or purchased.

(E) Description of the outcome to be achieved including identification of benchmarks that may be used to determine whether the outcome has been achieved and maintained.

(b) The CDDP must ensure the documentation of the support team approved modifications to the individual's plan of care that outline how the crisis is to be addressed through the use of crisis diversion services.

(c) The CDDP must ensure the documentation of monitoring contacts described in section (9)(a) of this rule.

(d) The CDDP must maintain a current copy of the Title XIX waiver form, when the individual eligible for crisis diversion services is receiving



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home and community-based waiver services, or as otherwise instructed by SPD.

(11) **REPORTING REQUIREMENTS.** The CDDP or regional crisis diversion program must report, using the accepted SPD payment and reporting systems, the following information to SPD by the tenth working day the month following each month in which crisis diversion services were provided and paid:

- (a) Individuals for whom crisis diversion services were provided;
- (b) Individual services provided and paid; and
- (c) Total cost by type of service.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0170

### Complaints

(1) **COMPLAINT LOG.** The CDDP must maintain a log of all complaints received regarding the CDDP or any subcontract agency providing services to individuals.

(a) The complaint log, at a minimum, must include:

- (A) The date the complaint was received;
- (B) The name of the person taking the complaint;
- (C) The nature of the complaint;
- (D) The name of the person making the complaint, if known; and
- (E) The disposition of the complaint.

(b) CDDP personnel issues and allegations of abuse may be maintained separately from a central complaint log. If a complaint resulted in disciplinary action against a staff member, the documentation must include a statement that personnel action was taken.

(2) **COMPLAINTS.** The CDDP must address all complaints by individuals or subcontractors in accordance with CDDP policies, procedures, and these rules. Copies of the procedures for resolving complaints must be maintained on file at the CDDP offices. The complaint procedures must be available to county employees who work with individuals, individuals who are receiving services from the county and the individual's families, the individual's legal representatives, advocates, service providers, and SPD.

(a) **Subcontractor Complaints.** When a dispute exists between a CDDP and a subcontracted service provider regarding the terms of their contract or the interpretation of a SPD administrative rule and local dispute resolution efforts have been unsuccessful, either party may request assistance from SPD in mediating the dispute.

(A) The parties must demonstrate a spirit of cooperation, mutual respect, and good faith in all aspects of the mediation process. Mediation must be conducted as follows:

(i) The party requesting mediation must send a written request to the SPD Assistant Director, the CDDP director, and the service provider agency director, unless other persons are named as official contact persons in the specific rule or contract under dispute. The request must describe the nature of the dispute and identify the specific rule or contract provisions that are central to the dispute.

(ii) SPD staff shall arrange the first meeting of the parties at the earliest possible date. The agenda for the first meeting shall include:

(I) Consideration of the need for services of an outside mediator. If the services of an unbiased mediator are desired, agreement shall be made on arrangements for obtaining these services;

(II) Development of rules and procedures that shall be followed by all parties during the mediation; and

(III) Agreement on a date by which mediation shall be completed, unless extended by mutual agreement.

(iii) Unless otherwise agreed to by all parties:

(I) Each party shall be responsible for the compensation and expenses of their own employees and representatives; and

(II) Costs that benefit the group, such as services of a mediator, rental of meeting space, purchase of snack food and beverage, etc. shall be shared equally by all parties.

(B) A written statement documenting the outcome of the mediation must be prepared. This statement must consist of a brief written statement signed by all parties or separate statements from each party declaring their position on the dispute at the conclusion of the mediation process. In the absence of written statements from other parties, SPD shall prepare the final report. A final report on each mediation must be retained on file at SPD.

(b) **Contract Not Substantially Similar.** A service provider may appeal the imposition of a disputed term or condition in the contract if the service provider believes that the contract offered by the CDDP contains terms or conditions that are not substantially similar to those established by DHS in its model contract. The service provider's appeal of the imposition of the disputed terms or conditions must be in writing and sent to the SPD

Assistant Director within 30 calendar days after the effective date of the contract requirement.

(A) A copy of notice of appeal must be sent to the CDDP. The notice of appeal must include:

- (i) A copy of the contract and any pertinent contract amendments;
- (ii) Identification of the specific terms that are in dispute; and
- (iii) A complete written explanation of the dissimilarity between terms.

(B) Upon receipt of the notice of appeal, the CDDP must suspend enforcement of compliance with any contract requirement under appeal by the contractor until the appeal process is concluded.

(C) The SPD Assistant Director must offer to mediate a solution in accordance with the procedure outlined in sections (2)(a)(A) and (2)(a)(B) of this rule.

(i) If a solution cannot be mediated, the SPD Assistant Director shall declare an impasse through written notification to all parties and immediately appoint a panel to consider arguments from both parties. The panel must include at a minimum:

- (I) A representative from SPD;
- (II) A representative from another CDDP; and
- (III) A representative from another service provider organization.

(ii) The panel must meet with the parties, consider their respective arguments, and send written recommendations to the SPD Assistant Director within 45 business days after an impasse is declared, unless the SPD Assistant Director grants an extension.

(iii) If an appeal requiring panel consideration has been received from more than one contractor, SPD may organize materials and discussion in any manner it deems necessary, including combining appeals from multiple contractors, to assist the panel in understanding the issues and operating efficiently.

(iv) The SPD Assistant Director must notify all parties of his or her decision within 15 business days after receipt of the panel's recommendations. The decision of SPD is final. The CDDP must take immediate action to amend contracts as needed to comply with the decision.

(v) Notwithstanding section (2)(b)(C) of this rule, the SPD Assistant Director has the right to deny the appeal or a portion of the appeal if, upon receipt and review of the notice of appeal, the SPD Assistant Director finds that the contract language being contested is identical to the current language in the county financial assistance agreement with SPD.

(D) The CDDP or the contractor may request an expedited appeal process that provides a temporary resolution if it can be shown that the time needed to follow procedures to reach a final resolution would cause imminent risk of serious harm to individuals or organizations.

(i) The request must be made in writing to the SPD Assistant Director. The request must describe the potential harm and level of risk that shall be incurred by following the appeal process.

(ii) SPD must notify all parties of its decision to approve an expedited appeal process within two business days.

(iii) If an expedited process is approved, SPD shall notify all parties of SPD's decision concerning the dispute within three additional business days. The decision resulting from an expedited appeal process shall be binding, but temporary, pending completion of the appeal process. All parties must act according to the temporary decision until notified of a final decision.

(c) **Complaints By or On Behalf of Individuals.** An individual, the individual's guardian or other legal representative, a family member, or advocate may file a complaint with the CDDP under the following conditions:

(A) An individual or someone acting on behalf of the individual must have an opportunity to informally discuss and resolve any allegation that is contrary to law, rule, policy, or that is otherwise contrary to the interest of the individual and that does not meet the criteria for an abuse investigation. Choosing an informal resolution does not preclude an individual or someone acting on behalf of the individual to pursue resolution through formal complaint processes. Any agreement to resolve the complaint must be reduced to writing and must be specifically approved by the complainant. The complainant must be provided with a copy of such agreement.

(B) A complaint may be filed regarding an inability to resolve a dispute concerning the appropriateness of services described in the service plan provided by a CDDP subcontractor or regarding dissatisfaction with services provided by the CDDP.

(i) The CDDP must follow its policies and procedures regarding receipt and resolution of a complaint.

(ii) The CMHDDP or CDDP director must provide to the complainant a written decision regarding the complaint within 30 days following receipt of the complaint.

(I) The written decision regarding the complaint must contain the rationale for the decision, and must list the reports, documents, or other information relied upon in making the decision.

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(II) Along with the written decision, the complainant must also be provided a notice that the documents relied upon in making the decision may be reviewed by the individual or the person who filed the complaint.

(III) Along with the written decision, the complainant must also be provided a notice that the complainant has the right to request a review of the decision by SPD. Such notice, must be written in clear, simple language and at a minimum explain how and when to request such a review and when a final decision must be rendered by the SPD Assistant Director.

(iii) Following a decision by the CMHDDP director regarding a complaint, the complainant may request an administrative review by the SPD Assistant Director.

(I) The complainant must submit to SPD a request for an administrative review within 15 days from the date of the decision by the CMHDDP director.

(II) Upon receipt of a request for an administrative review, the SPD Assistant Director shall appoint an administrative review committee and name the chairperson. The administrative review committee shall be comprised of a representative of SPD, a CDDP representative, and a service provider who provides a similar service as the service being reviewed, i.e., residential, employment, foster care, etc. Committee representatives must not have any direct involvement in the provision of services to the complainant or have a conflict of interest in the specific case being reviewed.

(III) The administrative review committee must review the complaint and the decision by the CMHDDP director and make a recommendation to the SPD Assistant Director within 45 days of receipt of the complaint unless the complainant and the administrative review committee mutually agree to an extension.

(IV) The SPD Assistant Director shall consider the report and recommendations of the administrative review committee and make a final decision. The decision must be in writing and issued within 10 days of receipt of the recommendation by the administrative review committee. The written decision must contain the rationale for the decision.

(V) The decision of the SPD Assistant Director is final. Any further review is pursuant to the provisions of ORS 183.484.

(d) Specific Complaints. Individuals, or the individual's guardian or legal representative may request a review of specific decisions by the CDDP, a service provider, or a state training center as follows:

(A) Complaints of entry, exit, or transfer decisions within residential services may only be initiated according to OAR 411-325-0400 for 24-hour residential services and OAR 309-041-0800 for supported living services.

(B) Complaints of entry, exit, or transfer decisions within employment services or community inclusion services may only be initiated according to OAR 411-345-0150.

(C) Appeals of Medicaid eligibility decisions may be initiated according to OAR 411-330-0130(2).

(D) Disagreements with Eastern Oregon Training Center decisions for admission and discharge may only be initiated according to OAR chapter 309, division 118.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0175

### Hearings for Developmental Disability Services Eligibility Determination

DHS follows the Attorney General's Model Rules OAR 137-003-0501 to 137-003-0700 and ORS 183 for the conduct of hearings in developmental disability eligibility determination.

(1) DEFINITIONS. As used in this rule:

(a) "Administrative Law Judge" means a professional hearing officer, employed by the Employment Division, Office of Administrative Hearings, who presides over hearings and issues a final order.

(b) "Claimant" means a person who has requested a hearing or who is scheduled for a hearing.

(c) "DHS Hearing Representative" means a person authorized to represent DHS in the hearing.

(d) "Good Cause" means a circumstance beyond the control of the claimant and claimant's representative.

(e) A "Request for Hearing" is a written request by an individual or an individual's representative that the individual wishes to appeal an eligibility determination.

(2) HEARING REQUESTS. A claimant has the right to a hearing, as provided in ORS chapter 183, if the claimant disagrees with SPD's eligibility determination.

(a) The request for a hearing must be in writing on form DHS 443 and signed by the claimant or the claimant's representative. The signed form (DHS 443) must be received by DHS within 45 days from the date of SPD's notice of eligibility determination.

(b) The CDDP must assist individuals requiring assistance in completing the hearing request form.

(c) A late hearing request may be granted when the claimant has good cause.

(3) REPRESENTATION.

(a) SPD employees are authorized to appear as a witness on behalf of DHS for hearings.

(b) Hearings are not open to the public and are closed to non-participants, except non-participants may attend subject to the claimant's consent.

(4) FINAL ORDER.

(a) In a hearing, the administrative law judge is authorized to enter a final order on behalf of DHS without first issuing a proposed order unless DHS has specifically revoked authority.

(b) A final order shall be issued in compliance with OAR 137-003-0665 or the case otherwise resolved no later than 90 days following the request for hearing.

(c) The final order is effective immediately upon being signed or as otherwise provided in the order.

(d) A petition by a claimant for reconsideration or rehearing must be filed with the entity who issued the final order.

(5) INFORMAL CONFERENCE.

(a) The DHS representative and the claimant may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for DHS and the claimant to settle the matter;

(B) Ensure the claimant understands the reason for the action that is the subject of the hearing request;

(C) Give the claimant an opportunity to review the information that is the basis for the action;

(D) Inform the claimant of the rules that serve as the basis for the contested action;

(E) Give the claimant and DHS the chance to correct any misunderstanding of the facts; and

(F) Give DHS an opportunity to review its action.

(b) The claimant may, at any time prior to the hearing date, request an additional conference with the DHS representative. At the DHS representative's discretion, the DHS representative may grant an additional conference if it facilitates the hearing process.

(c) DHS may provide the claimant the relief sought at any time before the final order is issued.

(6) WITHDRAWAL OF HEARING. A claimant may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal shall be effective on the date DHS or the Office of Administrative Hearings receives it. DHS shall issue a final order confirming the withdrawal to the last known address of the claimant. The claimant may cancel the withdrawal up to 10 working days following the date the final order is issued.

(7) DISMISSAL FOR FAILURE TO APPEAR. A hearing request is dismissed by order when neither the claimant nor the claimant's representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. DHS may cancel the dismissal order on request of the claimant upon a showing that the claimant or the claimant's representative was unable to attend the hearing or unable to request a postponement for reasons beyond the claimant's control.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.670 695

Hist.: SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0180

### Inspections and Investigations

(1) REQUIRED INSPECTIONS AND INVESTIGATIONS. All services covered by these rules must allow the following types of inspections and inspections:

(a) Quality assurance, certification, and on-site inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) CONDUCT OF INSPECTIONS OR INVESTIGATIONS. SPD, SPD's designee, or proper authority must perform all inspections and investigations.

(3) UNANNOUNCED. Any inspection or investigation may be unannounced.

(4) PLAN OF CORRECTION. A plan of correction must be submitted to SPD for any non-compliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.670 695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 9-2009, f. & cert. ef. 7-13-09

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## 411-320-0190

### Program Review and Certification

(1) SPD REVIEW OF CDDP. SPD may review the CDDP implementation of these rules as provided for in OAR 411-320-0180.

(2) CERTIFICATE OF COMPLIANCE. If, following a SPD review, the CDDP is in substantial compliance with these rules SPD shall issue a certificate of compliance to the CDDP.

(3) SPD FOLLOW-UP. If, following a review, the CDDP or case management provider is not in substantial compliance with these rules, SPD may offer technical assistance or request corrective action. The CDDP must perform the necessary corrective measures required by and in the time specified by SPD. SPD may conduct such reviews as necessary to insure corrective action has been achieved.

Stat. Auth.: ORS 409.050, 410.070, 430.640  
Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.670 695  
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 9-2009, f. & cert. ef. 7-13-09

## 411-320-0200

### Variations

(1) CRITERIA FOR A VARIANCE. Variations that do not jeopardize individuals' health or safety may be granted to a CDDP if there is a lack of resources to meet the standards required in these rules and the alternative services, methods, concepts, or procedures proposed would result in services or systems that meet or exceed the standards. All variations must be submitted to and approved by SPD prior to implementation.

(2) VARIANCE APPLICATION. The CDDP requesting a variance must submit, in writing, an application to SPD that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) A description of the alternative practice, service, method, concept, or procedure proposed, including how the health and safety of individuals receiving services shall be protected to the extent required by these rules;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) Signed documentation from the CDDP reflecting the justification for the proposed variance.

(3) SPD REVIEW. The SPD Assistant Director must approve or deny the request for a variance.

(4) NOTIFICATION. SPD shall notify the CDDP of the decision within 45 days of the receipt of the request by the CPPD.

(5) APPEAL OF VARIANCE DENIAL. Appeal of the denial of a variance request must be made in writing to the SPD Assistant Director whose decision is final.

(6) WRITTEN APPROVAL. The CDDP may implement a variance only after written approval from SPD. The intergovernmental agreement is amended to the extent that the variance changes a term in that agreement.

Stat. Auth.: ORS 409.050, 410.070, 430.640  
Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.670 695  
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 9-2009, f. & cert. ef. 7-13-09

## Department of Justice Chapter 137

**Rule Caption:** Amends Notice of Garnishment Model Forms to Respond to Increase in Federal Disposable Earnings Exemption.

**Adm. Order No.:** DOJ 7-2009

**Filed with Sec. of State:** 6-30-2009

**Certified to be Effective:** 7-24-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 137-060-0150, 137-060-0160, 137-060-0350, 137-060-0360

**Subject:** Amends existing model garnishment forms for notices of garnishment issued by state agencies and county tax collectors.

**Rules Coordinator:** Carol Riches—(503) 378-6313

## 137-060-0150

### County Tax — Notice of Exempt Property Form

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 18.854(8)  
Stats. Implemented: ORS 18.375, 18.385, 18.600 – 18.850, 18.85 & 18.857  
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09

## 137-060-0160

### County Tax — Wage Exemption Calculation Form

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 18.854(8)  
Stats. Implemented: ORS 18.375, 18.385, 18.600 – 18.850, 18.854 & 18.857  
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09

## 137-060-0350

### Debts other than State Tax — Notice of Exempt of Property

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 18.854(8)  
Stats. Implemented: ORS 18.375, 18.385 & 18.600 – 18.855  
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09

## 137-060-0360

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[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 18.854(8)  
Stats. Implemented: ORS 18.375, 18.385 & 18.600-18.855  
Hist.: DOJ 5-2004, f. & cert. ef. 2-11-04; DOJ 3-2008, f. 1-17-08, cert. ef. 1-18-08; DOJ 9-2008, f. 4-30-08, cert. ef. 7-24-08; DOJ 7-2009, f. 6-30-09, cert. ef. 7-24-09

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**Rule Caption:** Clarifies processes involving parties' contact addresses.

**Adm. Order No.:** DOJ 8-2009

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 8-1-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 137-055-1160

**Rules Repealed:** 137-055-1180

**Subject:** OAR 137-055-1160 is amended to remove the term "address of record." This is because the rule for address of record (OAR 137-055-1180) is repealed as it is not necessary for a contact address and it is confusing to program staff. Parties will continue to be able to provide the program with a contact address that can be used in a legal proceeding or to receive other documents.

**Rules Coordinator:** Vicki Tungate—(503) 986-6086

## 137-055-1160

### Confidentiality — Finding of Risk and Order for Nondisclosure of Information

(1) For the purposes of this rule in addition to the definitions found in OAR 137-055-1020, the following definitions apply:

(a) "Claim of risk for nondisclosure of information" means a claim by a party to a paternity or support case made to the administrator, an administrative law judge or the court that there is reason to not contain or disclose the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information;

(b) "Finding of risk and order for nondisclosure of information" means a finding and order by the administrator, an administrative law judge or the court, which may be made ex parte, that there is reason to not contain or disclose the information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a) because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information.

(2) A claim of risk for nondisclosure of information may be made to the administrator by a party at any time that a child support case is open. Forms for making a claim of risk for nondisclosure of information will be available from all child support offices and be made available to other community resources. At the initiation of any legal process that would result in a judgment or administrative order establishing paternity or including a provision concerning support, the administrator will provide parties an opportunity to make a claim of risk for nondisclosure of information.

(3)(a) When a party makes a written and signed claim of risk for nondisclosure of information pursuant to section (2) of this rule, the administrator will make a finding of risk and order for nondisclosure of information unless the party does not provide a contact address pursuant to section (5) of this rule;

(b) When a party is accepted into the Address Confidentiality Program (ACP), the administrator will make a finding of risk and order for nondisclosure of information. The party's contact address will be the ACP substitute address designated by the Attorney General pursuant to OAR 137-079-0150.

(4) An administrative law judge will make a finding of risk and order for nondisclosure of information when a party makes a claim of risk for nondisclosure of information in a hearing unless the party does not provide a contact address pursuant to section (5) of this rule.

(5) A party who makes a claim of risk for nondisclosure of information under subsection (3)(a) or section (4) must provide a contact address that is releasable to the other party(ies) in legal proceedings. The claim of risk for nondisclosure of information form provided to the party by the administrator must have a place in which to list a contact address. If a requesting party does not provide a contact address, a finding of risk and order for nondisclosure of information will not be made.



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(6) When an order for nondisclosure of information has been made, the administrator must ensure that all pleadings, returns of service, orders or any other documents that would be sent to the parties or would be available as public information in a court file does not contain or must have deleted any of the identifying information specified in ORS 25.020(8)(a) or OAR 137-055-1140(6)(a). Any document sent to the court that contains any of the information specified in ORS 25.020(8) or OAR 137-055-1140(6)(a) must be in a sealed envelope with a cover sheet informing the court of the confidential nature of the contents or in the manner provided by UTCR 2.130.

(7) A finding of risk and order for nondisclosure of information entered pursuant to this rule will be documented on the child support case file and will remain in force until such time as the ACP participant or party who requested a claim of risk retracts the claim or requests dismissal in writing.

(8) A party who requested a claim of risk may retract the claim on a form provided by the administrator. When a signed retraction form is received by the administrator, the administrator will enter, or will ask the court to enter, a finding and order terminating the order for nondisclosure of information.

(9) Any information previously protected under an order for nondisclosure of information will be subject to disclosure when the order for nondisclosure of information is terminated. The retraction form provided by the administrator will advise the requestor that previously protected information may be released to the other party(ies).

(10) In cases where the administrator is not involved in the preparation of the support order or judgment establishing paternity, or when child support services under ORS 25.080 are not being provided, any claim of risk for nondisclosure of information pursuant to ORS 25.020 must be made to the court.

(11) Notwithstanding section (5) of this rule, where the court has made a finding of risk and order for nondisclosure of information and the case is receiving or subsequently receives child support services pursuant to ORS 25.080, the administrator will implement the court's finding pursuant to this rule. In such a case, the administrator will use, in order of preference, the party's contact address as contained in the court file, or the party's contact address previously provided to the Child Support Program. If no contact address is available through either of these sources, the administrator will send a written request to the party, asking that the party provide a contact address. The written request from the administrator must advise the party that if no contact address is provided within 30 days, the administrator will use, in order of preference, the party's mailing or residence address as the contact address, and the new contact address may be released to the other party(ies).

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

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 25.020, 192.820 – 192.858

Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0291; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 5-2007, f. & cert. ef. 7-2-07; DOJ 8-2009, f. 7-1-09, cert. ef. 8-1-09

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**Rule Caption:** Clarifies processes involving case assignment and credit for SSB and VA benefits.

**Adm. Order No.:** DOJ 9-2009

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 137-055-2020, 137-055-5520

**Rules Repealed:** 137-055-2040

**Subject:** OAR 137-055-2020 is amended to clarify how cases are assigned within the program and incorporates the provisions of former 137-055-2040 (which is therefore repealed). The rule also makes provisions manager approval for case transfers within the program.

OAR 137-055-5520 is amended to remove the two-year limitation on allowing credit against arrears for a child's receipt of Social Security or Veterans' Administration benefits. The rule will retain the limitation that credit cannot exceed arrears, and credit must not have already been applied.

**Rules Coordinator:** Vicki Tungate—(503) 986-6086

## 137-055-2020

### Case Assignment

(1) Except as provided in OAR 137-055-1090, the Division of Child Support (DCS) must provide services pursuant to ORS 25.080 for all chil-

dren for whom support rights are or have been assigned to the state because the child(ren) are receiving or have received cash assistance, services from the Oregon Youth Authority, foster care or medical assistance when one or both parents are absent from the benefit group.

(2) Notwithstanding section (1) of this rule, if a District Attorney (DA) is providing services pursuant to ORS 25.080(1)(b) on a case where the family, or a family member, assigns medical child support rights, the DA will continue to provide services on that case.

(3)(a) Once a case is assigned to a DCS office, barring error, it will remain assigned to a DCS office, even if no support remains assigned to the state; and

(b) The provisions of subsection (3)(a) do not apply if the DCS office to which the case is assigned is a DCS office providing services in lieu of a DA office and the case would have been assigned to a DA office under this rule.

(4) Notwithstanding the provisions of section (3), a DCS office and DA office may agree to transfer a case or may co-work a case or conclude pending legal proceedings. Before a case may be transferred from one office to another, approval must be obtained from each office manager or management equivalent and narrated on the computer record for the case.

(5) The matrix set out in Exhibit 1 is offered as an aid in applying sections (1) through (4) of this rule. [Exhibit not included. See ED. NOTE.]

(6) Sections (7) to (11) apply only to cases assigned to DA offices or to counties in which DCS offices provide DA services.

(7)(a) Except as provided in subsection (b) of this section, the DA of the applicant's county will be assigned the case and must provide services;

(b) If the obligor resides in the same county where the operative support order is entered, the DA of the order county will be assigned the case and must provide the services.

(8)(a) Except as provided in subsection (b) of this section, when continued services as required in OAR 137-055-1100 must be provided, the DA of the county in which the person receiving services resides will be assigned the case and must provide services;

(b) If the obligor resides in the same county where the operative support order is entered, the DA of the order county must provide the services.

(9) When the person applying for or receiving services resides in another state, the DA where the obligor resides must provide services, even if there is a support order in another county.

(10) When both the person applying for services and the obligor reside in another state:

(a) If there is an Oregon order, the DA of the order county must provide the services;

(b) If there is no Oregon order, the DA of the county where the child resides or where the obligor's income or property is located must provide the services;

(c) If there is no Oregon order and the obligor has no income or property located in the state, but it is anticipated that the obligee will be moving to this state, the DA of the county where the obligee is anticipated to reside must provide the services;

(d) If there is no Oregon order, the obligor has no income or property located in the state, the obligee is not anticipated to be moving to this state, but continuation of services is being provided pursuant to OAR 137-055-1100, the DA where the case was previously assigned must provide the services.

(11) The matrix set out in Exhibit 2 is offered as an aid in applying sections (7) through (10) of this rule. [Exhibit not included. See ED. NOTE.]

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

Stat. Auth.: ORS 25.080 & 180.345

Stats. Implemented: ORS 25.080

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 4-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0035; AFS 7-2002, f. & cert. ef. 4-25-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2020; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2020; DOJ 9-2009, f. & cert. ef. 7-1-09

## 137-055-5520

### Request for Credit Against Child Support Arrears for Social Security or Veterans' Benefits Paid Retroactively on Behalf of a Child

(1) In accordance with ORS 107.135 and 416.425, the purpose of this rule is to define the process for allowing a credit against child support arrears for Social Security or Veterans' benefits paid retroactively to the child, or to a representative payee administering the funds for the child's use and benefit.

(2) A request for credit against arrears under this rule may be for:

(a) A lump sum; or

(b) Monthly amounts which, when added together, equal a lump sum.

(3) As used in this rule, Social Security benefits are as defined in OAR 137-050-0320.

# ADMINISTRATIVE RULES

(4) As used in this rule, Veterans' benefits include both apportioned Veterans' benefits and Survivors and Dependents Educational Assistance, as defined in OAR 137-050-0320.

(5) The request for credit against arrears will be considered if submitted in writing and credit has not already been given for the same payments.

(6) A request for credit against a child support arrears for Social Security or Veterans' benefits paid retroactively on behalf of the child may be made either:

(a) With a request for a periodic review and modification or a substantial change in circumstance modification if there is a current support obligation for that child. The modification must have an effective date on or after October 23, 1999; or

(b) Independently of a request for a modification if the order has already been modified to reflect that the obligor receives Social Security or Veterans' benefits or there is no longer a current support obligation for the child.

(7) A party must provide documentation of the Social Security Administration (SSA) or Department of Veterans' Affairs (DVA) retroactive payment paid on behalf of the child.

(8)(a) The credit for Survivors and Dependents Educational Assistance will be a dollar for dollar credit against the child support arrears; and

(b) The credit for Social Security and apportioned Veterans' benefits may be a dollar for dollar credit against the child support arrears.

(9) Notwithstanding subsections (8)(a) and (b), the maximum credit allowed will be limited to the amount of the child support arrears. In no circumstances will the credit exceed the amount of the retroactive SSA or DVA payment made on behalf of the child.

(10) The administrator will send to the parties by regular mail notice and proposed order of the intended action, including the amount to be credited and how the amount was calculated. Such notice will advise the parties of the right to an administrative hearing regarding this action:

(a) Within 30 days from the date of this notice, a party may request an administrative hearing as specified in the notice;

(b) The request for hearing must be in writing;

(c) The only basis upon which a party may object is that:

(A) The lump sum payment was not received;

(B) The lump sum payment amount used in the calculation is not correct; or

(C) The amount of the credit is not correct because credit has already been given for all or part of the lump sum payment.

(d) Any appeal of the decision made by an administrative law judge will be to the circuit court for a hearing de novo.

(11) If no timely written request for hearing is received, the order will be filed in circuit court.

(12) If the credit determined in subsections (8)(a) and (b), is less than the amount of arrears owed per section (9), the file credit will be applied as follows:

(a) If none of the arrears are assigned to the state, the credit will be applied to the family's unassigned arrears;

(b) If there are arrears assigned to the state and the child was receiving assistance during any time period covered by the retroactive payment per the SSA or DVA determination letter, the credit will be applied in the following sequence:

(A) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(B) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance;

(C) Family's unassigned arrears;

(D) Family's conditionally assigned arrears.

(c) If there are arrears assigned to the state and the child was not receiving assistance during any time period covered by of the retroactive payment per the SSA or DVA determination letter, the credit will be applied in the following sequence:

(A) Family's unassigned arrears;

(B) Family's conditionally assigned arrears;

(C) State's permanently assigned arrears, not to exceed the amount of unreimbursed assistance;

(D) State's temporarily assigned arrears, not to exceed the amount of unreimbursed assistance.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.020, 107.135 & 416.425

Hist.: AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0159; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5520; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5520; 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 9-2009, f. & cert. ef. 7-1-09

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**Rule Caption:** Exempt technology transfer contracts and certain other contracts from legal review requirements.

**Adm. Order No.:** DOJ 10-2009

**Filed with Sec. of State:** 7-2-2009

**Certified to be Effective:** 7-6-09

**Notice Publication Date:** 6-1-2009

**Rules Adopted:** 137-045-0052

**Rules Amended:** 137-045-0050

**Rules Repealed:** 137-045-0050(T)

**Subject:** Amendment of OAR 137-045-0050 exempts technology transfer contracts and related agreements with the Oregon University System ("OUS") from the legal sufficiency approval requirements under ORS 291.047. The Attorney General has determined that the degree of risk assumed by OUS under such contracts is not materially reduced by legal review of individual contracts within the class. Adoption of OAR 137-045-0052 exempts all contracts included under OAR 137-045-0050(1)-(18) & (20) from the review requirements under ORS 190.430 and 190.490.

**Rules Coordinator:** Carol Riches—(503) 378-6313

## 137-045-0050

### Exemptions from Legal Sufficiency Approval Based on Risk Assessment

The Attorney General has determined that the degree of risk assumed by Agencies is not materially reduced by legal review and approval of individual Public Contracts within the types of Public Contracts listed below. The Attorney General exempts from the legal sufficiency approval requirement under the Act the Public Contracts falling within the types of Public Contracts listed below:

(1) **Adoption Assistance Agreements.** A document of understanding between the Department of Human Services and adoptive parents of a special needs child as defined under title IV-E at section 473(c) of the Social Security Act.

(2) **Amendments to Contracts Other than Public Improvement and Loan Contracts.** A written amendment to a Public Contract that is not a Public Improvement or loan Contract, if all of the following apply:

(a) The Public Contract being amended was approved for legal sufficiency.

(b) The amendment modifies only one or both of the following and related payment obligations as necessary:

(A) The Statement of Work to require the contractor to provide additional or fewer goods, services or other work within the general scope of the Last Reviewed Contract.

(B) The expiration date of the Public Contract; Technical Specifications; time, place, quantity or form of delivery, or price.

(c) The aggregate increase in payments scheduled to be made by the Agency, or the aggregate decrease in payments scheduled to be received by the Agency, under the amendment, and all prior amendments exempted from the legal sufficiency approval requirement under this section subsequent to the Last Reviewed Contract, does not exceed the greater of:

(A) \$100,000; or

(B) Any particular amounts specified in writing at the time of approval by the Assistant Attorney General who provided legal sufficiency approval of the Last Reviewed Contract.

(3) **Amendments to Public Improvement Contracts.**

(a) A written change order to a Public Improvement Contract, other than as provided in subsections (b) and (c) of this section, if all of the following apply:

(A) The original Public Improvement Contract was approved for legal sufficiency.

(B) The change order is within the general scope of the Public Improvement Contract.

(C) The change order is implemented in accordance with the change order provisions of the Public Improvement Contract.

(D) Any increase in Agency payments under the change order does not exceed ten percent (10%) of the total amount of Agency payments scheduled to be made under the Last Reviewed Contract, and the aggregate increase in Agency payments scheduled to be made under that change order and all prior change orders subsequent to the Last Reviewed Contract do not exceed thirty-three percent (33%) of that total amount.

(b) The amendment (whether in the form of a change order or amendment) is modifying the guaranteed maximum price (GMP) in a Construction Manager/General Contractor (CM/GC) contract (as defined in OAR 137-040-0510) if all of the following apply:

(A) The original contract and any amendment that established the original GMP were approved for legal sufficiency.

(B) The amendment is made under the terms of the Last Reviewed Contract.

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(C) The amendment does not increase the GMP by more than \$500,000 or five percent (5%) of the GMP established under the Last Reviewed Contract (whichever is less).

(D) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the GMP established under the Last Reviewed Contract by more than ten percent (10%).

(c) The amendment (whether in the form of a change order or amendment) is modifying the GMP in a Design-Build contract (as defined in OAR 137-040-0510) or in the construction phase of an energy savings performance contract (as defined in ORS 279A.010(1)(g)) if all of the following apply:

(A) The original contract and any amendment that established the original GMP were approved for legal sufficiency.

(B) The amendment is made under the terms of the Last Reviewed Contract.

(C) The amendment does not increase the GMP by more than \$500,000 or five percent (5%) of the GMP established under the Last Reviewed Contract (whichever is less).

(D) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the GMP established under the Last Reviewed Contract by more than ten percent (10%) or \$500,000 (whichever is less).

#### (4) Bonds and Confirmation Statements.

(a) A Public Contract entered into, issued or established in connection with the issuance of a bond or other borrowing of the State of Oregon, including an interest rate exchange agreement and any associated confirmation statement, if the Oregon State Treasurer has issued or authorized the bond or other borrowing obligation to which the Public contract relates and if bond counsel appointed in accordance with applicable law has issued an approving opinion for the benefit or use of purchasers of the bond or other borrowing with respect to the enforceability of the bond or other borrowing upon closing of the transaction.

(b) A confirmation statement associated with an Agency's investment-related interest rate or currency swap agreement or other investment transaction, if the agreement under which the confirmation statement arises has been approved for legal sufficiency or is exempt from legal sufficiency approval.

(5) **Employment Agreements.** Employment agreements; collective bargaining agreements negotiated under applicable federal or state laws, including collective bargaining agreements entered into pursuant to ORS 410.612; or notices of appointment provided in accordance with OAR chapter 580, division 021. Agreements with third-party providers of temporary services are not exempt.

(6) **Federal Contracts.** A contract with a federal agency consisting substantially of provisions prescribed in Federal Acquisition Regulations or federal agency supplemental acquisition clauses (48 CFR), except a contract allowed under Section 211 of the federal E-Government Act of 2002.

(7) **Federal Cooperative Agreements.** A Federal Cooperative Agreement.

(8) **Federal Grants.** A grant from a federal agency under which an Agency is the grantee, provided that the Agency has a grants coordinator.

(9) **Federal Pass-Through Grants.** A grant under which an Agency passes through to another recipient all or a portion of the money or property received by the Agency under a grant from a federal agency, provided that:

(a) The Agency does not add to or modify the federal grant except as necessary to provide for proper administration; and

(b) The grant contains a clause substantially in the following form: "The recipient of grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for recipient's breach of the conditions of the grant, and shall, upon recipient's breach of grant conditions that causes or requires the State of Oregon to return funds to the grantor, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to pay to grantor."

(10) **Foster Care Agreements.** An agreement between the Department of Human Services or the Oregon Youth Authority and a foster parent for the provision of foster care to an individual under the age of 21, or a youth placed with the Department of Human Services or Oregon Youth Authority pursuant to ORS 419C.478.

(11) **Home Care Services Agreements.** An agreement for the provision of and payment for home care services as defined in ORS 410.600(6).

(12) **Membership Agreements.** A Public Contract that calls for the payment of dues or fees in consideration of membership of individual officers, employees or agents of the State of Oregon in a club, institution, or association in which the State of Oregon acquires no ownership interest.

(13) **Non-Negotiable Public Contracts.** A Non-Negotiable Public Contract.

(14) **Prescribed Contracts.** A Public Contract that is in the form prescribed in Procurement Documents and any conditions on authorization for release under OAR 137-045-0035. Prescribed Contracts do not vary from

the form prescribed in Procurement Documents other than to fill in blanks in the form, as is commonly done with invitations to bid for goods and services other than personal services.

(15) **Purchase Order Contracts.** A Public Contract formed by a purchase order or a similar ordering instrument for the purchase of goods or services under a Price Agreement, provided that the Price Agreement was approved by an Assistant Attorney General and the purchase order or similar instrument complies with any conditions of the approval.

(16) **Reinstated Public Contracts.** A Public Contract entered into solely for the purpose of reinstating an expired Public Contract in accordance with OAR 125-246-0570 or 125-248-0310 if, when required under the Act, the expired Public Contract and all amendments to the expired Public Contract were approved for legal sufficiency.

(17) **Settlement Agreements.** Agreements settling disputed claims, provided that they do not have the effect of amending Public Contracts that are subject to the legal sufficiency approval requirement.

(18) **Amendments to Loan Contracts.** A written amendment to a Public Contract solely for an Agency loan of money to another party that requires repayment to the Agency, if all of the following apply:

(a) The Public Contract being amended was approved for legal sufficiency.

(b) The amendment modifies only:

(A) The description of the project being financed, but only to the extent that the modified project remains eligible for financing by the same source of funds as the project before modification; or

(B) Business terms in the Public Contract which:

(i) Except as provided in subsection (18)(c), do not increase or decrease the total principal repayment obligations under the Public Contract;

(ii) Change the interest rate or payment due dates, except for the final maturity date; or

(iii) Describe the non-financial terms and conditions of performance, such as performance start or completion dates for the project being financed or job creation or retention requirements.

(c) The aggregate increase in the loan amount under the amendment or the aggregate decrease in principal payments scheduled to be received by the Agency, and all prior amendments exempted from the legal sufficiency approval requirement subsequent to the Last Reviewed contract, does not exceed the greater of:

(A) \$100,000; or

(B) Any particular amounts specified in writing at the time of approval by the Assistant Attorney General who provided legal sufficiency approval of the Last Reviewed Contract.

(19) **Personal Services Contracts, Information Technology Contracts and Architectural and Engineering Services Contracts** not calling for or providing for payment in excess of \$100,000.

(20) **Technology Transfer and Related Agreements.** Agreements that govern the transfer of tangible research materials between Oregon University System ("OUS") and another organization, agreements with a predominant purpose to grant a license to OUS intellectual property and related agreements. Related agreements are agreements to manage interests in OUS intellectual property, agreements to combine management of interests in OUS intellectual property with management of interests in intellectual property from other parties, agreements that transfer ownership of intellectual property between OUS and other parties, agreements governing revenue sharing from licensing, and confidentiality agreements regarding intellectual property.

Stat. Auth.: ORS 291.047

Stats. Implemented: ORS 291.047(4)

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0050(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03; DOJ 19-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 2-2009(Temp), f. & cert. ef. 2-26-09 thru 8-25-09; DOJ 10-2009, f. 7-2-09, cert. ef. 7-6-09

## 137-045-0052

### Exemptions from ORS 190.430 and ORS 190.490 review

Contracts that are exempt under OAR 137-045-0050(1)-(18) and (20) are also exempt from the Attorney General review requirements under ORS 190.430 and 190.490.

Stat. Auth. ORS 190.430 & 190.490

Stats. Implemented: ORS 190.430 & 190.490

Hist.: DOJ 10-2009, f. 7-2-09, cert. ef. 7-6-09

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## Department of Public Safety Standards and Training Chapter 259

**Rule Caption:** Abolishes Certified Retired Officer Program.

**Adm. Order No.:** DPSST 5-2009(Temp)

**Filed with Sec. of State:** 6-26-2009

**Certified to be Effective:** 6-26-09 thru 12-2-09



# ADMINISTRATIVE RULES

## Notice Publication Date:

**Rules Amended:** 259-008-0068

**Subject:** Abolishes Certified Retired Officer program based on lack of demonstrated need for the program.

**Rules Coordinator:** Bonnie Narvaez—(503) 378-2431

## 259-008-0068

### Retired Police Officer

(1) Definitions. “Honorably retired” means reaching the state of Oregon’s recognized retirement age and retiring in good standing from active service as a police officer with a minimum of five years of full-time law enforcement experience in Oregon.

(a) “Retired Police Officer” means an honorably retired police officer who may carry a DPSST Retirement card.

(b) “Certified Retired Police Officer” means an honorably retired police officer who obtained certification prior to March 1, 2009.

(2) Certified Retired Police Officer Status.

(a) No certified retired police officer certifications will be issued after February 28, 2009.

(b) The certification of an honorably retired police officer that met the minimum standards for certified retired officer status prior to March 1, 2009, will automatically lapse three years from the initial date of issue of the retired police officer certification. To have police officer authority, a certified honorably retired police officer must be affiliated with and under the direction of a law enforcement agency.

(c) A certified honorably retired police officer that resumes full-time, permanent employment with a law enforcement agency, in a certified discipline, must meet active police certification requirements as required by OAR 259-008-0060. The law enforcement agency must submit the form F-4 and F-7 to the Department when a certified honorably retired police officer is hired on a permanent, full-time basis.

(3) The process for obtaining a police officer Retirement Card shall be as stated in OAR 259-008-0100.

(4) Denial or revocation of a Retired Police Officer Certification shall be handled in the same manner as active police officer certification pursuant to OAR 259-008-0070.

Stat. Auth.: ORS 181.667

Stats. Implemented: ORS 181.667

Hist.: DPSST 2-2004, f. & cert. ef. 1-16-04; DPSST 2-2005(Temp), f. 3-29-05, cert. ef. 4-1-05 thru 9-28-05; DPSST 8-2005, f. & cert. ef. 9-28-05; DPSST 5-2009(Temp), f. & cert. ef. 6-26-09 thru 12-21-09

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**Rule Caption:** Medical Standards for Telecommunicators/EMD, Issuance of DPSST numbers and Eliminates Certified Retired Officer Program.

**Adm. Order No.:** DPSST 6-2009

**Filed with Sec. of State:** 7-13-2009

**Certified to be Effective:** 7-13-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 259-008-0011, 259-008-0020, 259-008-0068

**Rules Repealed:** 259-008-0068(T)

**Subject:** Amends current medical standards for Telecommunicators/EMD’s relating to speaking acuity to clarify the Department’s intent to require a physician completing an F-2T medical examination to indicate whether an applicant exhibits normal speech patterns.

Amends rule to clarify those instances when a DPSST number will be issued; and

Establishes process to eliminate certified retired officer program. Phases out currently certified retired officers and prohibits issuance of new certifications for retired officers who honorably retire on or after February 28, 2009.

**Rules Coordinator:** Bonnie Narvaez—(503) 378-2431

## 259-008-0011

### Minimum Standards for Employment as a Telecommunicator and Emergency Medical Dispatcher

(1) On or before the date of employment, each telecommunicator and emergency medical dispatcher shall be fingerprinted on standard applicant fingerprint cards.

(a) The hiring agency, if a public agency, is responsible for fingerprinting and shall forward two (2) cards to the Oregon State Police Identification Services Section for processing and assignment of identification number.

(b) If the hiring agency is a private agency it is responsible for fingerprinting and shall forward two (2) cards to the Department along with the appropriate fee.

(A) Applicant’s fingerprints will be retained and kept on file with the Oregon State Police Identification Services Section.

(B) The Oregon State Police Identification Services Section shall notify the Department and the employing agency of any criminal record disclosed through processing the applicant’s fingerprint card.

(C) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department shall comply with the most current requirements.

(D) If the fingerprint clearance has not been obtained prior to submission of the application for certification, a criminal history affidavit provided by the Department shall be completed and returned to the Department by the applicant pending fingerprint clearance.

(2) Criminal Records. No telecommunicator or emergency medical dispatcher shall have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one (1) year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(3) Moral Fitness (Professional Fitness). All telecommunicators and emergency medical dispatchers must be of good moral fitness. 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 as described in OAR 259-008-0070(4).

(4) Education:

(a) Applicants for the position of a telecommunicator or emergency medical dispatcher will be required to furnish documentary evidence of one of the following:

(A) High School diploma; or

(B) Successful completion of the General Educational Development (GED) Test.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above shall consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(5) Reading and Writing Standard. Before beginning basic telecommunicator or Emergency Medical Dispatcher (EMD) training or challenging basic telecommunicator training, each applicant shall provide evidence to DPSST that the applicant has attained a minimum of a 12th grade reading and writing level in the English language.

(a) The hiring agency is responsible for administering a reading and writing instrument, approved by DPSST, and shall forward the results to DPSST on an application for training (Form F-5) prior to the applicant being admitted to basic telecommunicator or EMD training.

(b) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by DPSST under the provisions of OAR 259-008-0045 are exempt from completing the 12th grade reading/writing test prior to attending a course identified in this section.

(6) Physical Examination. All Telecommunicators and Emergency Medical Dispatcher applicants must be examined by a licensed physician.

(a) The medical examination must be completed not more than 180 days prior to initial offer of employment, nor more than 90 days after initial offer of employment, and must conform to applicable standards of the Americans with Disabilities Act (ADA). Title 42 USC 12101.

(b) Individuals who have had a successfully completed physical examination (while at the same employer) and are selected for a certifiable position in a discipline in which the individual is not yet certified must complete and pass a new physical examination.

(c) The Department will not require a new physical examination when a Telecommunicator or Emergency Medical Dispatcher obtains employment, or re-employment, in the same discipline if the Telecommunicator or Emergency Medical Dispatcher:

(A) Has had a successfully completed a physical examination, and

(B) Is currently certified; or

(C) Is currently employed full-time in another jurisdiction and has successfully completed a comparable physical examination in that jurisdiction.

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(d) Notwithstanding subsection (c), a medical examination may be required by a hiring agency at its discretion.

(e) Telecommunicator and Emergency Medical Dispatcher applicants must meet the following criteria:

(A) Visual Acuity. Corrected vision must be at least 20/30 (Snellen) when tested using both eyes together.

(B) Color Vision. Red or green deficiencies may be acceptable, providing the applicant can read at least nine (9) of the first thirteen (13) plates of the Ishihara Test (24 Plate Edition). Applicants who fail the Ishihara test can meet the color vision standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer and approved by DPSST. The results of the field test and the methods for testing must be maintained by the employing agency.

(i) Any employing agency that conducts a field test to meet the color vision standard must also complete a Department approved affidavit attesting that the applicant can either correctly discriminate colors or is able to successfully perform the required tasks of a Telecommunicator or Emergency Medical Dispatcher, notwithstanding the applicant's inability to correctly discriminate colors.

(ii) Any affidavit required by (i), that the Department receives and accepts, is non-transferable to any subsequent employer and may not be used by any other entity for certification purposes.

(iii) Notwithstanding subsection (c) of this rule, each employer must complete an agency-specific field test and a Department approved affidavit as described in subsection (i) of this section for any Telecommunicator or Emergency Medical Dispatcher who previously met the color vision standard by completing a field test.

(C) Peripheral Vision. Visual Field Performance must be 120 degrees in the horizontal meridian combined.

(f) Applicants for the position of Telecommunicator or Emergency Medical Dispatcher must have sufficient hearing in both ears to perform essential tasks without posing a direct threat to themselves or others. The applicant must meet National Emergency Number Association (NENA) hearing standard 54-002 (June 10, 2006).

(g) Applicants for the position of Telecommunicator or Emergency Medical Dispatcher must be able to use vocal cords and exhibit normal speech patterns, sufficient to perform speaking-related essential tasks.

(7) If further medical examination is required, it will be at the expense of the applicant or the hiring authority.

(8) All Telecommunicator and Emergency Medical Dispatcher applicants must submit a current-version DPSST Medical Examination Report for Telecommunicators and Emergency Medical Dispatchers (DPSST Form F-2T), or a medical report completed by a licensed physician containing at a minimum the information on Form F-2T. This Report will be furnished to the examining physician by the hiring agency.

(9) A copy of the Medical Examination Report must be sent to the Department prior to acceptance into a basic course, or any course where such report is required by the Department.

(10) The Department may require an applicant offered conditional employment to take a subsequent examination by a licensed physician of the Department's choice at the expense of the applicant or the hiring authority.

(11) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of a Telecommunicator or Emergency Medical Dispatcher's duties. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(12) A person or department head requesting a waiver of any physical requirement set forth in section (11) of this rule must submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(a) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(b) If the Board denies a request for a waiver of any physical requirement set forth in section (8) of this rule, the Department will issue Notice and proceed as provided in section (13) of this rule.

(13) Contested Case Hearing Process for denial of waiver.

(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the public safety professional or individual.

(c) Response Time: A party who has been served with a "Contested Case Notice" has 60 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(d) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver.

(e) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Office of Administrative Hearings.

(f) Proposed Order: The assigned Administrative Law Judge will prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(g) Exceptions and Arguments: A party must file specific written exceptions and arguments with the Department no later than 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order.

(A) The Department may extend the time within which the exceptions and arguments must be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments must serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

(h) Final Order: The Department will issue a final order if a public safety professional or individual fails to file exceptions and arguments in a timely manner.

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

Stat. Auth.: ORS 181.640, 181.644 & 183.341

Stats. Implemented: ORS 181.640, 181.644 & 183.341

Hist.: BPSST 1-2002, f. & cert. ef. 2-6-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04;

DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 10-2007,

f. & cert. ef. 10-15-07; DPSST 5-2008, f. & cert. ef. 4-15-08; DPSST 21-2008, f. 12-15-08,

cert. ef. 1-1-09; DPSST 6-2009, f. & cert. ef. 7-13-09

## 259-008-0020

### Personnel Action Reports

(1) All law enforcement units and public or private safety agencies must submit the name and other pertinent information concerning any newly appointed public safety professional to the Department on a Personnel Action Report (DPSST Form F-4) within ten (10) business days after employment.

(a) A Department (DPSST) number will be established for each newly appointed employee identified on a Personnel Action Report (DPSST Form F-4) if:

(A) The individual is employed in a certifiable position as a police officer, corrections officer, parole and probation officer, telecommunicator or emergency medical dispatcher;

(B) The individual is employed as a reserve police officer; or

(C) An individual's employer has submitted a written request identifying a demonstrated law enforcement need for an employee to obtain a DPSST number and the Department has approved the request. These positions may include, but are not limited to:

(i) A federal officer authorized by the Department to make arrests under ORS 133.245;

(ii) An individual who operates an Intoxilyzer or other law enforcement device for which a DPSST number is necessary; or

(iii) An individual who is required to file a police or other criminal justice report for which a DPSST number is necessary.

(b) No DPSST number will be assigned to an individual who has not been identified as a newly appointed public safety professional unless approved by the Department.

(2) Whenever public safety personnel resign, retire, or terminate employment, are promoted, demoted, discharged, deceased, take a leave of absence, or transfer within a law enforcement unit, or private or public safety agency, the department head shall report this information to the Department on a Personnel Action Report (DPSST Form F-4) within ten (10) business days of the action.

(3) All applicable sections of the Personnel Action Report (DPSST Form F-4) must be completed and signed by the department head or an authorized representative.

(4) All applicants shall furnish to the Department on a Personnel Action Report (DPSST Form F-4) their social security number. The social security number is used to accurately identify the applicant during computerized criminal history (CCH) and Department record checks and to verify information provided by public safety officers under the Act in connection with revocation proceedings.

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[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 181.640  
Stats. Implemented: ORS 181.640  
Hist.: PS 12, f. & ef. 12-19-77; Renumbered from 259-010-0050, PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0026, 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; BPSST 2-2001, f. & cert. ef. 2-8-01; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 6-2009, f. & cert. ef. 7-13-09

## 259-008-0068

### Retired Police Officer

(1) Definitions. "Honorably retired" means reaching the state of Oregon's recognized retirement age and retiring in good standing from active service as a police officer with a minimum of five years of full-time law enforcement experience in Oregon.

(a) "Retired Police Officer" means an honorably retired police officer who may carry a DPSST Retirement card.

(b) "Certified Retired Police Officer" means an honorably retired police officer who obtained certification prior to March 1, 2009.

(2) Certified Retired Police Officer Status.

(a) No certified retired police officer certifications will be issued after February 28, 2009.

(b) The certification of an honorably retired police officer that met the minimum standards for certified retired officer status prior to March 1, 2009, will automatically lapse three years from the initial date of issue of the retired police officer certification. To have police officer authority, a certified honorably retired police officer must be affiliated with and under the direction of a law enforcement agency.

(c) A certified honorably retired police officer that resumes full-time, permanent employment with a law enforcement agency, in a certified discipline, must meet active police certification requirements as required by OAR 259-008-0060. The law enforcement agency must submit the form F-4 and F-7 to the Department when a certified honorably retired police officer is hired on a permanent, full-time basis.

(3) The process for obtaining a police officer Retirement Card shall be as stated in OAR 259-008-0100.

(4) Denial or revocation of a Retired Police Officer Certification shall be handled in the same manner as active police officer certification pursuant to OAR 259-008-0070.

Stat. Auth.: ORS 181.667

Stats. Implemented: ORS 181.667

Hist.: DPSST 2-2004, f. & cert. ef. 1-16-04; DPSST 2-2005(Temp), f. 3-29-05, cert. ef. 4-1-05 thru 9-28-05; DPSST 8-2005, f. & cert. ef. 9-28-05; DPSST 5-2009(Temp), f. & cert. ef. 6-26-09 thru 12-21-09; DPSST 6-2009, f. & cert. ef. 7-13-09

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**Rule Caption:** Adopts NFPA 472 (2008 Edition) and Amends Denial and Revocation Rules for Fire Service Professionals.

**Adm. Order No.:** DPSST 7-2009

**Filed with Sec. of State:** 7-13-2009

**Certified to be Effective:** 7-13-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 259-009-0005, 259-009-0059, 259-009-0062, 259-009-0070

**Subject:** Defines cargo Tank Specialty, First responder, Hazardous Materials Safety Officer, Hazardous Materials Technician, Incident Commander, Intermodal Tank Specialty, Marine Tank Vessel Specialty, Operations Level Responder and Tank Car Specialty.

Amends minimum standards for employment as a Fire Service Professional to include the submittal of fingerprints when an individual is identified in the Oregon LEDS system as a multi-source offender.

Adopts the provisions of NFPA Standard 472, 2008 Edition, entitled "Standards for Hazardous Materials and Weapons of Mass Destruction."

Amends Mandatory Grounds for Denying or Revoking Certification of a Fire Service Professional or Instructor to include the entire list of current Measure 11 offenses within the text of the rule and includes an attempt to commit a Measure 11 offense as a discretionary offense.

**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 supervises 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



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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.

(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 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.

(34) "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)

(35) "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)

(36) "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)

(37) "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)

(38) 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.

(39) 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.

(40) 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.

(41) "NFPA Marine Land-Based Fire Fighter" means a member of a fire service agency who meets the job performance requirements of NFPA 1005.

(42) "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.

(43) "Service Delivery" means to be able to adequately demonstrate, through job performance, the knowledge, skills, and ability of a certification level.

(44) "Staff" are those employees occupying full-time, part-time, and/or temporary positions with the Department.

(45) "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.

(46) "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.

(47) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.705).

(48) "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.

(49) "Track" means a field of study required for certification.

(50) "Waiver" means to refrain from pressing or enforcing a rule.

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

## 259-009-0059

### Minimum Standards for Employment as a Fire Service Professional

(1) No person may be certified as a Fire Service Professional who has not yet attained 18 years of age.

(2) Only training received after attaining the age of 16 may be applied for certification purposes.

(3) DPSST Fire Service Agency affiliation may be attained after the age of 16 via submission of a PAF-1 (Personnel Action Form).

(4) Fingerprints. Any individual utilized by a fire service agency that is identified in the Oregon LEDS system as a multi-source offender is required to be fingerprinted on standard applicant fingerprint cards. The hiring agency is responsible for fingerprinting and must forward one (1) card, with the appropriate fees to the Department.

(5) Notification of Conviction:

(a) A fire service professional or instructor who is convicted of a crime, as identified in OAR 259-009-0070, while employed by a fire service agency must notify the agency head within five (5) business days of the conviction.

(b) When an agency receives notification of a conviction from a fire service professional, instructor, or another source, the must notify the Department within 30 calendar 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.

Stat. Auth.: ORS 181.610 & 181.640

Stats. Implemented: ORS 181.610 & 181.640

Hist.: DPSST 1-2006(Temp), f. & cert. ef. 1-23-06 thru 6-1-06; DPSST 5-2006, f. & cert. ef. 5-3-06; DPSST 7-2009, f. & cert. ef. 7-13-09

## 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, 2002 Edition, entitled "Fire Fighter Professional Qualifications";

(A) "Authority having jurisdiction" shall mean 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, 1997 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.

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(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 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 1998, entitled "Professional Qualifications for Fire Inspector and Plan Examiner" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

(i) November 1, 2000, all new certifications will be based on NFPA 1031.

(ii) November 1, 2000, through January 1, 2005, any certified Fire Prevention/Investigation Officer I may become certified at NFPA Fire Inspector I.

(iii) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer II will be certified as an NFPA Fire Inspector II.

(iv) November 1, 2000, anyone certified as an Oregon Fire Prevention Officer III will be certified as an NFPA Fire Inspector III.

(v) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until January 1, 2005.

(B) All applicants for certification as an NFPA Fire Inspector I shall:

(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.

(C) All applicants for certification as an NFPA Fire Inspector II shall:

(i) Hold a certification as a Fire Inspector I; and

(ii) Successfully complete a Department approved Task Book.

(D) All applicants for certification as an NFPA Fire Inspector III shall:

(i) Hold a certification as a Fire Inspector II; and

(ii) Successfully complete a Department approved Task Book.

(E) Task books shall be monitored by a Field Training Officer approved by the Department. The Field Training Officer shall be certified at or above the level being monitored and have at least 5 years inspection 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 1998, entitled "Professional Qualifications for Fire Investigator" are adopted subject to the following definitions and modifications:

(A) Transition Phase:

(i) Beginning November 1, 2000, all new certifications will be based on NFPA 1033.

(ii) November 1, 2000, anyone certified as an Oregon Fire Investigator II will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator II. No new Oregon Fire Investigator II certificates will be issued after January 1, 2005.

(iii) November 1, 2000, anyone certified as an Oregon Fire Investigator III will be certified as an NFPA Fire Investigator and will continue to be recognized as an Oregon Fire Investigator III. No new Oregon Fire Investigator III certificates will be issued after January 1, 2005.

(iv) An individual who has been working toward certification using Fire Prevention/Investigation Officer (SFM-P-7 10/88) may complete certification based on that standard until January 1, 2005.

(B) All applicants for certification as a Fire Investigator shall successfully complete a Department approved Task Book prior to passing a written certification exam administered by the Department. Exception: Anyone holding a valid IAAI Fire Investigator Certification is exempt from taking the Department's Fire Investigator written exam.

(C) Task books shall be monitored by a Field Training Officer approved by the Department. The Field Training Officer shall be certified at or above the level being monitored and have at least 5 years fire investigation experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department Staff.

(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.

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(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.

(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 shall first be certified as an NFPA Fire Fighter II.

(C) An applicant would need to 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 shall be completed before certification is awarded.

(1) Wildland Interface Fire Fighter, Wildland Interface Engine Boss/Officer, Wildland Strike Team leader, Wildland Division/Group Supervisor (DPSST Wildland Interface Certification Guide, Revised September, 2003).

(m)(A) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book.

(B) 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.

(n) Certification guide for Wildland Fire Investigator (August, 2005).

(o) 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.

(p) 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.

(q) 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



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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;
- (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.

(r) 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: 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

## 259-009-0070

### Denial/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to insure the highest levels of professionalism and discipline. These standards shall be upheld at all times unless the Board determines that neither the safety of the public or respect of the profession is compromised.

(2) For purposes of this rule, the following definitions will apply:

(a) "Denial" or "Deny" means the refusal to grant a fire service certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (9) of this rule.

(b) "Discretionary Conviction" means a conviction identified in OAR 259-009-0070(6).

(c) "Discretionary Disqualifying Misconduct" means misconduct identified in OAR 259-009-0070(4).

(d) "Revocation" or "Revoke" means to withdraw the certification of a fire service professional or instructor for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in subsection (9) of this rule.

*Grounds for Mandatory Denial or Revocation of Certification.*

(3) Mandatory Grounds for Denying or Revoking Certification of a Fire Service Professional or Instructor:

(a) The Department must deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing if requested, based upon a finding that:

(A) The fire service professional or instructor has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a

crime that, if committed in this state would constitute a crime listed in 137.700. Those crimes are:

163.095 Attempted Aggravated Murder;

163.115 Attempted Murder;

163.115 Murder;

163.118 Manslaughter in the First Degree;

163.125 Manslaughter in the Second Degree;

163.149 Aggravated Vehicular Homicide;

163.175 Assault in the Second Degree;

163.185 Assault in the First Degree;

163.225 Kidnapping in the Second Degree;

163.235 Kidnapping in the First Degree;

163.365 Rape in the Second Degree;

163.375 Rape in the First Degree;

163.395 Sodomy in the Second Degree;

163.405 Sodomy in the First Degree;

163.408 Sexual Penetration in the Second Degree;

163.411 Sexual Penetration in the First Degree;

163.427 Sexual Abuse in the First Degree;

163.670 Using a Child in a Display of Sexually Explicit Conduct

164.325 Arson in the First Degree (See exception under OAR 259-009-0070(4));

164.405 Robbery in the Second Degree;

164.415 Robbery in the First Degree;

167.017 Compelling Prostitution.

(B) The fire service professional or instructor has been discharged for cause from employment as a fire service professional or instructor.

(b) For purposes of this rule, "discharged for cause", means an employer initiated termination of employment for any of the following reasons after a final determination has been made. If, after service by the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the fire service professional or instructor provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department may stay further action pending a final determination.

(i) Dishonesty: Includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification;

(ii) Disregard for the Rights of Others: Includes violating the constitutional or civil rights of others, conduct demonstrating a disregard for the principles of fairness, respect for the rights of others, protecting vulnerable persons, and the fundamental duty to protect and serve the public.

(iii) Gross Misconduct means an act or failure to act that creates a danger or risk to persons, property, or to the efficient operation of the agency, recognizable as a gross deviation from the standard of care that a reasonable fire service professional or instructor would observe in a similar circumstance;

(iv) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a fire service professional or instructor that remedial measures have been unable to correct.

(v) Misuse of Authority: Includes abuse of public trust, abuse of authority to obtain a benefit, avoid a detriment, or harm another, and abuse under the color of office.

*Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification.*

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Fire Service Professional or Instructor:

(a) The Department may deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

(A) The fire service professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The fire service professional or instructor has been convicted of an offense listed in subsection (4)(c), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.

(b) For purposes of this rule, the Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

(A) Category I: Honesty. Honesty includes fairness and straightforwardness of conduct; integrity, adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.

(B) Category II: Professionalism. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.

(C) Category III: Justice. Justice includes just treatment, the quality or characteristics of being just, impartial, or fair; integrity and honesty.

(c) Pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the following crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification:

162.015 (Bribe Giving) — Category III;

162.025 (Bribe Receiving) — Category III;

162.065 (Perjury) — Category I;

162.117 (Public Investment Fraud) — Category I;

162.155 (Escape in the Second Degree) — Category II;

162.165 (Escape in the First Degree) — Category II;

162.185 (Supplying Contraband) — Category II;

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162.205 (Failure to Appear in the First Degree) — Category II;  
162.265 (Bribing a Witness) — Category III;  
162.275 (Bribe Receiving by a Witness) — Category III;  
162.285 (Tampering with a Witness) — Category III;  
162.305 (Tampering with Public Records) — Category III;  
162.325 (Hindering Prosecution) — Category III;  
162.355 (Simulating Legal Process) — Category III;  
162.365 (Criminal Impersonation) — Category I;  
162.367 (Criminal Impersonation of a Peace Officer) — Category I;  
162.415 (Official Misconduct in the First Degree) — Category II;  
163.145 (Criminally Negligent Homicide) — Category III;  
163.160 (Assault in the Fourth Degree) — Category III;  
163.165 (Assault in the Third Degree) — Category III;  
163.205 (Criminal Mistreatment in the First Degree) — Category III;  
163.207 (Female Genital Mutilation) — Category III;  
163.208 (Assaulting a Public Safety Officer) — Category III;  
163.213 (Unlawful Use of an Electrical Stun Gun, Tear Gas or Mace in the First Degree) — Category II;  
163.245 (Custodial Interference in the Second Degree) — Category III;  
163.257 (Custodial Interference in the First Degree) — Category III;  
163.275 (Coercion) — Category III;  
163.355 (Rape in the Third Degree) — Category III;  
163.425 (Sexual Abuse in the Second Degree) — Category III;  
163.465 (Public Indecency) — Category III;  
163.515 (Bigamy) — Category III;  
163.525 (Incest) — Category III;  
163.535 (Abandonment of a Child) — Category III;  
163.537 (Buying or Selling a Person Under 18 years of age) — Category III;  
163.547 (Child Neglect in the First Degree) — Category III;  
163.555 (Criminal Non-Support) — Category III;  
163.670 (Using Child in Display of Sexually Explicit Conduct) — Category III;  
163.684 (Encouraging Child Sexual Abuse in the First Degree) — Category III;  
163.686 (Encouraging Child Sexual Abuse in the Second Degree) — Category III;  
163.688 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) — Category III;  
163.689 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) — Category III;  
163.732 (Stalking) — Category III;  
163.750 (Violating Court's Stalking Protective Order) — Category III;  
164.045 (Theft in the Second Degree) — Category I;  
164.055 (Theft in the First Degree) — Category I;  
164.057 (Aggravated Theft in the First Degree) — Category I;  
164.075 (Theft by Extortion) — Category I;  
164.125 (Theft of Services: by Deception) — Category I;  
164.135 (Unauthorized Use of a Vehicle) — Category I;  
164.140 (Criminal Possession of Rented or Leased Personal Property: felony only) — Category I;  
164.170 (Laundering a Monetary Instrument) — Category I;  
164.172 (Engaging in a Financial Transaction in Property Derived from Unlawful Activity) — Category I;  
164.215 (Burglary in the Second Degree) — Category III;  
164.225 (Burglary in the First Degree) — Category III;  
164.235 (Possession of a Burglary Tool or Theft Device) — Category III;  
164.315 (Arson in the Second Degree) — Category II;  
164.325 (Arson in the First Degree — If not a conviction under ORS 137.700) — Category II;  
164.365 (Criminal Mischief in the First Degree) — Category III;  
164.377 (Computer Crime) — Category III;  
164.395 (Robbery in the Third Degree) — Category III;  
164.868 (Unlawful Labeling of a Sound Recording) — Category III;  
164.869 (Unlawful Recording of a Live Performance) — Category III;  
164.872 (Unlawful Labeling of a Videotape Recording) — Category III;  
164.885 (Endangering Aircraft) — Category II;  
164.889 (Interference with Agricultural Research) — Category III;  
165.013 (Forgery in the First Degree) — Category I;  
165.022 (Criminal Possession of a Forged Instrument in the First Degree) — Category I;  
165.032 (Criminal Possession of a Forgery Device) — Category I;  
165.055 (Fraudulent Use of a Credit Card: Felony Only) — Category I;  
165.065 (Negotiating a Bad Check) — Category I;  
165.070 (Possessing Fraudulent Communications Device) — Category I;  
165.074 (Unlawful Factoring of Payment Card Transaction) — Category I;  
165.085 (Sports Bribery) — Category III;  
165.090 (Sports Bribe Receiving) — Category III;  
165.579 (Cellular Counterfeiting in the Second Degree) — Category III;  
165.581 (Cellular Counterfeiting in the First Degree) — Category III;  
165.692 (Making False Claim for Health Care Payment) — Category I;  
165.800 (Identity Theft) — Category I;  
165.810 (Unlawful Possession of a Personal Identification Device) — Category I;  
165.813 (Unlawful Possession of Fictitious Identification) — Category I;  
166.005 (Treason) — Category II;  
166.015 (Riot) — Category II;  
166.085 (Abuse of Corps in the Second Degree) — Category II;  
166.087 (Abuse of Corps in the First Degree) — Category II;  
166.155 (Intimidation in the Second Degree) — Category III;  
166.165 (Intimidation in the First Degree) — Category III;  
166.220 (Unlawful Use of Weapon) — Category I;  
166.270 (Possession of Weapons by Certain Felons: Felony only) — Category II;  
166.275 (Possession of Weapons by Inmates of Institutions) — Category II;  
166.370 (Possession of Firearm or Dangerous Weapon in Public Building or Court Facility; Exceptions; Discharging Firearm at School) — Category II;  
166.382 (Possession of Destructive Device Prohibited) — Category II;  
166.384 (Unlawful Manufacture of Destructive Device) — Category II;  
166.429 (Firearms Used in Felony) — Category II;  
166.438 (Transfer of Firearms at Gun Shows: Felony Only) — Category II;  
166.450 (Obliteration or Change of Identification Number on Firearms) — Category II;  
166.642 (Felon in Possession of Body Armor) — Category II;  
166.643 (Unlawful Possession of Body Armor) — Category II;  
166.649 (Throwing an Object Off an Overpass in the Second Degree) — Category III;  
166.660 (Unlawful Paramilitary Activity) — Category III;  
166.720 (Racketeering Activity Unlawful) — Category II;  
167.012 (Promoting Prostitution) — Category III;  
167.062 (Sadomasochistic Abuse or Sexual Conduct in Live Show: Felony Only) — Category III;

167.164 (Possession of Gray Machine) — Category I;  
167.212 (Tampering with Drug Records) — Category I;  
167.262 (Adult Using Minor in Commission of Controlled Substance Offense: Felony Only) — Category III;  
167.322 (Aggravated Animal Abuse in the First Degree) — Category III;  
167.339 (Assaulting Law Enforcement Animal) — Category III;  
475.840 (Prohibited Acts Generally: Manufacture or Deliver a Controlled Substance) — Category II;  
475.846 (Unlawful Manufacture of Heroin) — Category II;  
475.848 (Unlawful Manufacture of Heroin Within 1,000 Feet of School) — Category III;  
475.850 (Unlawful Delivery of Heroin) — Category II;  
475.852 (Unlawful Delivery of Heroin Within 1,000 Feet of School) — Category III;  
475.854 (Unlawful Possession of Heroin) — Category II;  
475.856 (Unlawful Manufacture of Marijuana) — Category II;  
475.858 (Unlawful Manufacture of Marijuana Within 1,000 Feet of School) — Category III;  
475.860 (Unlawful Delivery of Marijuana: Felony only) — Category II;  
475.862 (Unlawful Delivery of Marijuana Within 1,000 Feet of School) — Category III;  
475.864 (Unlawful Possession of Marijuana: Felony only) — Category II;  
475.866 (Unlawful Manufacture of 3,4-Methylenedioxyamphetamine (Ecstasy)) — Category II;  
475.868 (Unlawful Manufacture of 3,4-Methylenedioxyamphetamine (Ecstasy) Within 1,000 Feet of School) — Category III;  
475.870 (Unlawful Delivery of 3,4-Methylenedioxyamphetamine (Ecstasy)) — Category II;  
475.872 (Unlawful Delivery of 3,4-Methylenedioxyamphetamine (Ecstasy) Within 1,000 Feet of School) — Category II;  
475.874 (Unlawful Possession of 3,4-Methylenedioxyamphetamine (Ecstasy)) — Category II;  
475.876 (Unlawful Manufacture of Cocaine) — Category II;  
475.878 (Unlawful Manufacture of Cocaine Within 1,000 Feet of School) — Category III;  
475.880 (Unlawful Delivery of Cocaine) — Category II;  
475.882 (Unlawful Delivery of Cocaine Within 1,000 Feet of School) — Category III;  
475.884 (Unlawful Possession of Cocaine) — Category II;  
475.886 (Unlawful Manufacture of Methamphetamine) — Category II;  
475.888 (Unlawful Manufacture of Methamphetamine Within 1,000 Feet of School) — Category III;  
475.890 (Unlawful Delivery of Methamphetamine) — Category II;  
475.892 (Unlawful Delivery of Methamphetamine Within 1,000 Feet of School) — Category III;  
475.894 (Unlawful Possession of Methamphetamine) — Category II;  
475.904 (Unlawful Manufacture or Delivery of Controlled Substance Within 1,000 Feet of School) — Category III;  
475.908 (Causing Another Person to Ingest a Controlled Substance) — Category III;  
475.910 (Application of Controlled Substance to the Body of Another Person) — Category III;  
475.914 (Prohibited Acts for Registrants: Deliver or Dispense Controlled Substance) — Category II;  
475.962 (Distribution of Equipment, Solvent, Reagent or Precursor Substance with Intent to Facilitate Manufacture of Controlled Substances) — Category II;  
475.967 (Possession of Precursor Substance With Intent to Manufacture Controlled Substance) — Category II;  
475.977 (Possessing or Disposing of Methamphetamine Manufacturing Waste) — Category II;  
811.182 (Criminal Driving While Suspended or Revoked) — Category II;  
811.540 (Fleeing or Attempting to Elude Police Officer: Felony Only) — Category II;  
811.705 (Failure to Perform Duties of a Driver to Person Injured) — Category II;  
813.010 (DUI: Felony Only) — Category II.

Any crime that requires the fire service professional or instructor to register as a sex offender.

An "attempt" to commit a crime listed in ORS 137.700 or in any other jurisdiction that, if committed in this state would constitute an attempt to commit a crime listed in 137.700 (and identified in OAR 259-009-0070(3)).

(d) If a fire service professional or instructor held certification on or before January 15, 2008 and applies for a new certification, the Department will proceed as follows:

(A) No action will be taken on a discretionary conviction that occurred prior to January 15, 2003.

(B) The Department will not initiate revocation proceedings based on a discretionary disqualifying conviction that occurred between January 15, 2003 and January 15, 2008.

(C) The Department may initiate denial of a new certification based on a discretionary disqualifying conviction that occurred between January 15, 2003 and January 15, 2008.

(e) If a fire service professional or instructor held certification on January 15, 2008 and applies for or obtains certification after that date, the Department may initiate denial or revocation of all certifications held based on a discretionary disqualifying conviction that occurred prior to January 15, 2008.

(f) If a fire service professional or instructor is convicted of a discretionary disqualifying crime on or after January 15, 2008, the Department may initiate a denial or revocation of all certification(s) upon learning of the conviction.

## *Initial Minimum Periods of Ineligibility*

(5) Upon determination to proceed with the denial or revocation of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct identified in section (4), the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

(a) In determining the initial minimum period of ineligibility for discretionary disqualifying misconduct listed in section (4) of this rule, the

# ADMINISTRATIVE RULES

Fire Policy Committee and the Board will take into consideration any aggravating or mitigating factors subject to the provisions of section (7) of this rule.

(b) A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for mandatory grounds identified in section (3) of this rule.

(c) The initial minimum period of ineligibility will be included in any Final Order of the Department.

(d) Any subsequent eligibility to apply for certification will be determined by the Board, after a review by the Fire Policy Committee, subject to the provisions of section (9) of this rule.

## *Procedure for Denial or Revocation of a Certificate*

(6) Scope of Revocation. Except as provided in (4) above, when the Department denies or revokes the certification of any fire service professional or instructor under the provisions of OAR 259-009-0070, the revocation will encompass all fire service certificates the Department has issued to that person.

## (7) Denial and Revocation Procedure.

(a) Agency Initiated Review: When the entity utilizing a fire service professional or instructor requests that a fire service professional's or instructor's certification be revoked or denied, it must submit in writing to the Department the reason for the requested revocation or denial and all factual information supporting the request.

(b) Department Initiated Review: Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the fire service professional's or instructor's certification be revoked or denied.

(c) Department Staff Review: When the Department receives information, from any source, that a fire service professional or instructor may not meet the established standards for Oregon fire service professionals or instructors, the Department will review the request and the supporting factual information to determine if the request for denial or revocation meets statutory and administrative rule requirements.

(A) If the reason for the request does not meet the statutory and administrative rule requirements for denial or revocation the Department will notify the requestor.

(B) If the reason for the request does meet statutory and administrative rule requirements but is not supported by adequate factual information, the Department will request further information from the employer or conduct its own investigation of the matter.

(C) If the Department determines that a fire service professional or instructor may have engaged in discretionary disqualifying misconduct listed in subsection (4), the case may be presented to the Board, through the Fire Policy Committee.

(D) The Department will seek input from the affected fire service professional or instructor, allowing him or her to provide, in writing, information for the Fire Policy Committee and Board's review.

(E) In misconduct cases in which there has been an arbitrator's opinion related to the fire service professional's or instructor's employment, the Department will proceed as follows:

(i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, the department will proceed as identified in paragraphs (A) through (D) of this subsection.

(ii) If the arbitrator has ordered employment reinstatement after a discharge for cause without a finding related to whether the misconduct occurred, the Department will proceed as identified in paragraphs (A) through (D) of this subsection.

(iii) If the arbitrator's opinion finds that underlying facts did not support the allegation(s) of misconduct, the Department will proceed as identified in paragraph (A) of this subsection and administratively close the matter.

(d) Policy Committee and Board Review: In making a decision to authorize initiation of proceedings under subsection (e) of this rule, based on discretionary disqualifying misconduct, the Fire Policy Committee and Board will consider mitigating and aggravating circumstances including, but not limited to the following:

(A) When the misconduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, the length of incarceration;

(C) Whether restitution was ordered, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor has ever been on parole or probation. If so, the date on which the parole or probation period expired or is set to expire;

(E) Whether the fire service professional or instructor has more than one conviction and if so, over what period of time;

(F) Whether the misconduct involved domestic violence;

(G) Whether the fire service professional or instructor self reported the misconduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on the fitness of the fire service professional or instructor to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

(L) What the fire service professional's or instructor's physical or emotional condition was at the time of the conduct.

(e) Initiation of Proceedings: Upon determination that the reason for denial or revocation is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(f) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with OAR 137-003-0001 of the Attorney General's Model Rules of Procedure adopted under 259-005-0015. The Department will have a copy of the notice served on the fire service professional or instructor.

(g) Response Time:

(A) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(B) A party who has been served with a "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(h) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order revoking or denying certification pursuant to OAR 137-003-0645.

(i) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(j) Proposed Order. The assigned Administrative Law Judge will prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(k) Exceptions and Arguments: A party must file specific written exceptions and arguments with the Department no later than 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order.

(A) The Department may extend the time within which the exceptions and arguments must be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments must serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

(l) Final Order: A final order will be issued pursuant to OAR 137-003-0070 if a fire service professional or instructor fails to file exceptions and arguments in a timely manner.

(m) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a fire service professional or instructor upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification, or to relinquish a certification under the terms and conditions outlined in the stipulated order.

## *Appeals, Reapplication, and Eligibility Determinations.*

(8) Appeal Procedure. A fire service professional or instructor, aggrieved by the findings and Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the Department.

(9) Reapplication Process.

(a) Any fire service professional or instructor whose certification has been denied or revoked under section (4) of this rule for discretionary disqualifying misconduct may reapply for certification within the applicable timeframes described in (4) and (5) of this rule.

(b) Any fire service professional or instructor whose certification has been denied or revoked based on discretionary disqualifying misconduct may not reapply for certification until:

(A) The initial minimum period of ineligibility stated in an Order of the Department denying or revoking certification has been satisfied;

(i) If the initial period of ineligibility for the individual was for a period of less than the maximum period identified in section (4) of this rule, and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not reapply for certification under the



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provisions of this rule until the maximum initial period of ineligibility identified in (5) of this rule has been satisfied.

(i) If the individual has satisfied the maximum initial period of ineligibility and the Board determines that an individual must remain ineligible to apply for certification, then the individual may not submit any further requests for an eligibility determination, and the original denial or revocation remains permanent.

(B) A written request for an eligibility determination has been submitted to the Department and the Fire Policy Committee has recommended that a fire service professional's or instructor's eligibility to apply for fire service or instructor certification be restored and the Board has upheld the recommendation;

(i) A request for an eligibility determination should include documentation or information that supports the public safety professional's or instructor's request for eligibility to apply for certification.

(ii) In considering a request for an eligibility determination, the Fire Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section (7)(d) of this rule.

(iii) After reviewing a written request for an eligibility determination, the Board, through the Fire Policy Committee, may determine that the individual's eligibility to apply for certification be restored if the criteria for certification have been met; or determine that the factors that originally resulted in denial or revocation have not been satisfactorily mitigated and the individual must remain ineligible to apply for certification.

(C) The fire service professional or instructor is employed or utilized by a fire service agency; and

(D) All requirements for certification have been met.

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

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

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

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 3-2008, f. & cert. ef. 11-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09

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## Department of State Lands Chapter 141

**Rule Caption:** Revision of rules governing public recreational use of property managed by the Department of State Lands.

**Adm. Order No.:** DSL 5-2009

**Filed with Sec. of State:** 6-23-2009

**Certified to be Effective:** 6-23-09

**Notice Publication Date:** 4-1-2009

**Rules Adopted:** 141-088-0002, 141-088-0004, 141-088-0005, 141-088-0006, 141-088-0007, 141-088-0008, 141-088-0009

**Rules Amended:** 141-088-0000

**Subject:** These rules govern public recreational use of various parcels of state-owned land managed by DSL. Typically, the restrictions provided in these rules have been established to protect the land and natural, cultural and archaeological resources and/or to protect public health and safety. The changes to these rules will:

(1) Give the Director of DSL the authority to quickly place restrictions on, or close to recreational use state-owned land to address an emergency (as defined in the proposed rules). Under the rules currently in effect, the Director cannot address emergency situations without going through a formal rulemaking process.

(2) Give the Director the authority to place restrictions on, or close to recreational use state-owned land to facilitate site specific environmental remedial actions (such as in the Portland Harbor). Under the rules currently in effect, the Director cannot do the without going through a formal rulemaking process.

(3) Provide clear processes that the Director and State Land Board will use to consider and impose such restrictions or closures.

**Rules Coordinator:** Elizabeth Martino—(503) 986-5239

### 141-088-0000

#### Purpose and Applicability

These rules:

(1) Govern the establishment of restrictions on the public recreational use of state-owned Trust and Non-Trust Land managed by the Department of State Lands (Department).

(2) Are in addition to those contained in OAR 141-082 (Rules Governing the Management of, and Issuing of Leases, Licenses, Temporary Use Permits and Registrations for Structures on, and Uses of State-Owned Submerged and Submersible Land) which govern the imposition of restrictions on the use of, and closures of state-owned submerged and submersible land for activities subject to authorization by the Department.

(3) Identify areas of state-owned land managed by the Department for which restrictions on public recreational use have been established by rule.

(4) Do not govern the establishment of restrictions on, or closure to the public recreational use of state-owned land administered by the Department of State Lands within the South Slough National Estuarine Research Reserve.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 9-1998, f. & cert. ef. 10-15-98; DSL 2-2004, f. & cert. ef. 6-11-04; DSL 5-2009, f. & cert. ef. 6-23-09

### 141-088-0002

#### Definitions

(1) "**Asset Management Plan**" is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short and long-term management by the Department of the Common School Fund's real estate assets.

(2) "**Department**" means the Department of State Lands.

(3) "**Director**" means the Director of the Department of State Lands or designee.

(4) "**Emergency**" means a human created or natural event or circumstance that causes or threatens:

(a) Human life, health or safety;

(b) Loss of, or damage to property;

(c) Loss of, or damage to natural, historical, cultural or archaeological resources; or

(d) Damage to the environment.

(5) "**Limited Duration**" means a public recreational use of state-owned land that does not exceed 30-calendar days in the same location.

(6) "**Non-Trust Land**" is land owned or managed by the Department other than Trust Land. Examples of Non-Trust Land include state-owned Swamp Land, and state-owned submerged and submersible land (land below ordinary high water) under navigable and tidally influenced waterways.

(7) "**Person**" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.

(8) "**Public Recreational Use**" or "**Public Recreational Uses**" are those recreational activities that a person may conduct on state-owned land managed by the Department without having to obtain a prior authorization from the Department as required by these or other administrative rules adopted by the State Land Board. Such uses include, but are not limited to, limited duration hunting, fishing, sightseeing, wildlife observation, hiking, boating, swimming, camping and picnicking.

(9) "**Removal**" means a removal as defined in ORS 465.200.

(10) "**Remedial Action**" means a remedial action as defined in ORS 465.200.

(11) "**State Land**" or "**State-Owned Land**" is land owned or managed by the Department or its agents and includes Trust and Non-Trust Land.

(12) "**Submerged Land**" means land lying below the line of ordinary low water of all title navigable and tidally influenced waters within the boundaries of the State of Oregon.

(13) "**Submersible Land**" means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced waters within the boundaries of the State of Oregon.

(14) "**Trust Land**" or "**Constitutional Land**" is all land granted to the state for the use of schools upon its admission into the Union, or obtained by the state as the result of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 5-2009, f. & cert. ef. 6-23-09

### 141-088-0004

#### General Provisions

(1) All Trust and Non-Trust Land under the jurisdiction of the State Land Board and the Department is open and available for public recreational use provided that such use:

(a) Is legal under local, state and federal law;

(b) Is allowed under the Department's Asset Management Plan;

(c) Does not, due to the nature or duration of the use, unnecessarily prevent other persons from using the same state-owned land; and

(d) Does not, as determined by the State Land Board or the Department:

(A) Substantially interfere with the use of land by persons holding a written authorization from the Department to use the subject site(s), parcel(s) or area(s);

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(B) Pose a significant risk of harm or damage to the natural, cultural and archaeological resources of the land or to the public; or

(C) Substantially interfere with tribal treaty rights.

(2) Any person may request that the Department impose restrictions on public recreational use of state-owned land, or close state-owned land managed by the Department to public recreational use. A request must be in writing and must clearly state the reasons such a restriction or closure is necessary.

(3) The Department may also identify state-owned land on which it believes public recreational use should be restricted or that should be closed to public recreational use.

(4) Restrictions or closures by the State Land Board or the Director will be:

(a) Based on a determination that the action is necessary to:

(A) Protect human life, health or safety;

(B) Prevent loss of, or damage to property;

(C) Prevent loss of, or damage to natural, historical or archaeological resources;

(D) Prevent damage to the environment;

(E) Facilitate or protect a removal or remedial action undertaken by or pursuant to an order issued by the Oregon Department of Environmental Quality (DEQ) or the United States Environmental Protection Agency (EPA);

(F) Fulfill an objective of an area management plan developed by the Department; or

(G) Meet other land management objectives or terms of any use authorization granted by the Department.

(b) As limited in area, duration and scope as necessary to address the identified need for the restriction or closure.

(5) All restrictions or closures will be promulgated by the State Land Board except that the Director may impose a restriction or closure when the Director determines that:

(a) The restriction or closure is necessary to address an emergency; or

(b) The restriction or closure is necessary to facilitate or protect a removal or remedial actions undertaken by or pursuant to an order issued by the Oregon Department of Environmental Quality (DEQ) or the United States Environmental Protection Agency (EPA).

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 5-2009, f. & cert. ef. 6-23-09

## 141-088-0005

### Restriction or Closure Request and Review Process

(1) Upon receipt of a request to impose restrictions on, or close state-owned land to public recreational use, the Department will review the request to evaluate the need for the restriction(s) or closure.

(2) As a part of its review, the Department may:

(a) Determine if feasible alternative approaches exist to address the problem(s) for which the restrictions or closure is requested; and

(b) Contact, persons or groups likely to be impacted by the proposed restrictions or closure including, but not limited to, law enforcement officials, users of the subject site, area or parcel, and adjacent landowners.

(3) Following its review of the request, the Department will make a recommendation to the Director concerning whether to place the requested restrictions on the public recreational use of, or to close to such uses the state-owned land.

(4) Upon receipt of the Department's recommendation, the Director will determine whether the restriction or closure must be promulgated by the State Land Board pursuant to OAR 141-088-0006, or may be imposed by the Director pursuant to either OAR 141-088-0007 or 141-088-0008.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 5-2009, f. & cert. ef. 6-23-09

## 141-088-0006

### Restrictions or Closures Adopted by the State Land Board

(1) All restrictions or closures by the State Land Board will be promulgated as rules in accordance with ORS 183.310 to 183.410.

(2) The State Land Board will adopt the proposed restriction or closure to public recreational use if the Land Board determines:

(a) That the restriction or closure is necessary to:

(A) Protect human life, health or safety;

(B) Prevent loss of, or damage to property;

(C) Protect natural, historical, cultural or archaeological resources;

(D) Prevent damage to the environment;

(E) Facilitate or protect a removal or remedial action undertaken by or pursuant to an order issued by the Oregon Department of Environmental Quality (DEQ) or the United States Environmental Protection Agency (EPA) in pursuit of identifying and remediating contaminated soil or sediments on state-owned land;

(F) Fulfill an objective of an area management plan developed by the Department; or

(G) Meet other land management objectives or terms of a use authorization; and

(b) That there is no feasible alternative to accomplish that objective without imposition of a restriction or closure.

(3) Restrictions or closures adopted by the State Land Board will be as limited in area, duration and scope as necessary to address the identified need for the restriction or closure.

(4) If the State Land Board adopts a restriction or closure by rule the Department will:

(a) Notify affected local, state and federal government agencies and tribal governments, as well as other interested persons or groups that might be affected by the imposition of restrictions or a closure, or that have indicated that they want to be notified of such actions; and

(b) Post a notice of such proposed public use restrictions or closure at least four weeks before the time that the restrictions or closure is to take effect:

(A) One time in the Public Notices Section of The Oregonian and, if the Director deems appropriate, in another newspaper serving the general area in which the proposed restriction or closure is to occur; and

(B) On the Department's website upon imposition of the restrictions or closure at [www.oregonstatelands.us](http://www.oregonstatelands.us).

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 5-2009, f. & cert. ef. 6-23-09

## 141-088-0007

### Restrictions or Closures Imposed by the Director to Address an Emergency

(1) The Director may impose a restriction or closure in the event s/he determines that the restriction or closure is necessary to address an emergency.

(2) Restrictions or closures imposed by the Director to address an emergency will be as limited in area, duration and scope as necessary to address the identified need for the restriction or closure.

(3) If the Director imposes a restriction or closure, the Department will:

(a) Notify affected local, state and federal government agencies and tribal governments, as well as other interested persons or groups that the Department believes might be affected by the imposition of restrictions or a closure, or that have indicated that they want to be notified of such actions; and

(b) Post a notice of such proposed public use restrictions or closure:

(A) One time in the Public Notices Section of The Oregonian and, if the Director deems appropriate, in another newspaper serving the general area of the subject restriction or closure within two weeks after the restrictions or closure take effect; and

(B) On the Department's website upon imposition of the restrictions or closure at [www.oregonstatelands.us](http://www.oregonstatelands.us).

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 5-2009, f. & cert. ef. 6-23-09

## 141-088-0008

### Restrictions or Closures Imposed by the Director to Facilitate or Protect Removal or Remedial Actions

(1) The Director may impose restrictions on, or close state-owned land if the Director determines that the restriction or closure is necessary to facilitate or protect any removal or remedial action undertaken by or pursuant to an order issued by DEQ or EPA.

(2) Restrictions or closures imposed by the Director will be as limited in area, duration and scope as necessary to address the identified need for the restriction or closure.

(3) Before imposing a restriction or closure, the Department will provide a 30- calendar-day public comment period on the proposed restriction or closure. An affected party may request a public meeting with agency staff to be held during this 30-day period to discuss the proposed action.

(4) Notice of this public comment period and the opportunity to request a public meeting with agency staff will be:

(a) Sent to affected local, state and federal government agencies and tribal governments, as well as other interested persons that have indicated that they want to be notified of such actions; and

(b) Posted:

(A) One time in the Public Notices Section of The Oregonian and, if the Director deems appropriate, in another newspaper serving the general area one week before the start of the public comment period; and

(B) On the Department's website upon imposition of the restrictions or closure at [www.oregonstatelands.us](http://www.oregonstatelands.us)

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(5) A restriction or closure imposed by the Director will not take effect until a date to be determined by the Director which must be at least four weeks following posting of a notice of the restriction or closure.

(6) If the Director imposes a restriction or closure the Department will:

(a) Notify affected local, state and federal government agencies and tribal governments, as well as other interested persons that have indicated that they want to be notified of such actions; and

(b) Post a notice of such proposed public use restrictions or closure at least four weeks before the time that the restriction or closure is to take effect:

(A) One time in the Public Notices Section of The Oregonian and, if the Director deems appropriate, in another newspaper serving the general area before the start of the restrictions or closure is to take effect; and

(B) On the Department's website at [www.oregonstatelands.us](http://www.oregonstatelands.us).

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 5-2009, f. & cert. ef. 6-23-09

## 141-088-0009

### Unauthorized Uses and Penalties

(1) The unauthorized use of state-owned land managed by the Department constitutes a trespass.

(2) In addition to any other penalties provided or permitted by law, the Department may pursue whatever remedies are available under law to ensure that any use that is in violation with these rules is either brought into compliance with the requirements of these rules or other applicable law, or ceased or removed.

(3) In addition to any other penalty or sanction provided by law, the Director may assess a civil penalty of not more than \$1,000 per day of violation for violations of any provision of these rules or ORS 274 that occurs on state-owned submerged or submersible lands pursuant to ORS 274.992.

(4) The Director will give written notice of a civil penalty incurred under OAR 141-088-0009(3) by registered or certified mail to the person incurring the penalty. The notice will include, but not be limited to the following:

(a) The particular section of the statute or this rule involved;

(b) A short and clear statement of the matter asserted or charged;

(c) A statement of the party's right to request a hearing within 20 calendar days of the notice;

(d) The time allowed to correct a violation; and

(e) A statement of the amount of civil penalty which may be assessed and terms and conditions of payment if the violation is not corrected within the time period stated.

(5) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in OAR 141-122-0130(3). Such request must be in writing. If no written request for a hearing is made within the time allowed, or if the party requesting a hearing fails to appear, the Director may make a final order imposing the penalty.

(6) In imposing a penalty under OAR 141-088-0009 of these rules, the Director will consider the following factors as specified in ORS 274.994:

(a) The past history of the person incurring a penalty regarding other trespasses on state-owned land managed by the Department;

(b) Any prior violations of statutes, rules, orders and authorizations pertaining to submerged and submersible land;

(c) The impact of the violation on public trust uses of commerce, navigation, fishing and recreation; and

(d) Any other factors determined by the Director to be relevant and consistent with the policy of these rules.

(7) Pursuant to ORS 183.090(2), a civil penalty imposed under OAR 141-088-0009 will become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.

(8) If a civil penalty is not paid as required by OAR 141-088-0009, interest will accrue at the maximum rate allowed by law from the date first due.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 5-2009, f. & cert. ef. 6-23-09

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**Rule Caption:** Revision to rules for the sale, exchange and purchase of land et al (OAR 141-067).

**Adm. Order No.:** DSL 6-2009

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 4-1-2009

**Rules Adopted:** 141-067-0155, 141-067-0165, 141-067-0195, 141-067-0215

**Rules Amended:** 141-067-0130, 141-067-0150, 141-067-0160, 141-067-0170, 141-067-0180, 141-067-0190, 141-067-0200, 141-067-0220, 141-067-0230, 141-067-0250, 141-067-0270, 141-067-0300, 141-067-0310, 141-067-0320, 141-067-0330, 141-067-0340

**Rules Repealed:** 141-067-0140, 141-067-0210, 141-067-0240, 141-067-0280, 141-067-0290

**Subject:** These rules, first adopted in this form in 2002, guide the Department in all aspects of activities involving Department-managed land and interests regarding land sales, land exchanges and the release of mineral and geothermal resource rights. The rules are being revised in order to: accommodate changes in law (ORS 273.787); update procedures; and clarify process. Since their initial adoption in 2002 the Department has conducted a number of sales transaction and determined where changes in the rule would speed the transaction process and produce efficiencies.

**Rules Coordinator:** Elizabeth Martino—(503) 986-5239

## 141-067-0130

### Purpose and Applicability

These rules:

(1) Establish procedures for the sale, exchange, and purchase of all types and classifications of land and other interests including mineral and geothermal resource rights in land managed or to be managed by the State Land Board and the Department of State Lands in order to comply with all Constitutional and statutory requirements including, but not limited to: Oregon Constitution Article VIII, Section 5(2), and ORS 270, 271, 272, 273, and 274.

(2) Do not pertain to the leasing of lands or the granting of easements across lands managed by the State Land Board and the Department of State Lands, which are governed by other Department administrative rules.

(3) Apply to all land transactions (for example, sales, exchanges and purchases) for the South Slough National Estuarine Research Reserve as established in ORS 273.553.

(4) Do not apply to:

(a) The sale of submerged, submersible or new lands fronting upon the Pacific Ocean, or

(b) Land sold by the Department under the administrative rules of Procedure for the Recovery of Escheat Property (OAR chapter 141 division 030) or the Administration of Estates — Probate (OAR chapter 141 division 035)

(c) Contracts for the sale of timber or other forest products.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0150

### Definitions

(1) **"Abutting"** means immediately adjacent to or facing.

(2) **"Apparent Successful Purchaser"** is the person who is the highest acceptable bidder and who has agreed to the terms and conditions of a land sale prior to the final approval of the sale by the State Land Board.

(3) **"Applicant"** is any person who submits a written request to the Department to purchase or exchange state land or interests in land.

(4) **"Appraisal"** or **"Appraisal Report"** means a written statement setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s) prepared by a qualified appraiser in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) standards.

(5) **"Asset Management Plan"** or **"AMP"** is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short and long term management by the Department of State Lands of its real estate assets.

(6) **"Bargain"** is a process by which the Department and another person attempt to agree to a final sale price of state land or interests in state land.

(7) **"Bargain and Sale Deed"** is a form of a deed that conveys real property from a seller to a buyer but does not guarantee clear title.

(8) **"Bid"** means a written or oral monetary commitment to purchase land or interest in land offered at the specified time and place by a person determined by the Department as provided in OAR 141-067-0220 of these rules to be eligible to participate in an auction process.

(9) **"Deed"** means a written, legal instrument that conveys an estate or interest in real property when it is properly executed and delivered.

(10) **"Director"** means the Director of the Oregon Department of State Lands or designee.



## ADMINISTRATIVE RULES

- (11) “**Department**” means the Department of State Lands.
- (12) “**Department Estimate of Value**” is the monetary value of a land parcel established by the Department and approved by the State Land Board based on a critical review of the appraisal report; any review appraisal information; and other relevant or supporting data. The value may be derived, at the discretion of the Director, by considering factors or costs as are appropriate and applicable to the transaction.
- (13) “**Easement**” is an authorization granted by the Department that gives a person the use of a specifically designated parcel of state-owned land for a specific purpose and length of time. An easement does not convey any proprietary or other rights of use to the holder other than those specifically granted in the easement authorization.
- (14) “**Filled Lands**” as defined in ORS 274.705 (1) means submerged and submersible lands reclaimed artificially through raising such lands above the highest probable elevation of the tides to form dry land, by placement of a fill or deposit of earth, rock, sand or other solid imperishable material.
- (15) “**Formerly Submerged and Submersible Lands**” are lands such as de-watered channels that once were part of the submerged and submersible lands of a navigable body of water but are no longer part of the waterway due to the dynamic forces of the waterway.
- (16) “**Geothermal Resources**” as defined in ORS 522.005 means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or that may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam in whatever form, found below the surface of the earth, exclusive of helium or of oil, hydrocarbon gas or other hydrocarbon substances, but including, specifically:
- (a) All products of geothermal processes, including indigenous steam, hot water and hot brines;
  - (b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;
  - (c) Heat or other associated energy found in geothermal formations; and
  - (d) Any by-product derived from them.
- (17) “**High Bid**” means the highest monetary commitment to purchase land offered by a person eligible to participate in a land sale auction.
- (18) “**Highest and Best Use**” means the reasonably probable and legal use of vacant or an improved property which is physically possible, appropriately supported, financially feasible, and that results in the highest value.
- (19) “**Historical Filled Lands**” are new lands created by the federal government on land owned by the state before October 5, 1973 and the adjoining or opposite upland or riparian land on the same side of the body of water is owned by other than a public body (i.e. a nonpublic riparian owner).
- (20) “**Individual Person**” means a natural person and does not include such entities as a corporation, public agency, political subdivision or association.
- (21) “**Land Acquisition Evaluation**” is an analytical review of land or interest being considered for acquisition by the Department to determine whether or not the land or interests should be acquired by purchase or exchange. The review includes:
- (a) An examination of the physical, land management, financial, natural resource, recreational and cultural resource aspects of the land or interest; and
  - (b) A comparison of the information from (a) above, with the acquisition criteria and strategies of the Asset Management Plan.”
- (22) “**Land Disposal Evaluation**” is an analytical review of state land or interest being considered for sale or exchange to determine whether or not the land or interest should be retained or disposed. The review includes:
- (a) An examination of the physical, land management, financial, natural resource, recreational and cultural resource aspects of the land or interest; and
  - (b) A comparison of the information from (a) above, with the disposal criteria and strategies of the Asset Management Plan.
- (23) “**Land Exchange**” means a simultaneous conveyance of land or interest in state land for land or interest in land of another entity of equal value (either appraised or Department-estimate of value).
- (24) “**Land Exchange Agreement**” is a non-binding agreement between the Department and another party that sets out the terms of the exchange proposal and the responsibilities of each party to complete the exchange. The agreement, at a minimum, describes the lands to be exchanged; assigns responsibility for completion of and payment for appraisals, surveys, land use applications, advertising, closing and any special studies including environmental audits; and establishes a reasonable time schedule for completion.
- (25) “**Lease**” means a valid enforceable contract executed by the Department and signed by the lease applicant (called lessee) allowing the use of a specific area of state land for a specific use under specific terms and conditions specified in the lease contract and these rules.
- (26) “**Lessee**” refers to any person having a valid lease issued by the Department.
- (27) “**Market Value**” or “**Fair Market Value**” means the most probable price in cash, or terms equivalent to cash, which land or interests in land should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.
- (28) “**Mineral and Energy Resource Potential Analysis**” is an analysis of the mineral and geothermal interests of a parcel to determine if any minerals or energy resources exist in commercially valuable and extractable abundance.
- (29) “**Mineral and Geothermal Resource Rights**” are all mineral rights as defined in ORS 273.775(1), including soil, clay, stone, sand, and gravel, and all geothermal resources, as defined in 273.775(2), together with the right to make use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, reinjecting, storing, drilling for, and removing, such minerals, materials, and geothermal resources.
- (30) “**Minimum Bid**” is the lowest monetary commitment to purchase land offered from a person eligible to participate at a land sale auction that the Department will accept.
- (31) “**New Lands**” as defined in ORS 274.905 means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian land on the same side of the body of water, which have been created upon submersible or submerged lands by artificial fill or deposit and not including bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.
- (32) “**Non-Trust Land**” or “**Statutory Land**” is state-owned land managed by the Department other than Trust Land. Examples of Non-Trust Land include state-owned Swamp Land Act Land, and submerged and submersible land (land below the line of ordinary high water) under navigable waterways.
- (33) “**Person**” includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.
- (34) “**Public Body**” means the State of Oregon or any port organized under the laws of Oregon or dock commission of any city of this state.
- (35) “**Public Trust Values**” are the rights and interests held by the public to use and enjoy submerged and submersible lands and waters of the state for fishing, navigation, recreation and commerce (also termed “jus publicum rights”).
- (36) “**Qualified Appraiser**” is a person who is a state-certified appraiser, or a salaried public employee of the federal government, the State of Oregon or a political subdivision of the federal government or the State of Oregon engaged in the performance of the duties of the employee as defined in ORS 674.100(2)(h).
- (37) “**Quitclaim Deed**” is a form of deed in which any interest the grantor possesses in the property described in the deed is conveyed to the grantee without warranty of title.
- (38) “**Rangelands**” means Trust and Non-Trust Lands that are classified by the Department for management primarily for livestock grazing largely on uncultivated forage areas with limited improvements or development.
- (39) “**Reserved Interest**” means an interest in the land that is retained by the Department from a conveyance of the title to the state land.
- (40) “**South Slough National Estuarine Research Reserve**” is a component of the National Estuarine Reserve System situated at South Slough (Coos County) established under ORS 273.553.
- (41) “**South Slough Management Commission**” is the public body established in ORS 273.554 for the purpose of directing the management of the South Slough National Estuarine Research Reserve.
- (42) “**State Forester**” is as described in ORS 526.005(03).
- (43) “**State Land**” means real property, including improvements, or any interest in real property (for example, timber or minerals) managed by the State Land Board and the Department of State Lands as Trust or Non-Trust Land.
- (44) “**State Land Board**” or “**Board**” means the constitutionally created body consisting of the Governor, Secretary of State and the State Treasurer that is responsible for managing the assets of the Common School Fund as well as for additional functions placed under its jurisdiction by law.
- (45) “**Submerged Land**” means land lying below the line of ordinary low water of all title navigable and tidally influenced waters within the boundaries of the State of Oregon.

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(46) “**Submersible Land**” means land lying between the line of ordinary high water and the line of ordinary low water of all title navigable and tidally influenced waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable within the boundaries of the State of Oregon.

(47) “**Trust Lands**” or “**Constitutional Lands**” is all land granted to the state for the use of schools upon its admission into the Union, or obtained by the state as the result of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985  
Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985  
Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0155 Policies

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board has a constitutional responsibility to manage all land (Trust and Non-Trust) under its jurisdiction “with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management.”

(2) In order to achieve the constitutional mandate described above and to maximize the financial return to the Common School Fund from Trust Lands, the Department will seek to obtain the full fair market value for any land or interests in land sold or exchanged.

(3) Trust Lands will be sold or exchanged in a manner that complies with state law while ensuring absolute adherence to both constitutional and Admission Act trust responsibilities as determined by the State Land Board and subject to review by the courts.

(4) The Department will follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan.

(5) In order to carry out the directives of the Asset Management Plan the Department may initiate efforts, subject to approval of the State Land Board, to purchase, sell or exchange Trust and/or Non-Trust Lands.

(6) Any Trust Land or interest in Trust Land may be exchanged for other land or interest in land, of equal or superior value. The newly acquired land or interest in land shall become Trust Land.

(7) The Director may, with State Land Board approval, purchase, sell or exchange lands in any such size, configuration or class (e.g. forest, agriculture, commercial).

(8) The State Forester may initiate and process land exchanges involving Common School Forest Lands under its management as allowed in the management agreement between State Land Board, the Department of State Lands and the State Forester. Such land exchanges require the approval of the State Land Board.

(9) Qualified persons and agencies may apply to purchase or exchange state land or interests in state land at any time. An application fee, as required by these rules, shall be included with each application. The Department reserves the right to accept or reject any application as well as to prioritize land sale and exchange projects according to available agency funds and income potential.

(10) The Department will not sell or exchange state-owned submerged land except to facilitate remedial action conducted pursuant to a plan approved by the Oregon Department of Environmental Quality (DEQ) or the U.S. Environmental Protection Agency (EPA) and with DEQ or EPA oversight. In instances when the Department chooses to sell or exchange submerged lands under circumstances as stated in these rules, such transaction shall occur only upon a finding that the transaction will provide a net gain in public trust values to the people of Oregon when viewed alone or in conjunction with other nearby or related sites. The State Land Board must approve all sales or exchanges of state-owned submerged land.

(11) The Department recognizes that uncertainty exists as to the extent of the State’s ownership of filled lands and some formerly submerged and submersible lands. Actions to determine and assert the State’s interest, if any, in filled lands or formerly submerged and submersible land should be done in a prompt and orderly manner and as funding allows. The State Land Board authorizes the Department to negotiate settlements in lieu of litigation, when and where appropriate, with regard to the ownership of filled lands and formerly submerged and submersible lands.

(12) The Department may exchange or sell submersible lands subject to the approval of the State Land Board, based on its finding that the proposed transaction will accrue a net gain of public trust values to the people of Oregon when viewed alone or in conjunction with other nearby or related lands within the control of the applicant.

(13) The State Land Board authorizes the Director or designee to issue such certificates of sale, deeds or conveyances as are necessary to

carry out the land transactions approved by the State Land Board in conformance with these rules. Such instruments shall include, but not be limited to bargain and sale, limited warranty and quitclaim deeds, and be drawn in a manner to transfer any and all rights and interests to the buyer/exchange partner that the Department may hold or has agreed to convey.

(14) Land or interest in land sold to another state agency or political subdivision under the provisions of ORS 270.100 shall be used for public purpose or benefit, and not be sold for resale to a private purchaser. Restrictions to further this policy shall be included in the deed and be enforceable through such terms as, but not limited to, reversionary clauses.

(15) The State Land Board shall recognize and adhere to all terms and conditions of valid existing leases and easements as they affect proposed land sales or exchanges.

(16) The State Land Board shall retain all mineral and geothermal resource rights (as defined) except as allowed under OAR 141-067-0320.

(17) The Department will seek certification of these rules by the Department of Administrative Services (DAS) as permitted under OAR 125-045-0210. These rules are intended to carry out land transactions in a manner consistent with DAS rules for the Disposition and Acquisition of Real Property Interests (OAR 125-045).

(18) DAS approval is not required for:

(a) Sale of Non-Trust Land (except those lands sold at less than the appraised value);

(b) Sale of New Land, where ORS 274.905 to 274.940 gives a person or public body a right to purchase New Lands;

(c) Sale of Trust Land;

(d) Any land exchange;

(e) Any release, sale or exchange of mineral and geothermal resource rights.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0160 Eligibility to Apply to Purchase or Exchange Land

Unless otherwise indicated in these rules, any person who is at least 18 years of age and who is a citizen of the United States or who has declared an intention to become a citizen, may apply to purchase or exchange state land

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0165 Application and Application Processing Fees

(1) An application to buy or exchange land subject to these rules must be submitted on a form provided by the Department.

(2) Each land sale applicant must submit with the application a correct and concise description of the land(s) involved in the requested transaction.

(3) A single application may include multiple land parcels.

(4) The appropriate application fee must be included with the application.

(5) The application fee for all land sales or land exchanges is \$750 per application. However, the Director may determine additional application fees are necessary for applications covering multiple parcels.

(6) The fee for the assignment of a certificate of sale is \$750.

(7) The application fee for the release of mineral or geothermal resource rights to a qualified owner under OAR 141-067-0320 of these rules is \$150.

(8) All application processing fees are non-refundable except as noted in these rules.

(9) Incomplete applications or those received from ineligible applicants will be returned.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0170 Land Exchanges

(1) Except as provided in OAR 141-067-0300 or as limited by 141-067-0155, the Department may exchange any lands or interests in lands

# ADMINISTRATIVE RULES

(including New Lands and submerged and submersible lands) for any other lands to meet objectives of the Asset Management Plan or the South Slough National Estuarine Research Reserve Management Plan. Exchanges shall be made on the basis of value. The Department may accept a monetary payment or reserve rights as part of the consideration to the extent required for a fair transaction.

(2) The Department may initiate a land exchange without requiring that an application be submitted.

(3) Any person, eligible to do so, may submit an application to the Department to initiate a land exchange. The application must be submitted on a form provided by the Department.

(4) The Department will notify the lessee, if any, by registered or certified mail and the applicant of receipt of the land exchange application. Within a reasonable time after receipt of the land exchange application, the Director will conduct an initial review of the application and determine the action to be taken including but not be limited to:

(a) Rejecting the application. A rejected application shall be returned to the applicant with the reasons for its rejection clearly stated. The lessee, if any, will also be notified. An additional non-refundable application fee will not be required for an application that is resubmitted within 120 calendar days of its rejection.

(b) Accepting the application for further processing; or

(c) Requesting more information.

(5) Following initial review and acceptance of the application, the Department will:

(a) Complete a Land Disposal Evaluation and Land Acquisition Evaluation of the lands involved in the exchange;

(b) Initiate the applicable elements of the public interest review process.

(6) If the Director determines to proceed with the land exchange proposal, the Department will negotiate a Land Exchange Agreement with the applicant. The State Land Board shall approve the Land Exchange Agreement.

(7) The Department may group together similar land exchange applications for more efficient processing. The willingness of applicants or other interested parties to pay for or share in the cost of appraisals, surveys, public notices or other expenses may be a factor in the Department's prioritization of land exchange proposals.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0180

### Public Interest Review Process; Public Meetings and Hearings

(1) After an application has been accepted for further processing or at anytime the Department decides to sell or exchange land the Department will notify, in writing, all affected lessees (by registered or certified mail) and adjacent lessees of a potential land sale or land exchange.

(2) Lessees affected by a land exchange proposal will be given notice that if a written protest is submitted by an affected lessee to the Department within 20 calendar days of the mailing a public hearing will be held on the exchange proposal. Such a hearing will be scheduled as described in OAR 141-067-0180(7).

(3) Notify, in writing, all adjacent landowners, and all affected school districts, city and county governments, including the county board of commissioners of a potential land sale or land exchange. The notice will offer all entities and persons an opportunity to comment on the proposal.

(4) Notify, in writing, those individuals and public interest groups that have indicated, through prior contact with the Department, an interest in potential land sales or land exchanges.

(5) Notify the Department of Administrative Services as described in OAR 141-067-0190.

(6) The Department may hold a public meeting on any land sale or exchange proposal to solicit public comment and explain the proposal. The Department will give 45 calendar days notice of any such meeting(s) to adjacent land owners, lessees, interested parties, agencies and local governments by mail and press releases or public notice in a newspaper of general circulation within the county in which the proposal is located. The public meeting information will also be posted on the Department's website.

(7) The Department will hold a public hearing on the proposal if it receives a timely written protest of a land exchange proposal from an affected lessee. The hearing will be cancelled or not scheduled if, anytime after the lessee's written protest is received, the Department rejects the land exchange proposal or the applicant withdraws the application. The hearing will be held at least 45 calendar days, but not more than 90 calendar days, after the written protest has been received by the Department. All affected lessees of land considered for exchange will be notified of the hearing by certified or registered mail. All others will be given notice in the same man-

ner as described in OAR 141-067-0180(6). All comments by the lessees or their representatives and all other interested parties will be recorded and compiled in the hearing record for review by the State Land Board or Director. The affected lessee and all registered public hearing attendees will be notified of any decision of the Director or the State Land Board resulting from the public hearing.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0190

### Compliance with the Department of Administrative Service (DAS) Rules for the Disposition and Acquisition of Real Property

(1) Before acquiring any land by purchase or exchange or selling or exchanging any land or interests in land, the Department will notify the Department of Administrative Services Facilities Division (DAS) on an approved form. DAS will notify all state agencies and political subdivisions of the anticipated transaction.

(2) The Department will seek certification of these rules (OAR 141-067) as permitted by OAR 125-045-0210.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0195

### Resolving Ownership of Filled Lands or Formerly Submerged and Submersible Lands

(1) Any person interested in resolving ownership of filled lands or formerly submerged and submersible lands may meet with the Department to discuss the facts concerning the creation and ownership of the lands in question.

(2) Based on the facts presented, as well as the Department's own investigation, the Department may do the following:

(a) Agree that the Department has no interest in the filled land or formerly submerged or submersible land;

(b) Determine who is entitled to purchase the filled lands under these rules;

(c) Enter into litigation to resolve the ownership issue, including but not limited to a suit to quiet title;

(d) Enter into negotiation in lieu of litigation with the person to resolve the ownership question;

(e) Request more information from the landowner or person; or

(f) Pursue other actions aimed at resolving the ownership question.

(3) Factors the Department may weigh in determining its course of action include but are not limited to:

(a) The chronological history of the creation of the filled lands;

(b) The identity of the person(s) who created the filled lands;

(c) The past actions of the Department regarding the sale of submersible lands;

(d) The identity of the current riparian owner;

(e) The cause for the change in the location of the waterway; and

(f) The relative strength of the Department's ownership claim.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0200

### Sale of New Lands

(1) The provisions of OAR 141-067-0200 apply to those New Lands described in ORS 274.905 to 274.940.

(2) New Lands will be sold in a manner consistent with ORS 274.905 to 274.940 after review of each application and approval of the State Land Board.

(3) Any public body or person, as defined in these rules with rights to purchase New Lands, as provided for in ORS 274.905 to 274.940, must submit an application on a form provided by the Department. A non-refundable application fee in the amount shown in OAR 141-067-0165 must be included with the application.

(4) Following receipt of the application, the Department will notify the applicant of receipt of the application. Within a reasonable time after receipt of the application, the Department will review the application for completeness and determine if the applicant qualifies under ORS 274.905 to 274.940 to purchase the New Lands and make a preliminary estimation



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of the extent of the State's ownership. Next the Department will take, but not be limited to, the following actions:

(a) Reject the application. A rejected application will be returned to the applicant with the reasons for its rejection clearly stated. An additional non-refundable application fee will not be required for an application that is resubmitted within 120 calendar days of its rejection;

(b) Accept the application for further processing; or

(c) Request more information.

(5) Upon acceptance of the application for further processing, the Department will:

(a) Complete a Land Disposal Evaluation including an analysis of the Public Trust Values of the New Lands and vicinity and a determination of the State's ownership; and

(b) Complete the applicable elements of the public interest review, including notifying DAS in accordance with OAR 141-067-0190.

(6) If the results of the Department's Land Sale Evaluation and analysis of Public Trust Values do not justify the sale of the New Lands, the Director shall notify the applicant and cease processing the application.

(7) If the Department's Land Sale Evaluation and analysis of Public Trust Values justify the sale of the New Lands, the Department will meet with the applicant to negotiate the following items to be included in a sales agreement to be approved by the State Land Board:

(a) The area of New Lands to be purchased;

(b) The schedule for the completion of appraisals, surveys and other aspects of the transaction as required by ORS 274.905 to 274.940; and

(c) The costs to be borne by the applicant and those administrative costs to be reimbursed to the Department by the applicant.

(8) In determining the final value for the sale of the New Lands, the Department may adjust the appraisal by considering factors or costs it deems appropriate, including:

(a) The relative strength of the state's ownership claim;

(b) The environmental condition of the property;

(c) The cost of various alternatives for addressing environmental or other conditions of the property;

(d) Access or lack of; and

(e) The amount of any property taxes based on the assessed value of the New Lands, excluding that portion of the annual tax assessment attributed to improvements, paid by the applicant in support of K-12 public schools during the duration of the applicant's use of the New Lands.

(9) The Department will not convey any rights to minerals, oil, gas or sulfur on New Lands.

(10) The State Land Board may reserve New Lands from sale, transfer, lease or exchange if upon notice and hearing it determines that the public interest requires such land to be preserved for recreational, conservation of fish and wildlife, or the development of navigation facilities, but in case of such reservation, the adjoining or opposite upland or riparian owner shall be allowed reasonable access across such reserved New Lands to navigable water.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0215

### Sale of Submerged and Submersible Lands, and New Lands Not Qualifying for Sale under the New Land provisions of OAR 141-067-0200 and ORS 274.905 to 274.940 including Historical Filled Lands

(1) Any person may submit an application to purchase submerged and submersible land and New Lands that do not qualify for sale under the new land provisions of OAR 141-067-0200 and ORS 274.905 to 274.940 including Historical Filled Lands. The application must be submitted on a form provided by the Department. A non-refundable application fee in the amount shown in OAR 141-067-0165 must be included with the application.

(2) The sale of submerged lands is limited to lands subject to remedial environmental action pursuant to a plan approved by DEQ or EPA.

(3) Applications will be processed in accordance with the applicable provisions of OAR 141-067-0220 and OAR 141-067-0155.

(4) The applicant will be required to acknowledge the character of the land being applied for and the title interest in the land held by the Department. Further, the applicant must waive all claims against the State, including but not limited to claims for the return of the purchase price, if all or part of the land are determined to not belong to the Department.

(5) Following notice that the land is available for sale, the applicant, at their own expense, shall have a survey of the land prepared. The survey must:

(a) Be prepared by a registered land surveyor approved by the Department in writing before the start of the survey work;

(b) Connect and conform to adjacent surveys acceptable to the Department, to the extent reasonably practicable; and

(c) Be notarized and submitted to the Department along with a hard copy map that is also notarized and electronic file in a format of the Department's choosing.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0220

### General Procedures for Land Sales (Except OAR 141-067-0200 and 0215)

(1) These general procedures apply to the processing of all land sale applications, except sales of New Lands (under ORS 274.905 to 274.940 and OAR 141-067-0200), sales of formerly submerged and submersible land (under OAR 141-067-0300), and release of mineral and geothermal resource rights to owners of residential real property (under OAR 141-067-0320). The Department may offer land for sale at any time without having first received an application from an individual or person. (Refer to OAR 141-067-0230 for additional requirements for the sale of rangelands.)

(2) Any person who is eligible to do so as described in OAR 141-067-0160, may submit an application to purchase state land.

(3) Upon receipt of the application, the Department will conduct an initial review of the land sale application, including but not limited to:

(a) A determination whether or not the land described in the land sale application is a legal lot of record as described in ORS Chapter 92;

(b) A determination, of the Department's rights and interests in the land or interests in land described in the land sale application, based, if necessary, on a preliminary title report by the Department or its agent;

(c) A Land Disposal Evaluation of the lands described in the land sale application;

(d) The results of the DAS notice process, if applicable, as described in OAR 141-067-0190;

(e) The applicable elements of the public interest review process as described in OAR 141-067-0180 of these rules; and

(f) A determination of whether the proposal is consistent with the policies set forth in OAR 141-067-0155.

(4) The Department will notify the lessee, if applicable (by registered or certified mail) and the applicant of receipt of the land sale application. Within a reasonable time after receipt of the sale application and following completion of the initial review, the Director will determine the action to be taken including, but not limited to:

(a) Rejecting the application. A rejected application shall be returned to the applicant with the reasons for its rejection clearly stated. The lessee, if any, will also be notified. An additional non-refundable application fee will not be required for an application that is resubmitted within 120 calendar days of its rejection;

(b) Accepting the application for further processing; or

(c) Requesting more information.

(5) The Department may group together similar land sale applications for more efficient processing and to attract more buyer interest. The willingness of applicants or other interested parties to pay for or share in the cost of appraisals, surveys, advertising or other expenses may be a factor in the Department's prioritization of land sales applications for processing.

(6) If following the initial review of the land sale application is accepted for further processing, the Director will within a reasonable time:

(a) Classify as "available for sale" the land under consideration; or

(b) Not classify the lands under consideration as "available for sale."

If the decision is to not classify the land as "available for sale" the Department will terminate further processing of the land sale application. As soon as possible after the Director's determination, the Department will notify the applicant and, if applicable, the lessee (by registered or certified mail) of the Director's decision.

(7) If the lands are classified as "available for sale":

(a) The Director will determine the method of sale for the land as described in OAR 141-067-0270 and request the State Land Board's approval of the land sale;

(b) The Department, its agent, or the applicant will, take such action as is necessary to obtain a legal lot of record determination as described in ORS 92 before the final closing of the sale;

(c) The Department will exercise its authorities under any applicable lease contract provisions allowing for the land to be sold without the encumbrance of the lease;

(d) The Department, its agent, or the applicant, will obtain a land appraisal in accordance with the provisions of OAR 141-067-0310; and

(e) The Department will determine the Department Estimate of Value as the minimum bid, reserve price or final purchase price, as applicable, depending on the approved method of sale.

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(8) The Department will conduct the sale in accordance with the method of sale established by the Director and approved by the State Land Board.

(9) The Department, its agent or the applicant will give public notice of the proposed land sale by publication in a local newspaper of general circulation within the county where the proposed land sale is located and on the Department's website. The newspaper notice will be published for at least one day per week for at least three consecutive weeks prior to the sale. The Department will notify all landowners and lessees of land adjacent to the land being offered for sale of the sales procedure and all pertinent information concerning the proposed land sale.

(10) The Department may, at any time prior to the closing, withdraw from the sale process any or all of the lands subject to the land sale. If lands are withdrawn from sale under these rules, any monetary deposit on the land withdrawn will be refunded to the owner.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0230

### Sale Procedures for Rangelands/Common School Grazing Lands

(1) After rangeland is determined to be "available for sale" as described in OAR 141-067-0220, if a forage lessee of the land has not already done so, the forage lessee may apply, on a form prescribed by the Department, to purchase the lands.

(2) A forage lessee is qualified to purchase rangeland it leases if the forage lessee meets all of the following requirements:

(a) The forage lessee is an individual person;

(b) The forage lessee is a resident of Oregon; and

(c) The forage lessee owns, in fee simple, land immediately adjacent to the land classified as "available for sale" (lands are considered to be adjacent if their boundaries are common or intersect at a common point); and

(A) The forage lessee is in compliance with all lease terms and conditions; or

(B) The forage lease affords the lessee an opportunity to purchase the leasehold.

(3) Based on the forage lessee's representation of eligibility as shown on the application form, the Director will certify that the forage lessee is qualified to purchase rangeland under OAR 141-067-0230(2). The Department will promptly notify the forage lessee of the Director's decision by registered or certified mail. The Director will advise the forage lessee of deficiencies in the event the forage lessee is not certified as eligible in the land sale process as described in 141-067-0230(2).

(4) If a qualified eligible forage lessee does not respond to the Department's notice as described in OAR 141-067-0220(4) within 90 calendar days of the sending date of the registered or certified mail notice, then the forage lessee will be ineligible to participate in the land sale process described in 141-067-0270(2)(e).

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0250

### Type of Deed; Payments for Land Purchases; Contracts; Default Issuance of Deed; Certificates of Sale; Assignments; Recording

(1) The Department will offer the type of deed (for example: quit-claim deed or bargain and sale deed) it deems to be the most legally defensible and best represents the known rights and interests held by the State Land Board in the land or interest in land being conveyed in the transaction.

(2) The Department may impose additional requirements or conditions on the issuance of the deed, including but not limited to indemnification of and waiver of claims against the Department and State of Oregon.

(3) When the land sale or land exchange process has been completed, including the payment of the purchase price or fulfillment of the terms of the land sale or land exchange agreement, the Director will execute and deliver to the purchaser a deed in a manner and form prescribed by these rules. The Department may choose to conduct closing through an escrow agent.

(4) When a purchaser of land (other than rangeland) desires to make payments in installments the Department or its agent shall, upon receipt of one-fifth or 20 percent of the purchase price of the land, deliver to the purchaser a certificate that the purchaser has contracted to purchase the land. Upon performance under the contract or payment of three-fifths or 60 percent of the purchase price and the receipt and documentation of a note or loan, and upon surrender of the certificate of sale, the purchaser, or their

heirs or assigns of the purchaser, shall be issued a deed for the property by the Department or its agent.

(5) A purchaser of rangeland deemed eligible under OAR 141-067-0230 must pay at least 10% of the purchase price at the time of purchase, and may then enter into a 10-year land sale contract with the Department to pay the remainder in 10 equal annual installments with the interest rate fixed by the Department in accord with ORS 327.425.

(6) All assignments of certificates of sale shall be executed and acknowledged in the same manner as a deed to land or real property. All requests for assignment of certificates shall be in writing. Written consent of the Department is required for any assignment. The Department shall issue the deed to the assignee upon full payment of the purchase price or the remaining balance of the land sale contract, and receipt of the certificate of sale.

(7) The Department will record, in the appropriate county office, any and all deeds it receives as a result of a land exchange or purchase.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0270

### Methods for Conducting Land Sales

(1) The director shall recommend to the State Land Board the method for conducting a land sale based upon the policies described in OAR 141-067-0155 and as set forth in these rules.

(2) The following methods shall be used:

(a) Direct sale at Department Estimate of Value. This method is generally used for the sale of: New Lands, as directed in OAR 141-067-0200 and ORS 274.905 to 274.940; and for the sale of certain Trust and Non-Trust land transactions involving agencies of the federal government with powers of eminent domain.

(b) Direct sale at Department Estimate of Value with reversionary rights, existing leases or other reserved interests, limitations and encumbrances. This method is used principally for land sales to state agencies and political subdivisions and is aimed at assuring that the land will continue to be used for public purposes after it has been transferred.

(c) Direct sale to a qualified lessee, or if not applicable, to an adjacent landowner at a sale price based on a Department Estimate of Value.

(d) Sale to the highest bidder via oral or sealed bid auction or combination thereof; minimum bid or reserve price approved by the Director. This method is used for all classes of Trust and Non-Trust land except as otherwise described in these rules.

(e) Sale to the highest bidder via oral or sealed bid auction with an eligible lessee having the right to bid last to exceed the final high bid; minimum bid or reserve price established by the Director based on Department Estimate of Value. This method is used for qualified rangeland lessees as described in OAR 141-067-0230 or for those lessees with lease contract terms and conditions that clearly and explicitly provide this opportunity.

(f) Negotiated sale. This method allows the Department to negotiate or bargain for the highest sale price possible from among interested parties.

(g) Brokered Sale. This method allows for the Department to offer land through a State of Oregon licensed real estate broker at a fair market value and to negotiate the final sale price with a buyer through the broker. A brokerage fee may be paid to the Department's broker or the buyer's agent or both in accordance with generally accepted real estate practices. This method is used when local real estate market conditions indicate and the land being offered best fits disposal through a more traditional marketing approach.

(3) The Department reserves the right, but not the obligation, to offer all property to lessees, followed by adjacent landowners and others when the Director determines that doing so will provide the greatest benefit for the people of the state and not conflict with the Department's constitutional and statutory obligations.

(4) The Director will report to the State Land Board the land sale method chosen for each sale and the reasons supporting the choice of sale method. The land sale method must be approved by the State Land Board.

(5) If the sale method selected involves an auction, the Department will establish the sale procedures to be followed including, but not limited to: the form and schedule for bid submittals; the amount of deposit required; the time and location of the bid openings and/or oral auction; the minimum bid or reserve price; preliminary terms and conditions of sale; payment options and any additional costs to be borne by the successful purchaser. The Department will fully disclose these procedures and all other pertinent information to the public as well as give ample advance public notice of the auction.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

# ADMINISTRATIVE RULES

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985  
Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0300

### Procedures for Resolving Claims to Formerly Submerged or Submersible Land (does not apply to lands described in OAR 141-067-0200 or 0215)

(1) The Director may issue a quitclaim deed to resolve a cloud of title over formerly submerged and submersible land. Such land may be, but is not limited to, areas that once were submerged or submersible land but are no longer connected to or a part of a state-owned (navigable) body of water due to the dynamic forces of the waterway. Such lands may be disposed of after the Department has completed a review of the facts and determined the extent, if any, of the state's ownership interest in the land.

(2) Any person may submit an application to resolve a claim to formerly submerged and submersible land. The application must be submitted on a form provided by the Department and include the appropriate application fee. Upon receipt of the application, and in order to determine the extent, if any, of the state's ownership claim, the Department will conduct an initial review of the application, including but not limited to:

(a) A determination whether or not the parcel(s)/lot(s) described in the land sale application are legal lots of record as described in ORS Chapter 92;

(b) A determination, based, if necessary, on a preliminary title report conducted by the Department or its agent, of the Department's rights and interests in the land or interests in land described in the land sale application; and

(c) A Land Sale Evaluation of the lands involved in the application;

(d) The results of the DAS notice process, if applicable, as described in OAR 141-067-0190;

(e) The applicable elements of the public interest review process as described in OAR 141-067-0180.

(3) The Department will notify any lessees (by certified or registered mail) and the applicant of the receipt of the sale application within 90 calendar days. Based on the initial review of the application, the Director will take, but not be limited to, the following actions:

(a) Reject the application. A rejected application will be returned to the applicant with an explanation of the reasons for its rejection clearly stated. An additional non-refundable application fee will not be required for an application that is resubmitted within 120 calendar days of its rejection;

(b) Accept the application for further processing; or

(c) Request more information and later determine the merit of the application based on the information submitted.

(4) Upon acceptance of the application for further processing the Department and the applicant will meet to negotiate an agreement establishing the terms and conditions of the transaction, the responsibilities of each party and the transaction schedule. The Department may impose additional requirements or conditions on the issuance of the deed, including but not limited to indemnification of waiver of claims against the Department and the State of Oregon.

(5) The Department may, where feasible and deemed to be in the best interests of the public to do so, require the quitclaim grantee to issue a similar quitclaim to the Department for the existing submerged and submersible land fronting and abutting the grantee's land on the waterway as it exists at the time of the transaction.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0310

### General Requirements for Appraisals

Appraisals conducted for land sales, purchases or exchanges shall comply with the following requirements:

(1) Be conducted by a State of Oregon-licensed appraiser familiar with the type of property to be appraised and in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards.

(2) Unless directed otherwise by the Department, the appraisal shall estimate the fair market value of the property based on its highest and best use, taking into account the contributory value of all offered interests in the property such as water rights, minerals, or timber to the extent that such interests are consistent with the highest and best use of the property.

(3) The appraisal report must include sufficient description of the property, highest and best use analysis, valuation methodology and support materials to fully document and justify the appraiser's estimate of fair market value.

(4) The Department may, based on the particular use of the appraisal, impose additional requirements or conditions on the appraisal.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0320

### Procedures for the Sale, Exchange or Release and Transfer of Mineral and Geothermal Resources

(1) For the purposes of OAR 141-067-0320(2) and (3):

(a) "Owner" means:

(A) The record holder of the fee title interest in residential real property; or

(B) The contract purchaser of residential real property.

(b) "Residential Real Property" means real property that is sold by the Department for the State Land Board and is located:

(A) Inside an urban growth boundary; or

(B) Within an area zoned for residential use on a lot or parcel that is three acres or smaller in size.

(2) An owner may apply to the Department for the release and transfer to the owner the reserved right to mineral and geothermal resources. Upon application by the owner, the Department will release and transfer to the owner the reserved rights to mineral and geothermal resources within 30 calendar days after the first Land Board meeting that is at least 60 calendar days after the Department received the completed application for the release and transfer of the rights, unless the Land Board finds that a significant mineral or geothermal resource exists. If the Land Board finds that a significant mineral or geothermal interest exists, the owner may:

(a) Offer to purchase the resource for the value of the resource; or

(b) Withdraw the application.

(3) If the Land Board finds that a significant mineral or geothermal resource exists and the owner offers to purchase the resource for the value of the resource:

(a) The Land Board will determine the value of the resource on the basis of an appraisal conducted by a state certified appraiser under ORS 674.310 or by a geologist who is registered under 672.505 to 672.705 and qualified to assess the value of mineral and geothermal deposits.

(b) The Land Board may not:

(A) Require an owner to obtain an appraisal, as described in (a) above; or

(B) Require an owner to pay the cost of an appraisal conducted at the request of the Land Board.

(4) The Department will charge a fee of \$150 to process mineral resource release and transfer applications for owners.

(5) Except as provided in subsections (1) through (4), if the rights to mineral and geothermal resources are to be included in a proposed land sale or land exchange, or the owner of the surface interest requests that the Department release and transfer its reserved right to mineral or geothermal resources, the Department will determine the mineral or geothermal potential of the property.

(6) The Department of Geology and Mineral Industries may conduct the mineral and geothermal potential analysis for the Department.

(7) For proposed land exchanges, the mineral and geothermal potential of both the land exchange partner's land and the Department's land are to be evaluated.

(8) When the Department deems it necessary, a mineral and geothermal appraisal may be required for a land exchange or land sale.

(9) The State Land Board may approve of the release and transfer of mineral and geothermal resources when the mineral potential evaluation (including an appraisal of values as required by the Director) reveals no or extremely limited resource potential in any lands being considered for sale or exchange; and the State Land Board deems that the disposal of mineral and geothermal resources is in the long term best interests of the Trust.

(10) When mineral or geothermal resources are part of a land exchange, the lands to be exchanged must have roughly equivalent mineral or geothermal resource potential.

(11) When mineral or geothermal resources are included in any sale they shall be accorded a monetary value and the Department shall be compensated for their sale.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09



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## 141-067-0330

### Procedures for Purchases including Donations of Land or Interests in Land

(1) Land or interests in land to be purchased for addition to the South Slough National Estuarine Research Reserve must be approved by the South Slough Commission and the State Land Board.

(2) Land or interests in land to be acquired by the Department through either purchase or donation must be approved in advance by the State Land Board and must be consistent with the policies set forth in the Asset Management Plan and OAR 141-067-0140.

(3) In acquiring land or interests in land by purchase, the Department will pay an amount equal to the price a prudent purchaser would pay under similar circumstances.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

## 141-067-0340

### Appeals

Any applicant may request reconsideration of a decision of the Department or the State Land Board relating to 141-067.

(1) The request must be received by the Director no later than 30 calendar days after the delivery of the decision.

(2) The Director will review the request within 60 calendar days after the date of delivery of the request.

(3) The Director may recommend to the State Land Board either that the decision be modified based on the merits of the request, or that the Land Board authorize initiation of a contested case proceeding.

(4) There is no opportunity to request reconsideration of a land sale or State land exchange after the transaction has occurred and title has passed from the State of Oregon to the purchaser or land exchange partner.

(5) If the Director recommends that the State Land Board initiate a contested case proceeding, the State Land Board will select a hearing officer and proceed pursuant to ORS 183.413 through 183.470.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, ORS 270.005 - 270.190, 273.045, 273.245 - 273.247, 273.251 - 273.311, 273.316 - 273.321, 273.413 - 273.456, 274.040, 274.905 - 274.940, 274.960 - 274.985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02; DSL 6-2009, f. & cert. ef. 7-1-09

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

**Rule Caption:** CDL Third Party Testing — Record Requirements, Test Completion Certificates, and Re-Testing Authority.

**Adm. Order No.:** DMV 11-2009

**Filed with Sec. of State:** 6-25-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 735-060-0040, 735-060-0055, 735-060-0057, 735-060-0065, 735-060-0105, 735-060-0110, 735-060-0120, 735-060-0130, 735-062-0080

**Subject:** Oregon allows applicants for commercial driver licenses (CDL) to take a driving skills test from a CDL Third Party Tester. The department's CDL Third Party Testing Program has been in place since 1986. DMV amended above listed rules to improve program oversight, deter fraud, and ensure applicants are provided necessary information concerning testing fees and the possibility of a retest before a CDL is issued. DMV amended these rules as follows:

- Clarify that the Oregon Secretary of State may audit tester records;

- Require the CDL Third Party Tester to ensure that each of their examiners obtain a copy of the applicant's Oregon CDL instruction permit and driver license (or the applicant's Oregon CDL) and provide a receipt for fees paid;

- Require that a photocopy of the applicant's Oregon CDL instruction permit and driver license (or the applicant's Oregon CDL)

becomes part of the applicant's permanent file maintained by the third party tester;

- Update the Tester and Examiner sanction tables to correspond with the proposed amendments;

- Require that CDL Third Party Examiners view and obtain a copy of the applicant's valid Oregon CDL instruction permit and valid driver license (or the applicant's valid Oregon CDL);

- Require that a Third Party Examiner provide a receipt for fees paid;

- Require that a CDL Certificate(s) of Test Completion not be issued without obtaining a copy of the applicant's valid Oregon CDL instruction permit and driver license (or Oregon CDL), and, if required, provide a written receipt for fees paid for the certification drive test. The receipt must include specific language provided by DMV, including notice that the applicant may be retested by DMV before issuance of a CDL;

- Give DMV the authority to retest a CDL applicant who submits a CDL Certificate of Test Completion or test a CDL applicant who surrenders on out-of-state CDL; and

- Clarify that an out-of-state CDL must be surrendered to DMV before an Oregon CDL is issued.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-060-0040

### Inspection

(1) To insure compliance with all relevant statutes, administrative rules and regulation, before issuing a CDL Third Party Tester Certificate, an authorized representative of DMV will, during regular business hours, inspect the applicant's:

(a) Business office, facility or campus;

(b) CDL drive test route and testing procedures; and

(c) Vehicles used for testing purposes that are owned or leased by the applicant.

(2) DMV, the Oregon Secretary of State, or the Federal Motor Carrier Safety Administration may conduct a random inspection of the business premises, records and equipment of a CDL Third Party Tester to review compliance with Oregon statutes, administrative rules and federal regulation requirements for CDL Third Party Testers and CDL Examiners. No notice will be given to the CDL Tester prior to the random inspection. The CDL Tester must consent to and fully cooperate with the random inspection.

(3) In addition to any other inspection, DMV will annually conduct an on-site inspection of each CDL Tester to review compliance with Oregon statutes, administrative rules and federal regulations pertaining to the third party tester and examiner program.

(4) An onsite inspection will include, but may not be limited to:

(a) CDL Third Party Tester records, including records of all applicants for whom a CDL drive test was conducted by the CDL Third Party Tester and Examiner, regardless of whether the applicant passed or failed the test and class rosters if the tester is also a commercial truck or bus driver training school licensed by the Oregon Department of Education;

(b) The business office, facility or campus;

(c) Testing procedures;

(d) Testing equipment, including vehicle(s) owned or leased by the CDL Tester and used for certification drive testing;

(e) A review of the CDL Third Party Tester's qualifications as listed in OAR 735-060-0030;

(f) The testing procedures used by CDL Examiners of the CDL Third Party Tester;

(g) The CDL drive test route(s);

(h) Review of the CDL Third Party Tester's compliance with all terms of the CDL Third Party Tester Agreement; and

(i) Any other related areas the DMV representative may deem necessary at the time of the inspection.

(5) As part of an inspection, a DMV representative may accompany a CDL Third Party Examiner on a certification drive test or retest a sample of the drivers who were tested by the CDL Examiner to compare pass/fail results.

(6) A DMV representative may pose as a customer of a CDL Third Party Tester without identifying himself or herself as an employee of DMV in order to observe the manner in which testing is conducted.

(7) To pass an inspection the CDL Third Party Tester must be in compliance with the statutes, rules and regulations pertaining to the CDL Third Party Tester and Examiner program and the provisions of the CDL Third Party Tester Agreement.

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(8) The DMV inspector will prepare a written report and specify any deficiencies that must be corrected. The CDL Third Party Tester will be given a copy of the report. Deficiencies identified must be corrected by the CDL Third Party Tester within 30 days of receipt of the report.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0635; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 11-2009, f. 6-25-09, cert. ef. 7-1-09

## 735-060-0055

### Responsibilities of a CDL Third Party Tester

(1) A CDL Third Party Tester must do all of the following:

(a) Notify DMV in writing within 10 calendar days of any change in:

(A) The address of the CDL Third Party Tester's business office, facility or campus;

(B) The location where the testing is conducted or a change in the drive test route(s);

(C) The status of a CDL Third Party Examiner, including an individual who is hired or who has discontinued employment;

(D) The name and address of the designated or registered agent, an owner, partner or shareholder owning 20% or more of the business or officer, director, agent or manager; or

(E) The testing services offered to the public and all fees charged for those services.

(b) Notify DMV in writing within 10 calendar days if:

(A) The CDL Third Party Tester goes out of business;

(B) The CDL Third Party Tester no longer meets the qualification requirements set forth in OAR 735-060-0030; or

(C) A CDL Third Party Examiner employed by the CDL Third Party Tester no longer meets the qualification requirements set forth in OAR 735-060-0090 including notification that the CDL Examiner has discontinued employment with the CDL Tester.

(c) Ensure that all CDL Third Party Examiners employed by the CDL Third Party Tester remain in compliance with all statutes, administrative rules and regulations pertaining to the qualifications and responsibilities of CDL Third Party Examiners.

(d) Make any and all business records, vehicles and facilities related to the operation of the CDL Third Party Tester's testing program available for inspection by representatives of DMV, the Oregon Secretary of State or the Federal Motor Carrier Safety Administration with or without prior notice.

(e) Correct any deficiencies specified in an inspection report with 30 days of receipt of the report.

(f) Ensure that vehicles provided by the CDL Third Party Tester for testing purposes meet the safety equipment standards of the Oregon Vehicle Code and federal regulations, are maintained in good mechanical condition, and are equipped with the following emergency equipment:

(A) Fire extinguisher; and

(B) Three flares or three approved reflectors.

(g) Comply with all statutes, administrative rules and regulations related to the CDL Third Party Testing program and with all terms of the CDL Third Party Testing Agreement.

(h) Notify DMV within 24 hours of any:

(A) Notice of a civil legal action filed against the CDL Third Party Tester or a CDL Third Party Examiner employed by the tester which is related to the administration of a test;

(B) Criminal investigation, arrest or conviction for an offense described in OAR 735-060-0030(2)(e)(C), a crime involving moral turpitude or any fraudulent activity related to CDL testing; or

(C) A complaint concerning the CDL Third Party Tester or a CDL Examiner employed by the CDL Tester related to CDL testing.

(i) Maintain the eligibility requirements set forth in OAR 735-060-0030 as applicable.

(j) Maintain and submit records as required by OAR 735-060-0057.

(k) Ensure that each CDL Third Party Examiner employed maintain a Third Party Tester Log documenting all CDL certification drive tests conducted by the Third Party Examiner.

(l) Maintain a record, by form control number, showing the disposition of all CDL Certificates of Test Completion issued to the CDL Third Party Tester by DMV.

(m) Ensure that before issuing a CDL Certificate of Test Completion each CDL Third Party Examiner employed:

(A) Obtain either a copy of the applicant's Oregon CDL instruction permit and Class C driver license, or the applicant's Oregon CDL; and

(B) Provide the applicant with a receipt for all fees paid for services related to the certification drive test.

(2) A CDL Third Party Tester must not:

(a) Falsify any records or fraudulently issue a CDL Certificate of Test Completion to any person who has not passed a CDL certification drive test;

(b) Permit anyone except a certified CDL third party examiner to conduct a CDL drive test or issue a CDL Certificate of Completion;

(c) Transfer its CDL Third Party Tester Certificate to any other person, employer, or publicly-owned and operated educational facility;

(d) Permit a CDL Third Party Examiner to issue a CDL Certificate of Test Completion to any person who:

(A) Was not tested in accordance with the requirements set forth in OAR 735-060-0120; or

(B) Failed the CDL certification drive test;

(e) Permit an Oregon Department of Education CDL Third Party Examiner to test a person who has not applied for an Oregon Department of Education School Bus Driver's Certificate or Permit;

(f) Knowingly assist a person in fraudulently obtaining driving privileges from DMV;

(g) Violate the Code of Ethics and Rules of Conduct set forth in OAR 735-060-0115;

(h) Knowingly allow a CDL Examiner to conduct a CDL certification drive test while under the influence of intoxicants; or

(i) Permit a CDL Third Party Examiner employed by a commercial driver training school to test an applicant who has been trained by the CDL Examiner or trained by anyone employed by the school.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.080

Stat. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0050(9) & (13); DMV 31-2005, f. & cert. ef. 12-14-05; DMV 11-2009, f. 6-25-09, cert. ef. 7-1-09

## 735-060-0057

### Record Requirements

(1) The CDL Third Party Tester must ensure records are maintained at the CDL Tester's primary place of business or by each CDL Examiner at each testing location(s) for no less than two years from the date of the test as follows:

(a) A fully completed copy of the CDL test score sheet for each applicant tested, regardless of whether the individual passed or failed the test. To be fully completed the CDL test score sheet must contain the applicant's full name and driver license number, the drive test location and route identifier, the CDL Examiner's name as well as the test date and test results.

(b) A copy of either the valid Oregon CDL instruction permit and Oregon Class C driver license or valid Oregon CDL presented by the applicant at the time of testing. The applicant's identifying information, including the photo, must be legible on the copy. A CDL Tester and CDL Examiner may not use a copy of the applicant's Oregon CDL instruction permit and driver license or Oregon CDL except to identify the driver for testing purposes and may not redisclose a copy for any purpose except as provided in subsection (3) of this rule, OAR 735-060-0040 and the CDL Third Party Tester Agreement.

(c) A copy of the receipt provided to the applicant showing all fees paid to the CDL Tester and CDL Examiner for services related to a certification drive test as provided in OAR 735-060-0130(2).

(d) A fully completed copy of the CDL Certificate of Test Completion that was issued to each applicant who passed the test. To be fully completed the CDL Certificate of Test completion must contain: the applicant's full name, date of birth, and driver license number; the CDL Examiner's name, certificate number, signature and date signed; the CDL Tester's name; the type of vehicle used for the test; the date of the test and whether the test vehicle had airbrakes, was a passenger carrying vehicle or a school bus.

(e) Copies of all CDL Certificates of Test Completion that have been voided by the examiner.

(f) Fully completed copies of all CDL Tester Logs for each CDL Examiner. To be fully completed:

(A) Each log must contain the month and year of tests included on the log, the CDL Tester name and city, the CDL Examiner and certificate number and the test route, location and number; and

(B) Each log entry must contain: the start and stop time of the test; the test date; the name and driver license number of the applicant tested; the class of vehicle used for testing and the vehicle's plate number(s), gross vehicle weight rating(s) and brake type; the test results, including the test score; and whether the applicant was a retest due to a previous failure.

(2) The CDL Third Party Tester must maintain documentation to show the disposition, by form control number, of all CDL Certificates of Test Completion issued to the CDL Tester. This documentation must be maintained for a minimum of two years after the date the certificate was issued or voided by the CDL Examiner or by DMV.

(3) All records subject to this rule must be available for inspection by an authorized representative(s) of DMV, the Oregon Secretary of State, or the Federal Motor Carrier Safety Administration, Monday through Friday between the hours of 8:30 a.m. to 4:30 p.m. Although DMV will normally arrange an appointment prior to an inspection, records must be available for

# ADMINISTRATIVE RULES

inspection without an appointment or prior notice. Records may be retained in paper format or electronically but must be maintained in a manner allowing for timely and efficient retrieval and review. DMV may require that any record printed or completed in a language other than English be accompanied by a copy translated into English.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.080  
Stat. Implemented: ORS 807.040, 807.070 & 807.100  
Hist.: DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0050(10), (11) & (12); DMV 31-2005, f. & cert. ef. 12-14-05; DMV 11-2009, f. 6-25-09, cert. ef. 7-1-09

## 735-060-0065

### Matrix for Tester Sanctions

DMV adopts the matrix of sanctions in Table 1 for CDL Third Party Tester violations. Table 1, Tester Sanctions, is hereby adopted and made a part of this rule. As used in this rule, an offense will be considered a second or subsequent offense if the CDL Third Party Tester was notified orally or in writing within the three previous years of the occurrence of the same or a substantially similar offense. If more than three years have passed between sanctions for the same or similar offense, DMV will sanction as a first offense. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 184.616, 184.619 & 807.080  
Stat. Implemented: ORS 807.040, 807.070 & 807.100  
Hist.: DMV 16-2003, f. & cert. ef. 11-18-03; DMV 11-2009, f. 6-25-09, cert. ef. 7-1-09

## 735-060-0105

### Responsibilities of a CDL Third Party Examiner

- (1) A CDL Third Party Examiner must:
  - (a) Remain in compliance with the eligibility requirements set for in OAR 735-060-0090;
  - (b) Properly complete all forms required by DMV;
  - (c) Conduct all certification drive tests as set forth in OAR 735-060-0120;
  - (d) Conduct drive tests and issue CDL Certificates of Test Completion only for the class of vehicles authorized on the Third Party Examiner Certificate by DMV;
  - (e) Issue CDL Certificates of Test Completion only for the class of commercial license for which the applicant is tested;
  - (f) Maintain a CDL Third Party Tester Log of all CDL tests conducted. A copy of the log must be kept at the CDL third party tester's business office or facility and the original must be submitted by the CDL Examiner to DMV by the 10th day of the following month;
  - (g) Comply with the following requirements before issuing a CDL Certificate of Test Completion:
    - (A) Obtain either a copy of the applicant's Oregon CDL instruction permit and Oregon Class C driver license or the applicant's Oregon CDL. The applicant's identifying information, including the photo, must be legible on the copy; and
    - (B) Provide the applicant a receipt for the fees the applicant paid for all services relating to the certification drive test, including but not limited to fees for the drive test, travel time or distance, and vehicle rental. A fee may be collected only for those services listed on the schedule submitted to DMV under OAR 735-060-0030(1)(e). The receipt must be on a standard receipt form provided to the CDL Tester by DMV or if not on the DMV form, must contain the same information. A receipt need not be provided when:
      - (i) The CDL Examiner is conducting a test for the Oregon Department of Education; or
      - (ii) The CDL Examiner is conducting a test for an employee of the CDL Tester.
    - (C) Place the CDL Certificate of Test Completion in an envelope and seal the envelope. The outside of the envelope must have the signature of the CDL Tester or CDL Examiner across the seal of the envelope; and
    - (D) Verbally instruct the applicant that the envelope containing the certificate must be submitted to DMV within two years of the date it is issued and will not be accepted if the envelope is opened prior to its delivery to DMV.
    - (h) Successfully complete any additional training when required by DMV;
    - (i) Comply with all statutes, administrative rules, and federal regulations pertaining to the qualifications and responsibilities of a CDL Third Party Examiner;
    - (j) Except as provided in section (2) of this rule, conduct a minimum of 12 certification drive tests during each 12-month period after the initial issuance date of the CDL Third Party Examiner Certificate;
    - (k) Be present during any DMV, Oregon Secretary of State, or Federal Motor Carrier Administration inspection of CDL Third Party Tester records if requested by DMV;
    - (l) Only conduct certification drive tests for the CDL Third Party Tester on the CDL Examiner's Third Party Examiner Certificate;
    - (m) Notify the CDL Third Party Tester within 24 hours of any notice of a civil legal action, a criminal investigation or arrest, or any complaint

concerning administration of a certification drive test or issuance of a certificate of test completion by the CDL Examiner;

(n) Unless prior written approval is obtained from DMV, only conduct a certification drive test that has been scheduled at least 48 hours prior to the administration of the test; and

(o) Submit a list of all certification drive tests scheduled, by facsimile or e-mail, to DMV at least 48 hours prior to administration of the test. The schedule must include the applicant's name, Oregon driver license number, the date and time of the test, the class and type of vehicle to be used for the test and identification of the drive test route. DMV must be notified of changes to the test location, test time, or additions that occur after submission of the schedule. DMV must also be notified of any cancellations that occur more than two hours before a scheduled test. A schedule need not be submitted when:

(A) The Examiner conducts tests only for the Oregon Department of Education; or

(B) The Examiner conducts tests only for employees of the CDL Third Party Tester.

(2) A CDL Third Party Examiner employed by the Oregon Department of Education is not required to conduct a minimum number of certification drive tests in a 12-month period.

(3) A CDL Third Party Examiner must not:

(a) Issue a CDL Certificate of Test Completion to any person:

(A) If the CDL Third Party Examiner did not administer a certification drive test to the person;

(B) If the CDL Third Party Examiner did not administer a certification drive test meeting the requirements of OAR 735-060-0120 to the person;

(C) If the person did not pass the certification drive test; or

(D) Who is known to not have valid driving privileges. Acceptable evidence of valid driving privileges requires that the applicant present an Oregon driver license and CDL instruction permit or Oregon CDL that are not expired.

(b) Falsify any records;

(c) Conduct certification drive tests without a valid CDL Third Party Examiner Certificate issued by DMV;

(d) Transfer his or her CDL Third Party Examiner Certificate to any other person;

(e) Knowingly assist a person in fraudulently obtaining driving privileges from DMV;

(f) Violate the Code of Ethics and Rules of Conduct set forth in OAR 735-060-0115;

(g) Allow any person to take a certification drive test if the CDL Examiner has reason to believe the person is under the influence of intoxicants;

(h) Knowingly test a relative or friend of the CDL Tester or a relative or friend of any employee of the CDL Tester; or

(i) Except as provided in section (4) of this rule, conduct a drive test with an applicant who does not possess either:

(A) A valid Oregon CDL instruction permit along with a valid Oregon driver license that was issued at least 21 days prior to the date of the test; or

(B) A valid Oregon CDL.

(4) A CDL Third Party Examiner that conducts tests only for the Oregon Department of Education or a CDL Third Party Examiner that conducts tests only for employees of the CDL Third Party Tester is exempt from the requirements of section (3)(i) of this rule except that he or she must not conduct a drive test with an individual who does not possess a valid Oregon CDL instruction permit along with a valid Oregon driver license or a valid Oregon CDL.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.080  
Stats. Implemented: ORS 807.040, 807.070 & 807.100  
Hist.: DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0100(8), (9) & (10); DMV 31-2005, f. & cert. ef. 12-14-05; DMV 11-2009, f. 6-25-09, cert. ef. 7-1-09

## 735-060-0110

### Matrix Third Party Examiner Sanctions

DMV adopts the matrix of sanctions in Table 2 for CDL third party examiner violations. Table 2, Examiner Sanctions, is hereby adopted and made a part of this rule. As used in this rule, an offense will be considered a second or subsequent offense if the CDL Third Party Examiner was notified in writing within the three previous years of the occurrence of the same or a substantially similar offense. If more than three years have passed between sanctions for the same or similar offense, DMV will sanction as a first offense. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.080  
Stats. Implemented: ORS 807.040, 807.070 & 807.100  
Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0690; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 3-2006, f. 3-17-06, cert. ef. 4-15-06; DMV 11-2009, f. 6-25-09, cert. ef. 7-1-09



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## 735-060-0120

### The Certification Drive Test

(1) DMV adopts the following Federal Motor Carrier Safety Administration regulations in effect on July 1, 2008 and prescribes that these regulations establish the standards that must be followed in the testing for a commercial driver license:

- (a) 49 CFR sec. 383.75, Third Party Testing; and
- (b) 49 CFR sec. 383.131 through sec. 383.135.

(2) The certification drive test conducted under the CDL Third Party Tester program must be by a CDL Third Party Examiner. The CDL Third Party Examiner must:

- (a) Be certified by DMV; and
- (b) Not conduct more than eight CDL Class A, B, or C pre-trip inspection tests and on-road drive tests within a single calendar day;
- (c) Begin and end all pre-trip inspection and on-road drive tests during daylight hours;
- (d) Conduct all pre-trip inspection and on-road drive tests within the State of Oregon;

(e) Conduct both the pre-trip inspection and on-road drive tests in the same type and class of commercial vehicle. Both the pre-trip inspection and on-road drive tests must be completed on the same calendar day unless the applicant tested has previously failed the on-road drive test;

(f) Not conduct another on-road drive test until after the minimum waiting period set forth in OAR 735-062-0070(5) has passed, if the applicant fails a pre-trip inspection test or an on-road drive test;

(g) Conduct the same pre-trip inspection tests and on-road drive tests that are administered by DMV examiners and use test scoring sheets approved by DMV;

(h) Not permit any person who is not a certified examiner, an official with DMV, an official with the Federal Motor Carrier Safety Administration or the applicant being tested to observe or participate in CDL pre-trip inspection tests or the on-road drive tests without the prior approval of DMV; and

(i) Conduct both the pre-trip inspection and on-road drive tests in English as required by OAR 735-062-0075(2)(d) and (e).

(3) The CDL Third Party Examiner must do the following before administering a drive test:

(a) Ensure the applicant being tested has a valid Oregon CDL instruction permit and Oregon Class C driver license or a valid Oregon CDL and, if the applicant does not have a CDL, the Oregon driver license was issued at least 21 days prior to the test as required by OAR 735-060-0105(3)(i). A certification drive test must not be administered if the CDL Examiner has reason to believe that the applicant's driving privileges are suspended, revoked, canceled or have otherwise been withdrawn; and

(b) View the applicant's Medical Certificate and any required medical waiver as described in OAR 735-063-0060.

(4) The certification drive test must be conducted in accordance with the federal regulations adopted by section (1) of this rule and the methods and procedures set forth in the Oregon Department of Transportation CDL Examiner's Manual, incorporated herein. The certification drive test must include, but is not limited to, the following:

(a) A pre-trip inspection test. This test is designed to evaluate the applicant's ability to identify and operate the equipment on the vehicle in which he or she is being tested and to detect and identify unsafe vehicle equipment items. The specific items that must be inspected during a pre-trip inspection are those listed in the Oregon Department of Transportation CDL Examiner's Manual; and

(b) An on-road drive test. This test is designed to evaluate the applicant's competency to safely operate a commercial motor vehicle or combination of commercial vehicles under actual driving conditions. The applicant must demonstrate safe and proper driving methods and procedures and knowledge of the traffic laws. The following apply to an on-road drive test:

(A) It must be conducted on a drive test route approved by DMV and meeting the specifications set forth in section (5) of this rule;

(B) The commercial motor vehicle or combination of commercial motor vehicles must be of the class for which the applicant seeks a license or endorsement and must have the proper equipment in safe working order so that the vehicle(s) can be operated safely and legally. The CDL Examiner is not required to verify the safe condition of any commercial motor vehicle provided by the applicant for an on-road test, but must not conduct the test if it is apparent the vehicle cannot be operated safely and legally; and

(C) The commercial motor vehicle or combination of vehicles need not be loaded, but the test must be conducted and scored as if the vehicle or combination of vehicles is loaded.

(5) The on-road drive test route must:

(a) Be designed to enable the CDL Third Party Examiner to evaluate the ability of the applicant to perform the maneuvers listed in the Oregon Department of Transportation CDL Examiner's Manual, incorporated by reference herein; and

(b) Meet the specifications for an on-road drive test for commercial driver licensing set forth in the Oregon Department of Transportation CDL Examiner's Manual, incorporated by reference herein.

(6) The Oregon Department of Education may establish additional requirement for the pre-trip inspection and on-road drive test for applicants for a school bus driver certificate, but may not modify or omit any of the testing requirements set forth in these rules, including those in the Oregon Department of Transportation CDL Examiner Manual, incorporated by reference herein, without the prior approval of DMV.

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

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0710; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 3-2006, f. 3-17-06, cert. ef. 4-15-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 11-2009, f. 6-25-09, cert. ef. 7-1-09

## 735-060-0130

### The CDL Certificate(s) of Test Completion

(1) DMV will accept as the actual demonstration of an applicant's ability to drive a Class A, B, or C commercial motor vehicle under ORS 807.070(3)(b) a CDL Certificate(s) of Test Completion issued by a DMV certified CDL Third Party Examiner.

(2) Before issuing a CDL Certificate of Test Completion, the CDL Examiner must:

(a) Obtain a copy of the applicant's Oregon CDL instruction permit and Oregon driver license or the applicant's Oregon CDL. The applicant's identifying information, including the photo, must be legible on the copy; and

(b) Provide the applicant a receipt for the fees the applicant paid for all services relating to the certification drive test, including but not limited to fees for the drive test, travel time or distance, and vehicle rental. A fee may be collected only for those services listed on the schedule submitted to DMV under OAR 735-060-0030(1)(e). The receipt must be on a standard receipt form provided to the CDL Tester by DMV or if not on the DMV form, must contain the same information. A receipt need not be provided when:

(A) The CDL Examiner is conducting a test for the Oregon Department of Education; or

(B) The CDL Examiner is conducting a test for an employee of the CDL Tester.

(3) A CDL Certificate(s) of Test Completion, DMV Form 6771, will be accepted only when it is submitted by an applicant who:

(a) Has passed a Commercial A, B, or C or endorsement drive test meeting the standards set forth in OAR 735-060-0120;

(b) Has valid driving privileges and has passed the necessary CDL knowledge tests and vision screening. A hardship or probationary permit does not constitute valid driving privileges; and

(c) Is applying for a Class A, B, or C commercial driver license or endorsement related to a commercial driver license.

(4) The CDL Certificate(s) of Test Completion must be:

(a) On DMV Form 6771 CDL Certificate(s) of Test Completion;

(b) Completed in its entirety by a CDL Third Party Examiner with a valid Examiner Certificate issued by DMV; and

(c) Submitted to DMV within two years of the date of the certification drive test in an unopened envelope sealed by the CDL Third Party Examiner.

(5) DMV will not accept a CDL Certificate(s) of Test Completion, DMV Form 6771, when:

(a) The applicant for a CDL failed a drive test(s) for CDL of the same class or a lower class and did not wait the required waiting period under OAR 735-062-0070 before taking a certification drive test from a CDL Third Party Examiner.

(b) The applicant submits a CDL Certificate(s) of Test Completion in an envelope that has been opened prior to its being submitted to DMV;

(c) The applicant submits a CDL Certificate(s) of Test Completion that includes any alterations;

(d) The applicant submits a CDL Certificate(s) of Test Completion that is more than 2 years after the date of the drive test; or

(e) The applicant was not tested by a CDL Third Party Examiner who is certified by DMV.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0720; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 11-2009, f. 6-25-09, cert. ef. 7-1-09

## 735-062-0080

### Waiving Drive Test Portion of Driver License Examination

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will waive the actual demonstration

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of an applicant's ability to drive a Class C vehicle required by ORS 807.070(3) if all of the following apply:

(a) The applicant surrenders to DMV a driver license issued to the applicant by another state, the District of Columbia, a United States Territory or a Canadian Province that has not been expired for more than one year, or if the person's driver license issued by another jurisdiction, has been lost or stolen, the applicant submits a letter of clearance, as required in OAR 735-062-0007;

(b) The surrendered, lost or stolen license authorizes the driving of a vehicle other than a moped or motorcycle;

(c) The surrendered, lost or stolen license includes no restrictions other than a single restriction or a combination of restrictions comparable to restrictions imposed on an Oregon driver license;

(d) The applicant has no physical disabilities or impairments which may necessitate any restrictions other than:

(A) "With corrective lenses";

(B) "Outside or side-view mirror(s)"; or

(C) The restriction(s) imposed on the applicant's surrendered, lost or stolen driver license issued by another jurisdiction.

(e) The applicant has no physical or mental condition that provides DMV with reason to question the applicant's ability to drive a motor vehicle without endangering the safety of persons or property.

(2) DMV may waive the actual demonstration of an applicant's ability to drive a Class A, B, or C commercial motor vehicle or any endorsement related to a commercial driver license if the applicant satisfies the requirements in subsection (a) or (b) of this section:

(a) The applicant must meet the qualifications set forth in subsections (1)(a) through (e) of this rule and surrender an out-of-state commercial driver license approved by the Federal Motor Carrier Safety Administration that authorizes the driving of a commercial motor vehicle included in the Oregon classification for which the application is made; or

(b) The applicant submits to DMV a CDL Certificate of Test Completion, Form 6771, in accordance with OAR 735-060-0130.

(3) DMV will waive the actual demonstration of an applicant's ability to drive a motorcycle if:

(a) The applicant surrenders to DMV a motor-cycle-endorsed driver license issued to the applicant by another state, the District of Columbia, a United States Territory or a Canadian Province, or submits a clearance letter as provided for in subsection (1)(a) of this rule; and

(b) The applicant meets the qualifications in subsections (1)(c), (d) and (e) of this rule.

(4) In addition to section (3) of this rule, DMV will waive the actual demonstration of an applicant's ability to drive a motorcycle if:

(a) The applicant passes a motorcycle skills test given during a motorcycle rider education course established by the Transportation Safety Division under ORS 802.320; and

(b) The motorcycle skills test administered during the motorcycle education course meets or exceeds the motorcycle skills test administered by DMV.

(5) Evidence of passing the motorcycle skills test identified in section (4) of this rule is a motorcycle education course completion card as provided for in OAR 735-062-0140. The completion card must have been issued within two years of application to be considered valid for waiver of the skills test.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.070, 807.080 & 807.170  
Stats. Implemented: ORS 807.070, 807.080 & 807.170  
Hist.: MV 61, f. 10-14-75, ef. 11-11-75; MV 15-1986, f. 9-16-86, ef. 10-1-86; MV 15-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0045; MV 26-1988, f. & cert. ef. 11-1-88; MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1990, f. & cert. ef. 8-16-90; MV 1-1991, f. & cert. ef. 3-18-91; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; MV 6-1992(Temp), f. 5-29-92, cert. ef. 6-1-92; MV 10-1992, f. 8-21-92, cert. ef. 9-1-92; MV 12-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 4-1995, f. & cert. ef. 3-9-95; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 11-2006(Temp), f. & cert. ef. 8-25-06 thru 2-20-07; DMV 18-2006, f. & cert. ef. 12-13-06; DMV 3-2009, f. & cert. ef. 2-20-09; DMV 11-2009, f. 6-25-09, cert. ef. 7-1-09

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**Rule Caption:** Availability and Requirements of Hardship or Probationary Permit.

**Adm. Order No.:** DMV 12-2009

**Filed with Sec. of State:** 6-25-2009

**Certified to be Effective:** 6-25-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 735-064-0020, 735-064-0040

**Subject:** OAR 735-064-0020 specifies the particular types of suspensions for which DMV will not issue a hardship or probationary permit. OAR 735-064-0020 previously did not allow DMV to issue a hardship permit to a person who had committed a fraudulent or

unlawful act in applying for or in the use of a driver license, driver permit or identification card.

To establish identity, DMV is using facial recognition software to compare a person's current photograph with his or her previous photographs and all other digital photographs in DMV's data base. As a result, DMV can determine if a person previously applied for a driver license or ID card using a false name, false age or through some other fraudulent or unlawful act. ORS 809.310 and OAR 735-070-0004 authorizes DMV to suspend a person's driving privileges or identification card and the person's right to apply for privileges and an ID card if the person committed a fraudulent or unlawful act in applying for or in the use of a driver license, driver permit or ID card.

Often these suspensions result from an application for false ID when the person was under the age of 21 years. Once DMV determines the person obtained a driver license or ID card through a fraudulent or unlawful act, a suspension is imposed regardless of the number of years that have passed and regardless of the circumstances. For example, the person may have obtained the false identification in college and now eight years later is gainfully employed. Ineligibility for a hardship permit can result in tremendous financial impact on a person whose poor judgment has come to light many years later. DMV determined it is inequitable that a person convicted of a crime such as DUI or reckless driving is eligible for a hardship permit, whereas a person who obtained a false license or ID card is not eligible. DMV corrected this inequity by amending OAR 735-064-0020 to repeal the prohibition on issuance of a hardship permit under these circumstances. The result is that a person whose driving privileges are suspended under ORS 809.310(3) or 809.411(9) for committing a fraudulent or unlawful act in applying for or in the use of a driver license, driver permit or ID card will be eligible for a hardship permit if he or she otherwise qualifies.

OAR 735-064-0040 establishes the application requirements for persons applying for a hardship or probationary permit. The requirements may differ depending on the reason the person's driving privileges are suspended or revoked. DMV amended this rule to specify that a person applying for a hardship permit whose driving privileges are suspended for committing a fraudulent or unlawful act in applying for or in the use of a driver license, driver permit or ID card, must provide documentation insuring that the person is being issued the hardship permit in his or her true identity.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-064-0020

### Who Can Apply for a Hardship or Probationary Permit

(1) Any Oregon resident whose driving privileges are suspended may apply for a hardship permit unless the person's driving privileges are revoked for any reason or suspended under:

(a) ORS 25.780 for failure to pay child support because ORS 807.250(3) does not allow the issuance of a hardship permit;

(b) ORS 809.260 for court denial of juvenile driving privileges because a person suspended for this reason is eligible for an emergency driver permit per ORS 807.220(4);

(c) ORS 809.280(10) for a controlled substance conviction because ORS 807.250(2) does not allow the issuance of a hardship permit;

(d) ORS 809.419(1) for failure to appear for or pass required tests because ORS 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(e) ORS 809.419(2) for failure to obtain a required medical clearance because ORS 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(f) ORS 809.419(3) for a mental or physical condition because ORS 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(g) ORS 809.421(1) for habitual incompetence, recklessness or criminal negligence or committing a serious violation of the motor vehicle laws because ORS 809.421(1)(b) states this suspension is subject to any conditions the department determines necessary. The department has determined that a person suspended under this subsection may not be issued a hardship permit;

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(h) ORS 809.419(5) upon notification by the superintendent of a hospital because ORS 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(i) ORS 809.419(6) when a person charged with a traffic offense has been found guilty except for insanity because ORS 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(j) ORS 813.400 and 813.403, and the person fails to install or use an IID in a vehicle(s) the person intends to operate, because under ORS 813.602(1)(a) an IID must be installed before the person is eligible for a hardship permit;

(k) ORS 809.280(5) or 809.416(1) for failure to appear in court, because ORS 807.250(4) does not allow the issuance of a hardship permit; or

(l) ORS 809.416(2) for failure to pay a fine or obey a court order, because ORS 807.250(4) does not allow the issuance of a hardship permit.

(2) DMV will not issue a hardship permit that authorizes a person to operate a commercial motor vehicle because ORS 807.240(2) does not allow the issuance of a hardship permit to drive a commercial motor vehicle.

(3) Any Oregon resident whose driving privileges are revoked as a habitual traffic offender may apply for a probationary permit unless the person's driving privileges are also revoked for any reason other than being a habitual traffic offender or are also suspended for any of the reasons listed in section (1) of this rule. DMV will not issue a probationary permit that authorizes a person to operate a commercial motor vehicle because ORS 807.270(4) does not allow the issuance of a probationary permit to drive a commercial motor vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240, 807.252 & ORS 807.270  
Stats. Implemented: ORS 807.062, 807.240, 807.250, 807.270, 809.265, 809.380, 809.390, 809.419, 809.421, 813.500 & 813.602  
Hist.: MV 7-1984, f. 6-29-84, ef. 7-1-84; MV 17-1986, f. & ef. 10-1-86; MV 12-1987(Temp), f. 9-16-87, ef. 9-27-87; MV 31-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0085; MV 12-1989, f. & cert. ef. 3-20-89; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 4-1999(Temp.), f. & cert. ef. 10-13-99 thru 4-9-00; DMV 1-2000, f. & cert. ef. 3-10-00; DMV 27-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-29-02; DMV 11-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 25-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 12-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 12-2009, f. & cert. ef. 6-25-09

## 735-064-0040

### Application Requirements for a Hardship or Probationary Permit

(1) Documents required to obtain a hardship permit depend on the reason(s) for the suspension. Documents required to obtain a probationary permit depend on whether the applicant's driving privileges are also suspended and the reason for the suspension. An applicant must comply with any sections of this rule that apply to their suspension and/or revocation. All applicants must:

(a) Complete a Hardship/Probationary Application, (DMV Form 735-6044). This form is available at any DMV office and on the Internet at [www.oregondmv.com](http://www.oregondmv.com); and

(b) Pay the hardship or probationary permit fee and the reinstatement fee.

(2) An applicant, whose driving privileges are suspended based on a conviction for DUII, reckless driving, fleeing or attempting to elude a police officer or misrepresentation of age by a minor to purchase or consume alcohol, must obtain the recommendation and signature of the convicting judge on the Hardship/Probationary Application form.

(3) An applicant, whose driving privileges are suspended for two or more DUII convictions where the commission of the later offense and the conviction for a separate offense occurred within a five-year period, must submit a recommendation for issuance of a hardship or probationary permit from a program approved by AMH.

(4) An applicant, whose driving privileges are suspended under ORS 809.310(3) or 809.411(9) for committing a fraudulent or unlawful act in applying for or in the use of a driver license, driver permit or identification card, must:

(a) Provide proof of a verifiable Social Security Number or proof of not being eligible for one;

(b) Provide proof of legal presence;

(c) Submit to the collection of biometric data and establish identity as provided in ORS 807.024; and

(d) Provide proof of identity and date of birth.

(5) Unless driving privileges are suspended for a DUII conviction, an applicant for a hardship permit must submit a SR22 insurance certificate or other proof of financial responsibility as described in ORS 806.240. An applicant whose driving privileges are suspended for a DUII conviction must submit a SR22 certificate as proof of financial responsibility that shows at least the minimum coverage amounts specified in ORS 806.075. An applicant for a probationary permit must submit a SR22 insurance certificate if the applicant's driving privileges are suspended in addition to the habitual traffic offender revocation.

(6) An applicant for a probationary permit must submit to DMV a medical report form or a report on the Hardship/Probationary Permit Application (DMV Form 735-6044), completed by a licensed physician showing to the satisfaction of DMV that the applicant has no medical condition or impairment that makes it unsafe for the applicant to operate a motor vehicle.

(7) An applicant for a probationary permit must submit verification of the successful completion of a driver improvement course approved by DMV. Names of approved courses can be obtained by calling DMV.

(8) An applicant must provide the following information, depending upon the driving privileges sought:

(a) An applicant who is required to drive for employment purposes must provide the routes, counties, days and times the applicant is required to drive. In addition, this information must be supported by any of the following that apply:

(A) The applicant must submit a letter from the applicant's employer in order to verify the hours of work and the need for on the job driving;

(B) The applicant must submit proof of self-employment. Acceptable proof includes a copy of a business license, business tax statement, newspaper advertisement or business receipts; and

(C) The applicant must provide the days, hours and counties for seeking employment.

(b) An applicant who needs to drive to attend an alcohol or drug treatment or rehabilitation program must provide the name and address of the program, routes, days and times the applicant is required to drive to and from the program;

(c) An applicant for a hardship permit who needs to drive to receive medical treatment on a regular basis for himself or herself or a member of the person's immediate family, must provide the name and address of the medical treatment facility, routes, days and times the applicant is required to drive to receive medical treatment on a regular basis for the person or a member of the person's immediate family. The applicant must submit a signed statement from the physician or certified nurse practitioner treating the person or the person's immediate family member, advising of the need for medical treatment on a regular basis. The statement must include how often the treatment is required and hours of the day and days of the week treatment is available. Actual appointment times are subject to verification by DMV and law enforcement;

(d) An applicant for a hardship permit, whose driving privileges are suspended for violation of ORS 165.805, 471.430, or 806.010, is eligible to request driving privileges for family necessities. The applicant must provide the name and address of the person to whom or facility to which the applicant is driving for the family necessity, routes, days and times the applicant is required to drive for family necessities, as defined in OAR 735-064-0005.

(9) Applicants may submit documents to DMV as they meet requirements. DMV, however, will not issue the hardship or probationary permit until all required documents are received and processed by DMV, Driver Suspensions Unit.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240 & 807.270  
Stats. Implemented: ORS 807.240, 807.250, 807.270, 807.370, 813.500, 813.510  
Hist.: MV 7-1984, f. 6-29-84, ef. 7-1-84; MV 17-1986, f. & ef. 10-1-86; MV 12-1987(Temp), f. 9-16-87, ef. 9-27-87; MV 31-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0095; MV 29-1989, f. & cert. ef. 10-3-89; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 14-2005, f. & cert. ef. 5-19-05; DMV 2-2006, f. & cert. ef. 2-15-06; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 12-2009, f. & cert. ef. 6-25-09

## Employment Department Chapter 471

**Rule Caption:** Amends language regarding compelling family reasons for work separations.

**Adm. Order No.:** ED 1-2009(Temp)

**Filed with Sec. of State:** 6-25-2009

**Certified to be Effective:** 6-29-09 thru 12-26-09

**Notice Publication Date:**

**Rules Amended:** 471-030-0038

**Subject:** Amends language to include "compelling family reasons" as good cause for a work separation.

**Rules Coordinator:** Janet Orton—(503) 947-1724

### 471-030-0038

#### Work Separations, Job Referrals and Job Refusals

(1)(a) As used in ORS 657.176(2)(a), (b) and (c) and sections (1) through (5) of this rule the term "work" means the continuing relationship between an employer and an employee. An employment relationship exists even in circumstances where the work performed is not subject employment as set forth in ORS Chapter 657. This section does not apply where no employment relationship exists because the worker is an independent contractor or operating an independently established business. With the



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exception of the provisions of 657.221(2)(a), the date an individual is separated from work is the date the employer-employee relationship is severed. In the case of individuals working for temporary agencies or employee leasing companies, the employment relationship shall be deemed severed at the time that a work assignment ends.

(b) In the case of absence due to labor dispute, the employee is separated from work on the date there is a complete dissociation from all participation in the labor dispute and no re-employment rights are claimed.

(c) As used in this rule, "wantonly negligent" means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee.

(d) As used in this rule, the following standards apply to determine whether an "isolated instance of poor judgment" occurred:

(A) The act must be isolated. The exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.

(B) The act must involve judgment. A judgment is an evaluation resulting from discernment and comparison. Every conscious decision to take an action (to act or not to act) in the context of an employment relationship is a judgment for purposes of OAR 471-030-0038(3).

(C) The act must involve poor judgment. A decision to willfully violate an employer's reasonable standard of behavior is poor judgment. A conscious decision to take action that results in a wantonly negligent violation of an employer's reasonable standard of behavior is poor judgment. A conscious decision not to comply with an unreasonable employer policy is not misconduct.

(D) Acts that violate the law, acts that are tantamount to unlawful conduct, acts that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3).

(e) For purposes of this rule, "compelling family reasons" means:

(A) Domestic violence, as defined in OAR 471-30-0150, which causes the individual reasonably to believe that the individual's continued employment would jeopardize the safety of the individual or a member of the individual's immediate family; or

(B) The illness or disability of a member of the individual's immediate family necessitates care by another and the individual's employer does not accommodate the employee's request for time off; or

(C) The need to accompany the individual's spouse or domestic partner:

(i) To a place from which it is impractical for such individual to commute; and

(ii) Due to a change in location of the spouse's or domestic partner's employment.

(f) As used in OAR 471-030-0150 and this rule, "a member of the individual's immediate family" includes spouses, domestic partners, parents, and minor children under the age of 18, including a foster child, stepchild or adopted child.

(2) The distinction between voluntary leaving and discharge is:

(a) If the employee could have continued to work for the same employer for an additional period of time the separation is a voluntary leaving of work;

(b) If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer the separation is a discharge.

(3)(a) As used in ORS 657.176(2)(a) and (b) a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct.

(b) Isolated instances of poor judgment, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct.

(c) The willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved is misconduct, so long as such failure is reasonably attributable to the individual.

(d) Discharge for "compelling family reasons," when the individual has made the attempt to maintain the employer-employee relationship, is not misconduct.

(4) Good cause for voluntarily leaving work under ORS 657.176(2)(c) is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work. For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause for voluntarily leaving work is such that a rea-

sonable and prudent person with the characteristics and qualities of such individual, would leave work. Except as provided in OAR 471-030-0038(5)(g), for all individuals, the reason must be of such gravity that the individual has no reasonable alternative but to leave work.

(5) In applying section (4) of this rule:

(a) If an individual leaves work to accept an offer of other work good cause exists only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay:

(A) An amount equal to or in excess of the weekly benefit amount; or

(B) An amount greater than the work left.

(b) Leaving work without good cause includes, but is not limited to:

(A) Leaving suitable work to seek other work;

(B) Leaving work rather than paying union membership dues;

(C) Refusing to join a bona fide labor organization when membership therein was a condition of employment;

(D) Leaving to attend school, unless required by law;

(E) Willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved, so long as such failure is reasonably attributable to the individual;

(F) Resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct;

(G) Leaving work for self employment.

(c) Good cause for voluntarily leaving work while on layoff status shall be determined solely under the provisions of section (4) of this rule without regard to the provisions of subsections (a) and (b) of this section;

(d) Reduction in rate of pay: If an individual leaves work due to a reduction in the rate of pay, the individual has left work without good cause unless the newly reduced rate of pay is ten percent or more below the average rate of pay for similar work in the individual's normal labor market area. The average rate of pay in the individual's labor market shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.

(A) This section applies only when the employer reduces the rate of pay for the position the individual holds. It does not apply when an employee's earnings are reduced as a result of transfer, demotion or reassignment.

(B) An employer does not reduce the rate of pay for an employee by changing or eliminating guaranteed minimum earnings, by reducing the percentage paid on commission, or by altering the calculation method of the commission.

(C) An employer does not reduce the rate of pay by loss or reduction of fringe benefits.

(D) If the Employment Department cannot determine the average rate of pay, the provisions of OAR 471-030-0038(4) apply.

(e) Reduction in hours: If an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full time work or unless the cost of working exceeds the amount of remuneration received;

(f) Where the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of section (4) of this rule.

(g) Leaving work with good cause includes, but is not limited to, leaving work due to compelling family reasons.

(6) As used in ORS 657.176(2)(d) and (e), the term "work" means the performance of services for which remuneration, compensation or wages is intended to be received or earned. Good cause as used in 657.176(2)(d) and (e) is such that a reasonable and prudent person, exercising ordinary common sense, would refuse to apply for available suitable work when referred by the employment office or accept suitable work when offered by the employer. For an individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR §1630.2(h)) good cause is such that a reasonable and prudent person with the characteristics and qualities of such individual, would refuse to apply for available suitable work when referred by the employment office or accept suitable work when offered by the employer. In determining disqualification under this section, consideration shall be given to suitable work factors and exceptions as set forth in ORS 657.190 and 657.195.

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

Stat. Auth.: ORS 657.176, 657.260, 657.265 & 657.610

Stats. Implemented: ORS 657.176

Hist.: IDE 1-1979(Temp), f. & ef. 4-30-79; IDE 5-1979, f. & ef. 8-27-79; IDE 1-1984, f. & ef. 3-21-84; IDE 2-1986, f. & ef. 4-14-86; ED 5-1992, f. & cert. ef. 12-14-92; ED 2-1993(Temp), f. & cert. ef. 8-12-93; ED 4-1993, f. & cert. ef. 11-22-93; ED 6-1999, f. 9-23-99, cert. ef. 9-26-99; ED 7-2001(Temp), f. 5-17-01, cert. ef. 5-20-01 thru 11-11-01; ED 13-2001, f. 11-2-01, cert. ef. 11-4-01; ED 8-2004, f. 12-17-04, cert. ef. 12-19-04; ED 1-2009(Temp), f. 6-25-09, cert. ef. 6-29-09 thru 12-26-09

# ADMINISTRATIVE RULES

**Rule Caption:** Amends language regarding domestic violence and members of an individual's immediate family.

**Adm. Order No.:** ED 2-2009(Temp)

**Filed with Sec. of State:** 6-25-2009

**Certified to be Effective:** 6-29-09 thru 12-26-09

**Notice Publication Date:**

**Rules Amended:** 471-030-0150

**Subject:** Amends language in the domestic violence rule to define "member of an individual's immediate family."

**Rules Coordinator:** Janet Orton—(503) 947-1724

## 471-030-0150

### Domestic Violence

(1) As used in ORS 657.176(12) and for purposes of this rule, "a member of the individual's immediate family" has the same meaning as the term is defined in OAR 471-030-0038(1).

(2) As used in ORS 657.176(12), "domestic violence" means the physical injury, sexual assault or forced imprisonment, or threat thereof, of a person by another who is related by blood or marriage or has a significant relationship with the other person at the present, or who has been related or has had a significant relationship at some time in the past, to the extent that the person's health, safety or welfare is harmed or threatened thereby.

(3) As used in ORS 657.176(12), "stalking" means:

(a) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person thereby alarming or coercing the other person;

(b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and

(c) The repeated and unwanted contact causes the individual or a member of the individual's immediate family reasonable apprehension regarding the personal safety of the individual or the family member.

(4) As used in ORS 657.176(12), "sexual assault" means any unwanted touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(5) The effective date for implementing this rule shall be June 29, 2009.

Stat. Auth.: ORS 657.176 & 657.610

Stats. Implemented: ORS 657.176 & HB 2767 (OL 2001)

Hist.: ED 13-2001, f. 11-2-01, cert. ef. 11-4-01; ED 3-2005(Temp), f. & cert. ef. 6-24-05 thru 12-17-05; ED 4-2005(Temp), f. & cert. ef. 7-5-05 thru 12-17-05; ED 7-2005, f. & cert. ef. 12-15-05; ED 2-2009(Temp), f. 6-25-09, cert. ef. 6-29-09 thru 12-26-09

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**Rule Caption:** Defines "Standards Base Period as used in ORS 657.010(1)(b).

**Adm. Order No.:** ED 3-2009(Temp)

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09 thru 12-28-09

**Notice Publication Date:**

**Rules Adopted:** 471-030-0012

**Subject:** This rule defines "Standard Base Year" as used in ORS 657.010(1)(b) to clarify the agency's definition of a "Standard Base Year."

**Rules Coordinator:** Janet Orton—(503) 947-1724

## 471-030-0012

### Standard Base Year Defined

As used in ORS 657.010(1)(b), "standard base year" means a regular base year or period that is not expanded in any way.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610

Hist.: ED 3-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09

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## Mortuary and Cemetery Board Chapter 830

**Rule Caption:** Clarifies/updates industry terms and practices, updates statute numbers, reflects statute changes, implements plain language.

**Adm. Order No.:** MCB 1-2009

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 830-001-0000, 830-011-0000, 830-011-0020, 830-011-0040, 830-020-0030, 830-030-0000, 830-030-0050, 830-030-0060, 830-040-0000, 830-040-0040

**Subject:** The proposed rules recognize industry changes in practices and terms, corrects outdated references to various statute numbers and correct the date of Administrative Procedures Act uniform Model Rules. The proposed rules also reflect statutory changes in ORS 692 and ORS 97 in relation to apprenticeship. Plain language statutory mandates (spelling, grammar, etc.) are also proposed.

**Rules Coordinator:** Michelle Gaines—(971) 673-1502

## 830-001-0000

### Model Rules of Procedure and Notice of Proposed Rulemaking

(1) The Attorney General's Uniform Model Rules of Procedure under the Administrative Procedures Act, which became effective January 1, 2008 are by this reference adopted as rules of administrative procedure of the Board and shall be controlling except as otherwise required by statute or rule.

(2) Prior to the adoption, amendment or repeal of any rule, the Mortuary and Cemetery Board shall give notice of the intended action:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days before the effective date of the intended action;

(b) By mailing a copy of the notice to persons on the Mortuary and Cemetery Board's mailing list established pursuant to ORS 183.335(8);

(c) By mailing or furnishing a copy of the notice to the United Press International and Associated Press; and

(d) To licensees, certificate holders of the Board, State Medical Examiner, the Center for Health Statistics of the State Health Division, District Attorneys within the state, the Oregon Funeral Directors Association and the Cemetery Association of Oregon.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Mortuary Board.]

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 183.335 & 183.360

Hist.: FDB 15, f. & ef. 10-15-76; FDB 2-1979, f. & ef. 2-21-79; FDB 1-1980, f. & ef. 3-28-80; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09

## 830-011-0000

### Definitions

(1) "At Need". As used in this chapter, means arrangements entered into after a death has occurred, "at the time of need".

(2) "Authorizing Agent(s)". The authorizing agent(s) is (are) the person(s) legally entitled to order the disposition of human remains and cremated remains.

(3) "Burial Vault". A burial vault is a receptacle designed to protect the casket from the intrusion of outside elements, the weight of the surrounding earth, and the weight of maintenance equipment.

(4) "Certificate of Authority". A Certificate of Authority is a certificate issued to an individual or corporation who is responsible for the operation of either a cemetery or crematory. If the crematory or cemetery is a corporation, the Certificate of Authority shall be issued to the corporation.

(5) "Cremated Remains". Cremated remains are the remaining ash and bone fragments after the act of cremation is completed.

(6) "Cremated Remains Container". As used in this chapter, a cremated remains container means any container in which processed cremated remains can be placed and closed [so as] to prevent leakage. At a minimum, this would be a plastic-lined cardboard container.

(7) "Cremation". Cremation is the technical heating process that reduces human remains to ash and bone fragments.

(8) "Cremation Chamber". A cremation chamber is the enclosed space in which the cremation process takes place.

(9) "Cremation Container". A cremation container is the container in which the human remains are placed in the cremation chamber for a cremation. The container shall meet all the requirements of the crematorium.

(10) "Crematory Authority". The crematory authority is the legal entity or the authorized representative of the legal entity who conducts the cremation.

(11) "Crematory or Crematorium". A crematory or crematorium is any person, partnership, or corporation with a Certificate of Authority to operate a cremation chamber.

(12) "Death Care Industry". As used in this chapter death care industry means the funeral service, cemetery, immediate disposition, and cremation industries.

(13) "Disinfectant Solution". A disinfectant solution is a chemical agent capable of destroying pathogens or their product when applied with sufficient time and concentration.

(14) "Disposition". Disposition is burial, entombment, burial at sea or cremation.

(15) "Embalmed". Human remains shall be considered embalmed when sufficient disinfectant solution or preservative fluid has been injected into the circulatory system and/or applied externally to render it not a hazard to public health.

# ADMINISTRATIVE RULES

(16) "Endowment Care Funds". Endowment care funds are principal amounts deposited from which the revenue on the principal is used for the care and maintenance of a cemetery.

(17) "Final Processing". Final Processing is the processing of cremated bone fragments to an unidentifiable dimension.

(18) "Grave Liner". A grave liner is a burial receptacle either in sectional or box form, built and designed to be installed in a grave to assist in preventing the ground from collapsing.

(19) "Holder of a Certificate of Registration". As used in this chapter a "Holder of a Certificate of Registration" means the same as "Certified Provider" as defined in ORS 97.923(2).

(20) "Holding Room". A holding room is a suitable room constructed in accordance with OAR 830-040-0020(2), (3), (4), (5), and (6) which licensed funeral establishments use for the care, storage, or holding of human remains prior to effecting disposition. This room shall be of sufficient size to accommodate at least one table for a casketed remains and attendant that may be used by the funeral establishment to care for or repair remains in those facilities which do not offer on premises embalming. This room would be other than a chapel, viewing or visitation room, office supply room, closet or other room normally open to the public.

(21) "Human Remains". Human remains means a dead human body.

(22) "Identification Viewing". Identification viewing means viewing the remains for the purpose of identifying the remains, regardless of whether the remains have been washed or otherwise prepared.

(23) "Identifying Metal Disc". An identifying metal disc is a metal disc, approximately one inch in diameter with a number assigned by the State Registrar's office, each with a different number, for the purpose of accompanying dead human remains through the disposition process and to serve as a means of permanent identification of those remains.

(24) "Intern Apprentice". An intern apprentice is any student enrolled in an accredited funeral service education program who is serving his/her three-month internship under the supervision of a combination-licensed funeral service practitioner/embalmer at a participating funeral establishment.

(25) "Licensed Facility". A licensed facility is any licensed business governed by ORS Chapter 692, either cemetery, crematory, immediate disposition company or funeral establishment.

(26) "Licensee". Licensee means any funeral establishment, immediate disposition company, funeral service practitioner, embalmer, apprentice, cemetery authority or crematory authority licensed under ORS Chapter 692 and any preneed salesperson registered under ORS 97.931.

(27) "Minimum Preparation of Human Remains". As used in this rule minimum preparation of human remains means the human remains are completely washed as defined in this section.

(28) "Offensive Treatment of Human Remains". As used in this rule and in ORS Chapter 692, offensive treatment of human remains is treatment offensive to the generally accepted standards of the community.

(29) "Prearrangement". As used in this chapter, means sales or agreements for undelivered goods or services to be delivered at an unspecified date in the future, entered into before a death has occurred, i.e., "before the time of need". Prearrangements by this definition do not include the sale of interment rights purchased before a death when the property is developed.

(30) "Preneed Funds". Preneed funds are specified amounts paid for goods and/or services that are sold in advance of need but not delivered.

(31) "Preneed salesperson". As used in these rules, "preneed salesperson" means an individual registered under ORS 97.931 and employed by a certified provider to engage in the sale of prearrangement or preconstruction sales contracts on behalf of the certified provider.

(32) "Preparation Room". As used in these rules, preparation room means the same as embalming facility as used in ORS Chapter 692.

(33) "Principal". Principal means those persons who have controlling authority over the licensed facility, including but not limited to:

(a) Managers or other persons who have decision-making authority and whose primary duties include control over the operation of the licensed facility;

(b) Officers or directors who have some degree of responsibility for the operation of the licensed facility;

(c) Stock holders or corporations who own or control ten percent or more of the licensed facility by owning or controlling ten percent or more of the voting stock; and

(d) Partners.

(34) "Processed Cremated Remains". As used in this chapter, processed cremated remains are the result of pulverization, where the residual from the cremation process is cleaned leaving bone fragments reduced to unidentifiable dimensions.

(35) "Public Viewing". Public viewing means the human remains have, at minimum, been washed, as defined in this section, and the remains are placed in a viewing room, church, chapel or other suitable place for viewing of the remains.

(36) "Receptacle". As used in this chapter, a receptacle means a rigid container for human remains.

(37) "Refrigeration Unit". As used in this chapter, a refrigeration unit is one used in licensed facilities to store dead human remains that meet commercial standards.

(38) "Registration". As used in this chapter, registration may refer to the registration of a cemetery that does not fall under the category of "Operating Cemetery" as defined in ORS 692.010(7) or it may refer to the "registration" of preneed salespersons. Registration of non-operating cemeteries, and preneed salespersons is required for compliance with Oregon Laws.

(39) "Sanitary Condition". Sanitary means clean from dirt, foreign particles, blood stains, offensive odors, insects, etc.

(40) "Sealed Casket". A sealed casket is one that is designed by a manufacturer to be sealed prior to final disposition.

(41) "Solicitation". Solicitation is defined as actively endeavoring to obtain business or clientele through means such as telephone or personal contact.

(42) "Visitation". Visitation means a specific time and place to gather where the human remains are present, except for graveside service.

(43) "Washed". A human remains shall be considered washed and brought to a sanitary condition when the entire surface of the human remains has been bathed with a disinfectant solution and the mouth, nose, and other body orifices have been washed and when necessary packed with cotton saturated with a disinfectant solution.

Stat. Auth.: ORS 128.414 & 692.320

Stat. Implemented: ORS 692.320 & 128.414

Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1988, f. & cert. ef. 2-10-88; MCB 1-1989, f. & cert. ef. 2-6-89; Renumbered from 830-030-0010(1)(a) - (k) & 830-030-0020; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2001(Temp), f. 12-12-01, cert. ef. 1-1-02 thru 6-29-02; MCB 1-2002, f. 5-30-02, cert. ef. 6-30-02; MCB 1-2009, f. & cert. ef. 7-1-09

## 830-011-0020

### Apprenticeship — Generally

(1) Apprenticeship for embalmer, funeral service practitioner, or intern apprentice must be served under persons licensed and working in Oregon who have been licensed for at least one year. A funeral service practitioner may supervise only one apprentice at a time and an embalmer may supervise only one apprentice at a time. (The only exception to this rule is that an embalmer may supervise up to three intern apprentices from an accredited funeral service education provider in addition to an apprentice embalmer.) A person who holds both a funeral service practitioner license and an embalmer license may supervise an apprentice funeral service practitioner and an apprentice embalmer. The licensee who supervises an apprentice must be working and located in the same licensed facility as the apprentice he/she is supervising.

(2) Apprentice embalmers must assist in the preparation of at least 45 human remains during the apprenticeship period under the personal supervision of a licensed embalmer. A record showing the name of the deceased, date, and place of death, and the date of embalming shall be kept and furnished to the Board upon request.

(3) Apprentice embalmers must work a minimum of at least thirty hours per week and at least three days per week, excluding up to 30 days of vacation time per year.

(4) Apprentice funeral service practitioners must work a minimum of 30 hours per week during normal business hours, excluding 30 days of vacation leave per year, and must assist in the planning of at least 25 funerals or dispositions per year through some form of direct contact with the family or representative of the deceased. Apprentice funeral service practitioners may not be accredited for time served in their funeral service practitioner apprenticeship while being enrolled in a full-time funeral service education program. For the purpose of this chapter, full-time is considered 12 or more credit hours per quarter. If the apprentice is enrolled in 11 or less credit hours per quarter, he/she will be considered a part-time student and could qualify for a funeral service practitioner apprenticeship providing he/she can meet the minimum requirements set forth above. Apprentice funeral service practitioners who are planning to become part-time students shall submit a letter to the Board clearly explaining their ability to attend classes and still meet the minimum requirements set forth above. Each applicant shall be approved individually based on the submission of all appropriate paperwork, fees and letters of explanation. No credit will be granted for apprenticeship time served unless prior approval by the Board has been granted. A log book shall be kept, on the premises, showing all arrangements made or participated in by the apprentice and be available upon request. The log book shall be retained for a period of one year after completion of the apprenticeship and shall include the following:

(a) Name of deceased;

(b) Date and place of death;

(c) Date arrangements were made;

(d) Apprentice participation with family; and



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(e) Number of days and hours worked per week.

(5) Intern apprentices shall serve their apprenticeships in accordance with the internship guidelines established by an accredited funeral service education program. A copy of the guidelines is available from the Board upon request. Intern apprentices are only required to intern at a funeral home for 15 hours per week and may acquire half credit for the three-month period toward the twelve-month licensing requirement for embalmer toward licensing. If the intern apprentice is also serving an embalmer apprenticeship and is meeting the thirty hour a week requirement set forth in section (3) of this rule then full credit shall accrue toward completion of the embalmer apprenticeship. If the intern is performing the functions of an intern funeral service practitioner in addition to an intern apprentice then the apprentice may also receive half-credit for the three-month period toward the 12-month requirement for a funeral service practitioner license.

(6) Applicants for an apprentice certificate shall make application in accordance with ORS Chapter 692. The application must be accompanied by the fee prescribed by OAR 830-020-0040, a certified copy of the applicant's birth certificate, and satisfactory proof of high school graduation or equivalency. If an applicant for an apprentice certificate does not have a high school diploma, he/she must present satisfactory evidence that he/she possesses the equivalent of a high school education received in some private, public, or trade school, or he/she must successfully pass the high school equivalency test (General Education Development Test) given by the local high school, or some similar equivalency test conducted by a similar agency. Prior to becoming licensed as a funeral service practitioner, apprentices shall provide a certified copy of a transcript from a school accredited by an Association of Schools and Colleges demonstrating completion of an Associate's degree or higher degree. Prior to becoming licensed as an embalmer, apprentices shall provide proof of completion of an accredited course of funeral service education.

(7) The effective date of the apprenticeship shall be the date the completed application, fee, and the required certificates are received and validated in the office of the Board. A letter will be sent notifying the apprentice of the status of his/her apprenticeship.

(8) The certificate of apprenticeship shall be issued to the applicant as an apprentice to a specified licensee. If the apprentice changes establishments or person to whom apprenticed, he/she shall file a request for approval of transfer with the Board immediately. A certificate shall be reissued upon payment of an administrative charge. When an apprentice ceases employment at the supervisor's facility, the apprenticeship certificate shall become null and void. It is the responsibility of the supervisor to notify the Board's office of any termination in apprenticeship.

(9) Apprentice funeral service practitioner and embalmer certificates shall not be granted to any person for a longer period than 48 aggregate months. When an apprentice has completed his/her apprenticeship, he/she will no longer be licensed as an apprentice, but must qualify either as a licensed embalmer or licensed funeral service practitioner.

(10) If a funeral service practitioner's apprentice makes any arrangements for a deceased person the licensed funeral service practitioner supervising the apprentice is responsible for any arrangements made by the apprentice.

(11) An applicant for Oregon funeral service practitioner or embalmer licensure shall be deemed to have satisfied the respective apprenticeship requirement upon submitting proof satisfactory to the Board that the person has practiced, respectively, as a licensed funeral service practitioner or embalmer:

- (a) For three years of the past five years; or
- (b) For a total of ten years.

(12) Embalmer applicants who meet the requirements set forth in section (11) of this rule, shall be required to demonstrate competency by way of a practical examination at a time and place designated by the Board.

(13) Funeral Service Practitioner applicants who meet the requirements set forth in section (11) of this rule shall be required to successfully complete a written examination and receive a score of not less than 75 percent, based on the total number of questions.

Stat. Auth.: ORS 692.160 & 692.320  
Stats. Implemented: ORS 692.045, 692.070, 692.105, 692.130 & 692.190  
Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0050; MCB 2-1988, f. & cert. ef. 9-9-88; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1992, f. & cert. ef. 2-11-92; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09

## 830-011-0040

### Completion of Funeral Service Practitioner and Embalmer Apprenticeship and Examination

(1) A funeral service practitioner apprenticeship shall be completed within 48 aggregate months. The individual must successfully complete practical experience as a funeral service practitioner's apprentice under ORS 692.190.

(2) An embalmer apprenticeship shall be completed within 48 aggregate months, excluding time lost as provided in ORS 692.190(7).

Extensions of the 48 aggregate month period for completion of an embalmer apprenticeship may be granted by the Mortuary and Cemetery Board due to extenuating circumstances beyond the control of the apprentice. The embalmer apprentice shall submit written evidence of graduation from an accredited program of funeral service education. An embalmer apprentice may either take the Oregon embalmer examination or he may submit to the Board proof of passing the National Board Examination written by the Conference of Funeral Service Examining Boards of the United States, Inc. in lieu of the Oregon embalmer examination. In either case an average score of at least 75 percent as described in OAR 830-020-0000(2)(b) will be required for passing.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320  
Stats. Implemented: ORS 692.105, 692.045 & 692.190  
Hist.: FDB 1-1978, f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0060; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09

## 830-020-0030

### Reciprocal Licensure

(1) An applicant for reciprocal licensure shall apply to the Board on a form provided by the Board. The application shall be accompanied by the following:

- (a) The reciprocal fee as prescribed by OAR 830-020-0040;
- (b) A certified copy of the applicant's birth certificate;

(c) A certified copy of transcripts from a school accredited by an Association of Schools and Colleges demonstrating completion of an Associate's degree or higher degree (for funeral service practitioner licensure) or proof of passing an accredited course of funeral service education (for embalmer licensure);

(d) A certificate from the state(s) the applicant is licensed in which includes: Length of apprenticeship, examination score, date licensed, status of license at the present time, and whether the applicant's license has ever been suspended or revoked or other disciplinary action taken;

(e) Proof that the applicant is licensed and has practiced, respectively, as a funeral service practitioner or an embalmer in another state for three of the past five years immediately preceding the respective application date; and

(f) An authorization signed by the applicant for the Board to perform a thorough background investigation as described in ORS 692.025(8).

(2) An applicant for reciprocal funeral service practitioner license shall be required to pass the Board's funeral service practitioner examination as a means of providing satisfactory proof to the Board that the applicant has the requisite qualifications for licensing as a funeral service practitioner in this state. The examination shall include Oregon and federal laws, rules and regulations relating to the care, preparation, disposition and transportation of human remains and to survivor death benefits. Reciprocal applicants for funeral service practitioner license shall be required to receive a score of not less than 75 percent, based on the total number of questions, in order to pass the examination. Reciprocal applicants shall be eligible to take the examination at the regularly scheduled examination dates if their applications are received at least 30 days prior to the examination date.

(3) Applicants for reciprocal embalmer licensure shall be required to show evidence satisfactory to the Board that the applicant has successfully passed the National Board Examination as administered by the Conference of Funeral Service Examining Boards or an equivalent examination written by the Conference of Funeral Service Examining Boards that shall include two sections, funeral service arts and funeral service sciences, and must receive an average score of at least 75 percent on the sections with not less than 70 percent on either of these two sections.

(4) At no time shall a license be issued to a reciprocal applicant before a complete background check has been performed and Board approval has been received.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320  
Stats. Implemented: ORS 692.140  
Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09

## 830-030-0000

### In General

(1) No licensee, operator of a licensed facility, or their agent shall interfere with another licensee, operator of a licensed facility, or their agent who has been legally called to take care of human remains, or perform services relating to the disposition of human remains. The choice of licensed funeral homes, cemeteries, crematories or immediate disposition companies, or licensed person shall be left entirely to the person with the legal right to control final disposition.

(2) It shall be the responsibility of the funeral service practitioner to prepare a certificate of death and file the same with the vital statistics local registrar in the county where the death occurred.

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(3) It shall be the responsibility of the funeral service practitioner to see that an identifying metal disc (with a number assigned by the State Registrar's Office) is attached to each receptacle containing human remains. When remains are to be cremated, the identifying metal disc shall be secured to the top of the head end of the casket or alternative container. When remains are going to be buried or entombed, the identifying metal disc shall be placed on the back side of the head end of the casket behind the handle. If there are no handles, the identifying metal disc should be attached in the same general vicinity. The number on the identifying metal disc shall be written on the certificate of death and final disposition permit by the responsible funeral service practitioner.

(4) It shall be the responsibility of the Crematory Authority to see that the identifying metal disc shall accompany remains through the cremation process.

(5) It shall be the responsibility of the Cemetery Authority or Crematory Authority to see that the identifying metal disc is properly secured to each receptacle containing human remains when remains are delivered to the Cemetery Authority or Crematory Authority and that the number on the identifying metal disc is the number recorded on the final disposition permit. The Cemetery Authority or Crematory Authority shall sign the final disposition permit verifying this fact prior to accepting the remains. At no time shall the Cemetery Authority or Crematory Authority accept remains without an identifying metal disc unless death occurred in a state other than Oregon.

(6) In the case of scattering of cremated remains by a licensee, the identifying metal disc shall be made a part of the licensee's permanent record.

(7) It shall be the responsibility of the funeral establishment licensee or person acting as such handling the disposition of human remains, to pay the death certificate filing fee as required in ORS 432.312(1). This fee shall be paid within 30 days after the billing, and in no case, longer than 90 days after the billing. Failure to pay death certificate filing fees shall be cause for disciplinary action by the Board.

(8) It shall be the responsibility of the funeral establishment licensee, immediate disposition company, Cemetery Authority, and Crematory Authority to assign a manager for each funeral establishment, cemetery or crematory. In the case of funeral establishments and immediate disposition companies, the manager shall be an Oregon licensed funeral service practitioner.

(9) Notwithstanding the provisions of subsection (8) of this section, the Board may authorize a funeral service practitioner to manage more than one funeral establishment or immediate disposition company when the Board, in its sole discretion, determines that the management of more than one funeral establishment or immediate disposition company by a single funeral service practitioner is in the public interest. A request by a funeral service practitioner to manage more than one funeral establishment or immediate disposition company shall be in writing and shall describe the basis for the request. Board approval shall be in writing and shall identify each funeral establishment or immediate disposition company the funeral service practitioner is authorized to manage.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320  
Stats. Implemented: ORS 432.165, 432.307, 692.180 & 692.405  
Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0150; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09

## 830-030-0050

### Processing of Cremated Remains

In order to protect the public's interests and to prevent any misrepresentation in the conduct of doing business, the crematory authority shall process cremated remains in the following manner:

(1) Upon completion of the cremation, insofar as is possible, all residual of the cremation process shall be removed from the cremation chamber and the chamber swept clean. The residual shall be placed within a container or tray that will ensure against co-mingling with other cremated remains, and the identification removed from the cremation chamber and attached to the container or tray to await final processing;

(2) All residual of the cremation process shall undergo final processing;

(3) The entire processed cremated remains shall be placed in a cremated remains container. The identifying metal disc shall be placed on the cremated remains container. The cremated remains container contents shall not contain any other object unrelated to the cremation process unless specific authorization has been received from the authorizing agent;

(4) If the entire processed remains will not fit within the dimensions of the cremated remains container, the remainder shall be returned either in a separate container, or upon written permission of the authorizing agent, be disposed of according to the established procedures of the crematory authority; and,

(5) The following information will be affixed to the temporary receptacle, or attached to the permanent receptacle for cremated remains: deceased name, date of death, identifying metal disc number, name of funeral home, and name of crematory.

Stat. Auth.: ORS 183.341, 183.545 & 692.320  
Stats. Implemented: ORS 692.025 & 692.275  
Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-2009, f. & cert. ef. 7-1-09

## 830-030-0060

### Rules for Transportation of Human Remains (Does Not Include Removal of Deceased from Place of Death to Funeral Establishment, Cemetery, Crematory or Other Holding Facility)

(1) When an unembalmed human remains is to be transported to a destination after 24 hours after death the remains may be removed from refrigeration and transported as described in OAR 830-030-0080(1) providing that the remains can be transported to its destination within the six hour time-frame. If the remains cannot be transported to its destination within the six hour time-frame, it shall be embalmed or placed in a sealed rigid container.

(2) No disinterred human remains shall be transported from one cemetery to another within the State of Oregon or transported out of the state, except by permit of the State Health Division. A disinterred human remains shall be any human remains removed from one cemetery to another cemetery (this does not apply to cremated remains).

Stat. Auth.: ORS 183.341, 183.545 & 692.160  
Stats. Implemented: ORS 432.317 & 692.025  
Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0160; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09

## 830-040-0000

### General Principles

(1) Every licensee operating under ORS Chapter 692 shall be responsible for complying with the provisions of ORS Chapter 692 and rules adopted thereunder, and any other law pertaining to the duties and responsibilities of the funeral service practitioner or the operation or licensing of funeral establishments, immediate disposition companies, cemeteries and crematoriums.

(2) No licensed facility shall be advertised or operated without the appropriate license or certification or be held out under any name which could be termed misleading.

(3) When a person, firm, partnership or corporation applies to the Board for a funeral establishment license, immediate disposition company license, or certificate of authority to operate a cemetery or crematorium, the name shall contain the identification of the activity, business or profession of funeral, immediate disposition, cemetery or crematory service as set forth in ORS Chapter 692 and the rules adopted thereto. This identified name shall be the registered name with the Board and shall also be utilized as the advertised name of the funeral, immediate disposition company, cemetery or crematory establishment.

(4) Applications for all licensed facilities shall specify the names of all principals. If the principal is a corporation, the application shall include the names of all principals of that corporation.

(5) When there is a change in any principal of the licensed facility, the licensee shall provide the Board with the name of the new principal(s) on a form provided by the Board within 30 days of the change. If the new principal is a corporation, the licensee shall provide the names of the principals of that corporation to the Board on a form provided by the Board.

(6) All licensees, licensed facilities and funeral service practitioners shall keep a detailed, accurate, and permanent record of all transactions that are performed for the care and preparation and final disposition of human remains. The record shall set forth as a minimum:

(a) Name of decedent and the identifying metal disc number provided by Vital Statistics;

(b) Date of death;

(c) Name of purchaser of professional services and relationship;

(d) Name of place wherein remains are to be interred or cremated (in cemetery records the exact location of the interment of remains by crypt, niche, or by grave, lot and plot);

(e) The name of the funeral service practitioner or cemetery or crematory personnel responsible for making the arrangements;

(f) The name of the embalmer responsible for embalming (does not apply to cemetery or crematorium records); and

(g) Written documentation of permission to embalm or cremate a human remains is required from the person who has the right to control disposition of the remains pursuant to ORS 97.130(1) and (2). The record of such authorization shall be made to include as a minimum: The name of the authorizing individual and relationship to the deceased, date and time contacted, phone number and name of the licensee or funeral home represen-

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tative acquiring the authorization (does not apply to cemetery or crematorium records).

(7) In the case of cremation, the licensee responsible for making the cremation arrangements shall require the person making the cremation arrangements to provide the licensee with a signed statement specifying the action taken regarding delivery of the cremated remains. A copy of this statement shall be retained by the responsible licensee and be made a part of the permanent record.

(8) If cremated remains are not retained by the licensee accepting initial responsibility, the licensee shall upon delivery of such cremated remains to another individual, obtain a signed receipt from that individual. The receipt shall state the name of the individual receiving the cremated remains, the name of the deceased, and the date of delivery of such cremated remains. The individual receiving the cremated remains shall sign the receipt. The licensee or the licensee's representative releasing the cremated remains shall also sign the receipt and a copy of that receipt shall remain a part of the permanent record.

(9) No funeral establishment operator, immediate disposition company operator, cemetery authority or crematory authority shall:

(a) Fail to preserve permanent records for inspection by the Board; or

(b) Alter, cancel or obliterate entries in permanent records for the purpose of falsifying any record required by this chapter to be made, maintained or preserved.

(10) After human remains are released to the cemetery authority, they shall be placed in their designated grave, crypt or vault within 24 hours after taking possession of the remains unless exigent circumstances exist. After human remains are released to the crematory authority, those remains shall be cremated and processed within 48 hours unless exigent circumstances exist. In such exigent circumstances, the cemetery/crematory authority shall notify both the funeral service practitioner responsible for the arrangements and the office of the Board. The funeral service practitioner responsible for the arrangements for that deceased shall notify the family of such exigent circumstances.

(11) No licensee shall pay, cause to be paid or offer to pay, and no person, firm or corporation shall receive, directly or indirectly, any commission, bonus, rebate or other thing of value in consideration for recommending or causing a human remains to be taken to any specific funeral establishment.

(12) When the Board issues to any person a certificate of authority to operate, license or certificate of apprenticeship the licensee shall post the certificate in a conspicuous location for public viewing. Individual licenses will be available for inspection upon request.

(13) Every cemetery authority and crematory authority shall keep the Board's office informed of the location of their permanent records. These records shall be made available for random inspections by the Board at any reasonable time.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 692.025 & 692.160

Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0200; MCB 1-1988, f. & cert. ef. 2-10-88; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09

## 830-040-0040

### Change of Ownership

Prior to a change of ownership, the prospective new owner shall apply to the Board for the issuance of a new license on forms provided by the Board in the new owner's name. (Refer to section (3) of this rule). In no event shall a funeral establishment, immediate disposition company, crematory or cemetery be operated without the appropriate license or certificate of authority to operate. The appropriate fees and disclosures shall accompany the application.

(1) Board approval: It is the intent of this rule that all licensed facilities receive Board approval prior to the sale or change of ownership of a licensed facility and provide the Board with a full disclosure of ownership of that licensed facility including percentages of ownership.

(2) All licensed facilities shall be licensed by the Board and all applications for licenses shall specify the real and true names of the person(s) who own or have an interest in the business proposed to be licensed by the Board, and shall be signed by such person(s) or in the case of corporations, by a duly authorized officer or agent.

(3) Licenses issued under ORS 692.146 and 692.275 are not transferable; therefore, prior to change of ownership, sales, or purchase agreements pertaining to such shall be conditioned upon the prospective new purchaser's ability to apply for and obtain the necessary license or certificate of authority to operate. All licensed or certificated facilities are subject to the inspection and approval of the Board. Before opening a new facility or continuing the operation of an existing facility under new ownership, the prospective operator or new owner shall apply to the Board on a form provided by the Board with all ownership and, if applicable, corporate information. Prior to a transfer of ownership, the prospective new purchaser and

seller shall notify the Department of Consumer and Business Services, giving notice of sale to that office, and give the approximate or intended date of the change of ownership.

(4) The purchase of a controlling interest (a majority) of assets or stock of an existing licensed facility will constitute a sale or change of ownership. The person or persons who own the stock of a licensed facility shall be considered the ownership of the licensed facility. Any one person who owns a majority of the stock shall be considered an owner. When percentages of stock ownership change, any person moving into a majority position shall be required to submit an application for change of ownership.

(5) Corporate Licenses:

(a) The corporate licensee shall notify the Board in writing whenever a person intends to acquire or accumulate ownership or control of ten percent or more of any class of stock in a licensed facility, except for stock in a publicly traded corporation;

(b) Except for publicly traded corporations, the corporate licensee shall notify the Board immediately in writing when there has been a change in an officer or director;

(c) The Board may disapprove a change or acquisition described in this rule for any of the grounds for which a license may be denied.

(6) Partnership licensees:

(a) For the purposes of this rule, a partnership is an association of two or more persons who carry on a business jointly and who demonstrate an intent to be treated as partners by signing a partnership agreement, or by entering into a lease or contract under a name different from their real and true names;

(b) The licensee must obtain prior written approval from the Board whenever a person intends to become a general partner in a partnership or intends to acquire or control ten percent or more of the total investment commitment in a licensed limited partnership;

(c) The licensee shall notify the Board in writing whenever an existing approved partner increases or decreases his/her investment interest;

(d) The Board may disapprove a change or acquisition described in this rule for any of the grounds for which a license may be denied.

(7) Colicensees: For purposes of this rule, whenever two or more persons intend to carry on the business jointly other than as a corporation, partnership, or other approved legal entity, they shall be treated as colicensees. Spouses usually fall within this category. Corporations, partnerships, individuals, or other legal entities may become colicensees. If corporations, or partnerships become colicensees, they must comply with the requirements pertaining to corporate and partnership licensees.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320

Stats. Implemented: ORS 692.025 & 692.160

Hist.: FDB 1-1978 f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0215; MCB 1-1993, 4-14-93, cert. ef. 4-16-93; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09

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## Office for Oregon Health Policy and Research Chapter 409

**Rule Caption:** Amendments to Health Care Acquired Infection Reporting and Public Disclosure Rules.

**Adm. Order No.:** OHP 1-2009

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 6-1-2009

**Rules Adopted:** 409-023-0012, 409-023-0013

**Rules Amended:** 409-023-0000, 409-023-0010, 409-023-0015

**Subject:** These rules implement the health care acquired infection (HAI) reporting, public disclosure, and other applicable mandates of ORS 442.838, which was enacted by the 74th Legislative Assembly. These rules are intended to fulfill the mandates by prescribing the HAIs that are reported, how they are reported, the health care facilities that report them, and how they are publicly disclosed.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

### 409-023-0000

#### Definitions

The following definitions apply to OAR 409-023-0000 to 409-023-0035:

(1) "Administrator" means the administrator of the Office for Oregon Health Policy and Research as defined in ORS 442.011, or the administrator's designee.

(2) "ASC" means ambulatory surgical center as defined in ORS 442.015(4) and that is licensed pursuant to ORS 441.015.

(3) "CBGB" means coronary bypass graft surgery with both chest and graft incisions, as defined in the Patient Safety Component Protocol of the National Healthcare Safety Network (NHSN) manual, version January 2008.



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(4) "CBGC" means coronary bypass graft surgery with chest incision only, as defined in the Patient Safety Component Protocol of the NHSN manual, version January 2008.

(5) "CDC" means the federal Centers for Disease Control and Prevention.

(6) "CLABSI" means central line associated bloodstream infection as defined in the Patient Safety Component Protocol of the NHSN manual, version January 2008.

(7) "CMS" means the federal Centers for Medicare and Medicaid Services.

(8) "Committee" means the Health Care Acquired Infections Advisory Committee as defined in ORS 442.838.

(9) "Dialysis facility" means outpatient renal dialysis facility as defined in ORS 442.015(29).

(10) "Follow-up" means post-discharge surveillance intended to detect CBGB, CBGC, and KRPO surgical site infection (SSI) cases occurring after a procedure.

(11) "HAI" means health care acquired infection as defined in ORS 442.838.

(12) "Health care facility" means a facility as defined in ORS 442.015(16).

(13) "Hospital" means a facility as defined in ORS 442.015(19) and that is licensed pursuant to ORS 441.015.

(14) "ICU" means an intensive care unit as defined in the Patient Safety Component Protocol of the NHSN manual, version January 2008.

(15) "KPRO" means knee prosthesis procedure as defined in the Patient Safety Component Protocol of the NHSN manual, version January 2008.

(16) "LTC facility" means long term care facility as defined in ORS 442.015(22).

(17) "MDS" means the Centers for Medicare and Medicaid Services' minimum data set nursing home resident assessment and screening tool, version 2.0 or its successor, including but not limited to manuals, forms, software, and databases.

(18) "Medical ICU" means a non-specialty intensive care unit that serves 80% or more adult medical patients.

(19) "Medical/Surgical ICU" means a non-specialty intensive care unit that serves less than 80% of either adult medical, adult surgical, or specialty patients.

(20) "NHSN" means the CDC's National Healthcare Safety Network.

(21) "NICU" means a specialty intensive care unit that cares for neonatal patients.

(22) "Office" means the Office for Oregon Health Policy and Research.

(23) "Oregon HAI group" means the NHSN group administered by the Office.

(24) "Patient information" means individually identifiable health information as defined in ORS 179.505(c).

(25) "Person" has the meaning as defined in ORS 442.015(30).

(26) "Procedure" means an NHSN operative procedure as defined in the Patient Safety Component Protocol of the NHSN manual version January 2008.

(27) "Provider" means health care services provider as defined in ORS 179.505(b).

(28) "QIO" means the quality improvement organization designated by CMS for Oregon.

(29) "RHQDAPU" means the Reporting Hospital Quality Data for Annual Payment Update initiative administered by CMS.

(30) "SCIP" means the Surgical Care Improvement Project.

(31) "SCIP-Inf-1" means the HAI process measure published by SCIP defined as prophylactic antibiotic received within one hour prior to surgical incision.

(32) "SCIP-Inf-2" means the HAI process measure published by SCIP defined as prophylactic antibiotic selection for surgical patients.

(33) "SCIP-Inf-3" means the HAI process measure published by SCIP defined as prophylactic antibiotics discontinued within 24 hours after surgery end time (48 hours for cardiac patients).

(34) "SCIP-Inf-6" means the HAI process measure published by SCIP defined as surgery patients with appropriate hair removal.

(35) "Specialty ICU" means an intensive care unit with at least 80% of adults are specialty patients including but not limited to oncology, trauma, and neurology.

(36) "SSI" means a surgical site infection event as defined in the Patient Safety Component Protocol of the NHSN manual, version January 2008.

(37) "Staff" means any employee of a health care facility or any person contracted to work within a health care facility.

(38) "State agency" shall have the meaning as defined in ORS 192.410(5).

(39) "Surgical ICU" means a non-specialty intensive care unit that serves 80% or more adult surgical patients.

(40) "VLBW" means very low birth weight as defined by Vermont Oxford Network.

(41) "VON" means the Vermont Oxford Network or its successor.

Stat. Auth.: ORS 442.838 & ORS 442.420(3)(d)

Stats. Implemented: ORS 179.505, 192.410, 192.496, 192.505, 442.400, 442.405, 442.011, 442.015 & 442.0838

Hist.: OHP 1-2008, f. & cert. ef. 7-1-08; OHP 1-2009, f. & cert. ef. 7-1-09

## 409-023-0010

### HAI Reporting for Hospitals

(1) Hospitals shall begin collecting data for HAI outcome and process measures for the HAI reporting program for services provided on and after January 1, 2009, except:

(a) NICU shall begin collecting data for HAI outcome and process measures for the HAI reporting program for services provided on and after January 1, 2010.

(b) Hospitals shall report the SCIP-Inf-6 process measure for the HAI reporting program for services provided on and after January 1, 2010.

(2) Reportable HAI outcome measures are:

(a) SSIs for CBGB, CBGC, and KPRO procedures.

(b) CLABSI in medical ICUs, surgical ICUs, and combined medical/surgical ICUs.

(3) The infection control professional (ICP), as defined by the facility, shall actively seek out infections defined in sections (2)(a) and (b) of this rule during a patient's stay by screening a variety of data that may include but is not limited to:

(a) Laboratory;

(b) Pharmacy;

(c) Admission;

(d) Discharge;

(e) Transfer;

(f) Radiology;

(g) Imaging;

(h) Pathology; and

(i) Patient charts, including history and physical notes, nurses and physicians notes, and temperature charts.

(4) The ICP shall use follow-up surveillance methods to detect SSIs for procedures defined in section (2)(a) of this rule using at least one of the following:

(a) Direct examination of patients' wounds during follow-up visits to either surgery clinics or physicians' offices;

(b) Review of medical records, subsequent hospitalization records, or surgery clinic records;

(c) Surgeon surveys by mail or telephone;

(d) Patient surveys by mail or telephone; or

(e) Other facility surveys by mail or telephone.

(5) Others employed by the facility may be trained to screen data sources for these infections, but the ICP must determine that the infection meets the criteria established by these rules.

(6) The HAI reporting system for HAI outcome measures shall be NHSN. Each Oregon hospital shall comply with processes and methods prescribed by CDC for NHSN data submission. This includes but is not limited to definitions, data collection, data reporting, and administrative and training requirements. Each Oregon hospital shall:

(a) Join the Oregon HAI group in NHSN.

(b) Authorize disclosure of NHSN data to the Office as necessary for compliance of these rules including but not limited to summary data and denominator data for all SSIs, the annual hospital survey and data analysis components for all SSIs, and summary data and denominator data for all medical ICUs, surgical ICUs, and combined medical/surgical ICUs.

(c) Report its data for outcome measures to NHSN no later than 30 days after the end of the collection month. The NHSN field "Discharge Date" is mandatory for all outcome measures.

(7) Each hospital shall report on a quarterly basis according to 409-023-0010(1) the following HAI process measures:

(a) SCIP-Inf-1;

(b) SCIP-Inf-2;

(c) SCIP-Inf-3; and

(d) SCIP-Inf-6.

(8) The reporting system for HAI process measures shall be the RHQDAPU program as configured on July 1, 2008. Each Oregon hospital shall:

(a) Comply with reporting processes and methods prescribed by CMS for the RHQDAPU program. This includes but is not limited to definitions, data collection, data reporting, and administrative and training requirements; and

(b) Report data quarterly for HAI process measures. Data must be submitted to and successfully accepted into the QIO clinical warehouse no later than 11:59 p.m. central time, on the 15th calendar day, four months after the end of the quarter.

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(9) For NICUs, the HAI reporting system for outcome measures shall be VON. Each Oregon hospital with a NICU shall comply with processes and methods prescribed by VON for the VLBW database including but not limited to definitions, data collection, data submission, and administrative and training requirements. Each Oregon hospital shall:

(a) Authorize disclosure of VON data to the Office as necessary for compliance with these rules, including but not limited to facility identifiers.

(b) Submit NICU data to VON according to the quarterly data submission deadlines established by VON in its annual publication "Member Instructions for Submitting Electronic Data" (or its successor).

(10) Each hospital shall complete an annual survey, as defined by the Office, of influenza vaccination of staff and submit the completed survey to the Office. The survey shall include but not be limited to questions regarding influenza vaccine coverage of facility staff:

(a) Number of staff with a documented influenza vaccination during the previous influenza season.

(b) Number of staff with a documented medical contraindication to influenza vaccination during the previous influenza season.

(c) Number of staff with a documented refusal of influenza vaccination during the previous influenza season.

(d) Facility assessment of influenza vaccine coverage of facility staff during the previous influenza season and plans to improve vaccine coverage of facility staff during the upcoming influenza season.

Stat. Auth.: ORS 442.838 & 442.420(3)(d)

Stats. Implemented: ORS 442.838 & 442.405

Hist.: OHP 1-2008, f. & cert. ef. 7-1-08; OHP 1-2009, f. & cert. ef. 7-1-09

## 409-023-0012

### HAI Reporting for Ambulatory Surgery Centers

(1) Each ASC shall complete a survey of evidenced-based elements of patient safety performance as defined by the Office.

(2) The survey shall be submitted annually by each ASC to the Office no later than 30 days after receipt of survey.

Stat. Auth.: ORS 442.838 & 442.420(3)(d)

Stats. Implemented: ORS 442.838 & 442.405

Hist.: OHP 1-2009, f. & cert. ef. 7-1-09

## 409-023-0013

### HAI Reporting for Long Term Care Facilities

(1) The HAI Reporting System for outcome measures shall be MDS and reporting will be mandatory for services provided on or after January 1, 2010.

(2) Reportable HAI outcome measures are from MDS and include the data element, "urinary tract infection in the last 30 days."

(3) Each LTC facility shall comply with reporting processes and methods prescribed by CMS for MDS. This includes but is not limited to definitions, data collection, data submission, and administrative and training requirements.

(4) Each LTC facility shall complete an annual survey, as defined by the Office, of influenza vaccination of staff and submit the completed survey to the Office. The survey shall include but not be limited to questions regarding influenza vaccine coverage of facility staff:

(a) Number of staff with a documented influenza vaccination during the previous influenza season.

(b) Number of staff with a documented medical contraindication to influenza vaccination during the previous influenza season.

(c) Number of staff with a documented refusal of influenza vaccination during the previous influenza season.

(d) Facility assessment of influenza vaccine coverage of facility staff and volunteers during the previous influenza season and plans to improve vaccine coverage of facility staff during the upcoming influenza season.

Stat. Auth.: ORS 442.838 & 442.420(3)(d)

Stats. Implemented: ORS 442.838 & 442.405

Hist.: OHP 1-2009, f. & cert. ef. 7-1-09

## 409-023-0015

### HAI Reporting for Other Health Care Facilities

Dialysis facilities shall begin collecting data for the HAI reporting program for services provided on and after January 1, 2011 pursuant to rules amended no later than July 1, 2010.

Stat. Auth.: ORS 442.838 & 442.420(3)(d)

Stats. Implemented: ORS 442.838 & 442.405

Hist.: OHP 1-2008, f. & cert. ef. 7-1-08; OHP 1-2009, f. & cert. ef. 7-1-09

## Oregon Commission on Children and Families Chapter 423

**Rule Caption:** Clarify the definition of "direct service" and delete unnecessary definition.

**Adm. Order No.:** OCCF 1-2009

**Filed with Sec. of State:** 6-24-2009

**Certified to be Effective:** 6-24-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 423-001-0006

**Subject:** Clarify definition of "direct service" and delete unnecessary definition of "Staff Director or Director". The duties and responsibilities of the director are detailed in OAR 423-010-0023.

**Rules Coordinator:** Marsha Clark—(503) 373-1283

## 423-001-0006

### Definitions

As used in OAR chapter 423:

(1) "Agency" means the State Commission acting through the staff of the Oregon Commission on Children and Families as defined in ORS 417.735(6).

(2) "Basic capacity" means an allocation to Local Commissions that provides for the basic functions of a Local Commission office which include the following functions:

(a) Managing resources (includes general office support, fiscal and budget management, program evaluation, and staff development);

(b) Facilitation and coordination of meetings and forums;

(c) Coordinated, comprehensive planning in accordance with ORS 417.775; and

(d) The provision of technical assistance to their communities.

(3) "Best practice" or "proven practice of effectiveness" means research-based or evidence-based programs, core components, and principles that have been shown to reliably produce measurable and sustainable improvements in productivity, efficiency, or effectiveness.

(4) "BOCC" or "Board of County Commissioners" means the governing body of a county as defined in ORS 203.030 and includes a county court as defined in ORS 203.111.

(5) "Budget allocation" means an allocation of funds from the State Commission to the Board of County Commissioners pursuant to an Intergovernmental Agreement per ORS 417.705 through 417.797 and 419A.170.

(6) "Budget distribution" means a budget created by Local Commission staff in a format prescribed by the Agency. The budget distribution demonstrates, by grant stream, the projected budget for all activities proposed by the Local Commission and approved by the Board of County Commissioners.

(7) "Collaborative funding process" means allowing all interested parties to have an opportunity to participate in a funding process intended to use resources in the most effective and efficient manner based on the local coordinated, comprehensive plan.

(8) "Community mobilization" means government and private efforts to increase community awareness and to facilitate the active participation of citizens and organizations in projects and issues that will have positive impact on the well-being of children, families and communities.

(9) "County" means a county or two or more counties, which have combined to provide services to children, youth and families under ORS 417.705 to 417.797 and 419A.170.

(10) "Direct costs" means those costs that can be identified specifically and directly with a particular program or project, such as a particular federal grant or a direct activity or program of the organization.

(11) "Direct Services" means those services provided directly to a child or family or group of children or families to maintain or enhance their well-being. Direct services do not include services that are contracted out to other parties pursuant to ORS 417.775-417.787 or being the fiscal agent of pass through funds.

(12) "Early Childhood System Planning" means planning developed to describe the system, process and services that families can voluntarily access and that is part of and consistent with the Local Plan. The planning includes goals and strategies to achieve the early childhood benchmarks and intermediate outcomes.

(13) "Expended" means the payment of goods delivered or services rendered or liquidation of an obligation.

(14) "Indirect Costs" means those costs that have been incurred for common or joint purposes and cannot be readily identified with or directly allocated to a particular program or project of the organization. Examples of indirect costs include building and equipment depreciation, rent and facilities maintenance costs, general and administrative expenses, and personnel administration and accounting where those costs are distributed to projects or programs through a formula or cost allocation method.

(15) "Initiatives" means those time-limited activities that a Local Commission undertakes to promote community mobilization.

(16) "Innovative program or practice" means a program or practice that demonstrates success when outcomes are evaluated over time and draws on research-based principles and ideas from best programs and practices.

# ADMINISTRATIVE RULES

(17) "Layperson" means a person whose primary income is not derived from offering direct service to children and youth or from administering a program for children or youth.

(18) "Local Commission" means a local commission on children and families appointed pursuant to ORS 417.760.

(19) "Local Plan" means the local coordinated, comprehensive plan for children and families that is developed pursuant to ORS 417.775 and includes identification of connections in state and local planning processes and provisions for a local continuum of social supports. The Local Plan includes planning for the early childhood system, alcohol and drug prevention and treatment, and high-risk juvenile crime prevention, and references mental health and public health service plans.

(20) "Locally invested funds" includes Children, Youth and Families, Great Start and Youth Investment grant streams.

(21) "Oregon Commission on Children and Families (OCCF)" means the totality of the service system described in ORS 417.705 to 417.797, and 419A.170, including the State Commission on Children and Families (417.730), the State Commission-appointed director and staff (417.735), the local commissions on children and families (417.760) and specific program areas.

(22) "Partners for Children and Families" means the formal collaboration among state agencies and affected local agencies that works to combine planning and data requirements and coordinate policies and the provision of services to children and families.

(23) "Perinatal" means the period on or around the time of childbirth.

(24) "Primary health care" for purposes of Healthy Start means linkage and referral to health care resources and assisting families to establish a medical home for primary health care.

(25) "Prenatal" means the period of time from conception to the onset of labor.

(26) "Provider" means a program or service described in ORS 417.705 through 417.797 and 419A.17 that has been approved for funding by the Local Commission and the Board of County Commissioners.

(27) "Provider allocation" means those funds awarded by a county to a public or private agency or person to achieve an outcome within the county's Local Plan.

(28) "State Commission" means the Oregon Commission on Children and Families' appointed members established pursuant to 417.730.

(29) "Services for children and families" does not include services provided by the Department of Education or school districts that are related to curriculum or instructional programs as defined in ORS 417.705.

Stat. Auth.: ORS 417.705 - 417.797

Stats. Implemented: ORS 417.705 - 417.797

Hist.: OCCF 1-2002, f. & cert. ef. 1-14-02; OCCF 1-2004, f. & cert. ef. 9-15-04; OCCF 1-2004, f. & cert. ef. 9-15-04; OCCF 3-2007(Temp), f. 5-8-07, cert. ef. 5-11-07 thru 9-7-07; Administrative correction 9-16-07; OCCF 4-2008(Temp), f. & cert. ef. 12-12-08 thru 6-11-09; Administrative correction 6-22-09; OCCF 1-2009, f. & cert. ef. 6-24-09

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## Oregon Criminal Justice Commission Chapter 213

**Rule Caption:** Amends Oregon sentencing guidelines regarding animal abuse classifications.

**Adm. Order No.:** CJC 3-2009(Temp)

**Filed with Sec. of State:** 6-17-2009

**Certified to be Effective:** 6-17-09 thru 12-13-09

**Notice Publication Date:**

**Rules Amended:** 213-017-0004, 213-017-0006, 213-017-0009

**Subject:** Under ORS 137.667(2), the Criminal Justice Commission may adopt changes to the sentencing guidelines. CJC adopted temporary rules changing the classification of Felony Animal Abuse I (ORS 167.320(4)) from a Crime Category 3 to a Crime Category 6 on the Crime Seriousness Scale, and changing the classification of Aggravated Animal Abuse I (ORS 167.322) from a Crime Category 3 to a Crime Category 8 on the Crime Seriousness Scale. Those rules require legislative approval before becoming effective. The temporary rules had an effective date of January 1, 2010, to parallel the effective date of the possible legislative approval. The rules are now being amended to delete the changes to the Crime Categories for Aggravated Animal Abuse I and Felony Abuse I, because those changes were not approved by the 2009 Legislative Assembly. These rules must be adopted immediately to enable legislature to approve them during the 2009 legislative session.

**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 163.207 — FEMALE GENITAL MUTILATION — (B).
- (5) ORS 163.365 — RAPE II — (B).
- (6) ORS 163.395 — SODOMY II — (B).
- (7) ORS 163.408 — SEXUAL PENETRATION II — (B).
- (8) ORS 163.427 — SEXUAL ABUSE I — (B).
- (9) ORS 163.537 — BUYING/SELLING THE CUSTODY OF A MINOR — (B).  
(If the conduct is likely to endanger the health or welfare of the child, otherwise CC 5.)
- (10) ORS 163.670 — USING CHILD IN DISPLAY OF SEXUAL CONDUCT — (A).
- (11) ORS 163.684 — ENCOURAGING CHILD SEX ABUSE I — (B).
- (12) ORS 163.732 — STALKING — (C).
- (13) ORS 163.750 — VIOLATE COURT STALKING ORDER — (C).
- (14) ORS 164.225 — BURGLARY I — (A).  
(If offender did not cause, threaten or attempt physical injury and was not armed with a deadly weapon (CC 9) but the offense was committed while the dwelling was occupied; otherwise CC 7.)
- (15) ORS 164.325 — ARSON I — (A).  
(If the offense did not represent a threat of serious physical injury (CC 10) and economic loss is \$25,000 or more but less than \$50,000; otherwise CC 9 or CC 7.)
- (16) ORS 164.877(3) — TREE SPIKING-INJURY — (B).
- (17) ORS 166.275 — INMATE POSSESSION OF WEAPON — (A).  
(if firearm, otherwise CC 7.)
- (18) ORS 167.012 — PROMOTING PROSTITUTION — (C).
- (19) ORS 167.017 — COMPELLING PROSTITUTION — (B).
- (20) ORS 167.262 — USING A MINOR IN CONTROLLED SUBSTANCE OFFENSE — (A).  
(CC 4 if minor less than 3 yrs. younger than offender.)
- (21) ORS 811.705 — HIT & RUN VEHICLE (DEATH/SERIOUS INJURY) — (B).
- (22) 2007 Oregon Laws Ch 876 — ONLINE SEXUAL CORRUPTION OF A CHILD I — (B).  
Stat. Auth.: ORS 137.667, 811.707 & 2003 OL Ch. 453  
Stats. Implemented: ORS 137.667 - 137.669, 811.707 & 2003 OL Ch. 453, 815, & 2007 OL Ch. 876  
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; 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

## 213-017-0006

### Crime Category 6

The following offenses are classified at crime category 6 on the Crime Seriousness Scale:

- (1) Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS\* — (C).
- (2) MAJOR DRUG OFFENSES (See division 19).
- (3) ORS 162.015 — BRIBERY — (B).
- (4) ORS 162.025 — BRIBE RECEIVING — (B).
- (5) ORS 162.065 — PERJURY — (C).
- (6) ORS 162.117 — PUBLIC INVESTMENT FRAUD — (B).
- (7) ORS 162.155 — ESCAPE II — (C).
- (8) ORS 162.185 — SUPPLYING CONTRABAND — (C).  
(The contraband involves a dangerous weapon not a firearm CC 7; Otherwise CC 4 or 5.)
- (9) ORS 162.265 — BRIBING A WITNESS — (C).
- (10) ORS 162.275 — BRIBE RECEIVING BY WITNESS — (C).
- (11) ORS 162.285 — TAMPERING W/ WITNESS — (C).
- (12) ORS 162.325 — HINDERING PROSECUTION — (C).
- (13) ORS 163.160(3) — FELONY DOMESTIC ASSAULT — (C).
- (14) ORS 163.165 — ASSAULT III — (C).
- (15) ORS 163.208 — ASSAULT OF A PUBLIC SAFETY OFFICER — (C).
- (16) ORS 163.213 — USE OF A STUN GUN, TEAR GAS, MACE I — (C).
- (17) ORS 163.257 — CUSTODIAL INTERFERENCE I — (C).
- (18) ORS 163.264 — 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).



# ADMINISTRATIVE RULES

- (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\* — (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).
- (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  
Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 147, 635 & 828 2003 OL Ch. 383, 453, 543, 2005 OL Ch. 708, 2007 OL Ch. 684, 811, 869, & 876, SB 1087 (2008), Ballot Measure 57 (2008)  
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

## 213-017-0009 Crime Category 3

The following offenses are classified at crime category 3 on the Crime Seriousness Scale:

- (1) ORS Chapter 59 — BLUE SKY LAWS & SECURITIES LAWS\* — (C).
- (2) ORS 162.305(2)(b) — TAMPER LOTTERY RECORDS — (C).
- (3) ORS 162.355 — SIMULATING LEGAL PROCESS — (C).
- (4) ORS 162.365(3)(b) — CRIMINAL IMPERSONATION OF PEACE OFFICER, JUDGE OR JUSTICE OF THE PEACE — (C).
- (5) ORS 162.367 — FALSE LAW ENFORCEMENT ID — (C).
- (6) ORS 163.535 — ABANDON CHILD — (C).  
(If not ranked at CC 7.)
- (7) ORS 163.555 — CRIMINAL NONSUPPORT — (C).
- (8) ORS 164.055 — THEFT I\* — (C).
- (9) ORS 164.065 — THEFT OF LOST/MISLAID PROPERTY\* — (C).
- (10) ORS 164.075 — THEFT BY EXTORTION\* — (B).
- (11) ORS 164.085 — THEFT BY DECEPTION\* — (C).
- (12) ORS 164.095 — THEFT BY RECEIVING — (C).  
(If not ranked at CC 5.)
- (13) ORS 164.125 — THEFT OF SERVICES\* — (C).
- (14) ORS 164.135 — UNAUTHORIZED USE OF VEHICLE \* — (C).
- (15) ORS 164.140(4) — POSSESSION OF RENTED PROPERTY \* — (C).
- (16) ORS 164.215 — BURGLARY II\* — (C).
- (17) ORS 164.315 — ARSON II\* — (C).
- (18) ORS 164.365 — CRIMINAL MISCHIEF I\* — (C).
- (19) ORS 164.377(5) — COMPUTER FRAUD (LOTTERY)\* — (C).
- (20) ORS 164.377(5) — COMPUTER CRIME\* — (C).
- (21) ORS 164.868 — UNLAWFUL LABEL SOUND RECORDING\* — (C).
- (22) ORS 164.869 — UNLAWFUL RECORD LIVE PERFORMANCE\* — (C).
- (23) ORS 164.872 — UNLAWFUL LABEL VIDEOTAPE\* — (C).
- (24) ORS 164.889 — INTERFERE W/ AGRICULTURAL RESEARCH\* — (C).
- (25) ORS 165.013 — FORGERY I\* — (C).
- (26) ORS 165.022 — CRIMINAL POSSESSION OF FORGED INSTRUMENT I\* — (C).
- (27) ORS 165.055(4)(B) — CREDIT CARD FRAUD\* — (C).
- (28) ORS 165.065 — NEGOTIATING BAD CHECKS\* — (C).
- (29) ORS 165.070 — POSSESSION OF FAKE COMMUNICATIONS DEVICE — (C).
- (30) ORS 165.074 — UNLAWFUL FACTORING PAYMENT CARD \* — (C).
- (31) ORS 165.800 — IDENTITY THEFT\* — (C).
- (32) ORS 166.085 — ABUSE OF CORPSE II — (C).
- (33) ORS 167.062(4) — PROMOTING LIVE SEX SHOW — (C).
- (34) ORS 167.137 — UNLAWFUL GAMBLING I — (C).
- (35) ORS 167.137 — POSSESSION OF GAMBLING RECORDS I — (C).
- (36) ORS 167.320 — FELONY ANIMAL ABUSE I — (C).
- (37) ORS 167.322 — AGGRAVATED ANIMAL ABUSE I — (C).
- (38) ORS 167.388 — INTERFERE LIVESTOCK PRODUCTION\* — (C).
- (39) ORS 647.145 — TRADEMARK COUNTERFEITING II\* — (C).
- (40) ORS 647.150 — TRADEMARK COUNTERFEITING I\* — (B).

# ADMINISTRATIVE RULES

- (41) ORS 819.300 — POSSESSION OF STOLEN VEHICLE\* — (C).
- (42) 2003 Oregon Laws Ch 804 — UNLAWFUL DISTRIB. CIGARETTES — (C) <60,000.
- (43) 2003 Oregon Laws Ch 804 — UNLAWFUL DISTRIB. TOBACCO PRODUCTS — (C).
- (44) 2003 Oregon Laws Ch 550 — ORGANIZE SPEED RACING EVENT — (C).
- (45) 2003 Oregon Laws Ch 632 — UNLAWFUL POSSESSION FICTITIOUS ID — (C).
- (46) 2003 Oregon Laws Ch 633 — UNLAWFUL PRODUCTION ODOT ID CARDS — (C).
- (47) 2007 Oregon Laws Ch 684 — CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE\* — (C).

\* Property offenses marked with an asterisk shall be ranked at Crime Category 2 if the value of the property stolen or destroyed was less than \$1,000.  
Stat. Auth.: ORS 137.667 & 2003 OL Ch. 453  
Stats. Implemented: ORS 137.667 - 137.669, 164.889, 166.642, 2003 OL Ch. 383, 453, 550, 632, 633, & 2007 OL Ch. 684  
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; 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

## Oregon Department of Education Chapter 581

**Rule Caption:** Modifies rules relating to instructional materials used in kindergarten through grade 12 schools.

**Adm. Order No.:** ODE 3-2009

**Filed with Sec. of State:** 6-29-2009

**Certified to be Effective:** 6-29-09

**Notice Publication Date:** 1-1-2009

**Rules Adopted:** 581-011-0087, 581-011-0114

**Rules Amended:** 581-011-0050, 581-011-0052, 581-011-0055, 581-011-0060, 581-011-0065, 581-011-0066, 581-011-0067, 581-011-0070, 581-011-0071, 581-011-0075, 581-011-0080, 581-011-0086, 581-011-0090, 581-011-0095, 581-011-0117, 581-022-1622, 581-022-1640, 581-022-1650

**Rules Repealed:** 581-011-0072, 581-011-0073, 581-011-0074, 581-011-0076, 581-011-0077, 581-011-0078, 581-011-0079, 581-011-0118, 581-011-0119, 581-011-0120, 581-011-0125, 581-011-0130, 581-011-0131, 581-011-0135, 581-011-0140, 581-011-0145, 581-011-0210

**Subject:** Modifies and clarifies rules relating to criteria for selection on instructional materials for kindergarten through grade 12 public schools. Repeals obsolete rules relating to instructional materials. Provides requirements for digital content in instructional materials.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

### 581-011-0050

#### Generally

(1) For purposes of rules adopted by the State Board of Education and for policies established by the Oregon Department of Education, “instructional material” means any organized system, which constitutes the major instructional vehicle for a given course of study, or any part thereof.

(2) Only basal instructional programs may be adopted by the State Board of Education. A major instructional vehicle may include such instructional materials as a hardbound or a softbound book or books, or sets or kits of print and non-print materials, including electronic and internet or web-based materials or media.

(3) Accessible Instructional Materials are required under OAR 581-015-2060, 581-022-1640, 581-011-1185, 581-011-1186, and 581-011-0052.

Stat. Auth.: ORS 337.035  
Stats. Implemented: ORS 337.035  
Hist.: IEB 215, f. 1-29-76, ef. 2-25-76; ODE 10-2001, f. & cert. ef. 5-15-01; ODE 28-2001, f. & cert. ef. 12-20-01; ODE 13-2007, f. 4-25-07, cert. ef. 4-27-07; ODE 3-2009, f. & cert. ef. 6-29-09

### 581-011-0052

#### Accessible Instructional Materials Required

As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, the Department of Education shall enter into a written contract with the publisher of the print instructional materials to require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center (NIMAC) electronic files containing the contents of the print instructional

materials using the National Instructional Materials Accessibility Standard (NIMAS).

Stat. Auth.: ORS 337.035  
Stats. Implemented: ORS 337.035  
Hist.: ODE 13-2007, f. 4-25-07, cert. ef. 4-27-07; ODE 3-2009, f. & cert. ef. 6-29-09

### 581-011-0055

#### Guidelines for the Selection of Instructional Materials Criteria Committees

(1) Instructional materials criteria committees shall be appointed by and work under the supervision of the Oregon Department of Education.

(2) A criteria committee in each subject area for which state adoptions are planned shall be appointed the year preceding a state adoption. The committee shall recommend categories and draft criteria to be used in evaluating the instructional materials submitted for basal consideration.

(3) Committees shall conduct committee work in time to present the final draft of the criteria to the State Board of Education by the Board’s January meeting in the year of the adoption.

(4) Each committee shall be chaired by the Department of Education specialist in the particular subject area for which criteria are being developed. In the event that there is not a staff specialist in a particular subject field, the Department shall obtain a specialist to serve as chair.

(5) Each committee shall include no less than five members selected from among Oregon classroom teachers, curriculum specialists, and others having experience and expertise in the subject area under consideration.

(6) Travel, lodging, and meal expenses for committee meetings are to be reimbursed in accordance with state policy from review fees collected by the Department of Education from publishers.

Stat. Auth.: ORS 337.035  
Stats. Implemented: ORS 337.035  
Hist.: IEB 215, f. 1-29-76, ef. 2-25-76; IEB 245, f. & ef. 9-23-76; EB 1-1992, f. & cert. ef. 2-21-92; EB 5-1996, f. & cert. ef. 3-29-96; ODE 3-2009, f. & cert. ef. 6-29-09

### 581-011-0060

#### Guidelines for Criteria Development by Committees

Criteria committees shall develop criteria which provide assistance for judgmental determination by evaluation committees and the State Board of Education. These criteria shall include, but not be limited to, the major concepts of the Core Academic Content Standards and Essential Skills established by the State Board of Education for Oregon schools; the criteria shall require instructional materials to provide fair treatment of all people and reflect our multicultural society.

Stat. Auth.: ORS 337  
Stats. Implemented: ORS 337.035  
Hist.: IEB 215, f. 1-29-76, ef. 2-25-76; IEB 245, f. & ef. 9-23-76; EB 1-1992, f. & cert. ef. 2-21-92; ODE 3-2009, f. & cert. ef. 6-29-09

### 581-011-0065

#### Approval of Criteria for Evaluation of Instructional Materials

(1) Criteria Committees, under the direction of the Department of Education staff, shall develop criteria to be submitted to the State Board of Education in the fall of the year preceding the adoption year.

(2) The State Board of Education shall review the criteria which will be used in the evaluation of instructional materials submitted for adoption. The Board will adopt the criteria no later than its January meeting in the adoption year.

Stat. Auth.: ORS 337.030, 337.035, 337.060, 337.065, 337.075 & 337.260  
Stats. Implemented: ORS 337.035  
Hist.: IEB 215, f. 1-29-76, ef. 2-25-76; IEB 245, f. & ef. 9-23-76; EB 21-1992, f. & cert. ef. 6-23-92; EB 5-1996, f. & cert. ef. 3-29-96; ODE 10-2001, f. & cert. ef. 5-15-01; ODE 3-2009, f. & cert. ef. 6-29-09

### 581-011-0066

#### Appointment of Committees to Evaluate Instructional Materials for State Adoption

(1) ORS 337.050 requires the State Board of Education to adopt a list of instructional materials for each grade and subject field in the standard curriculum for which, in its judgment, such materials are required.

(2) The Board, therefore, directs that educators who are knowledgeable of the grade level and subject area of materials to be reviewed be appointed to committees to evaluate instructional materials submitted by publishers, and delegates to the Superintendent of Public Instruction the responsibility for appointment of such committees. No fewer than three-fourths of the membership of each committee shall be comprised of classroom teachers currently employed in Oregon public schools.

(3) The committee membership should reflect the size and geographic diversity of school districts throughout Oregon as well as the racial and ethnic diversity of Oregon students and teachers. The committee members shall be chosen from a pool of names solicited from local districts, educational service districts, and other interested organizations including appropriate subject matter professional organizations.

(4) The committees shall determine the degree to which the submitted materials meet the Board’s criteria as adopted under OAR 581-011-0065.

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Based on the scores received, the Department of Education will present to the Board a recommended list of basal instructional materials for adoption.

(5) The rosters of committee appointees will be available from the Department of Education.

Stat. Auth.: ORS 337.050  
Stats. Implemented: ORS 337.035  
Hist.: EB 5-1993, f. & cert. ef. 2-11-93; EB 5-1996, f. & cert. ef. 3-29-96; ODE 3-2009, f. & cert. ef. 6-29-09

## 581-011-0067

### Compensation for Evaluators of Submitted Instructional Materials

(1) OAR 581-011-0066 provides for appointment of committees whose task is to evaluate submitted basal instructional materials.

(2) Committee members are to receive meal and travel (and lodging where appropriate) reimbursement in accordance with state policies for expenses incurred in attending evaluation sessions at the state level.

(3) In addition, an honorarium is to be given each participant who completes all the duties assigned including attending the training sessions, attending the presentations, working on the evaluations, completing the criteria checklists and comment sheets, and participating in any assigned committee meetings for drafting annotations for the adopted list or selecting the list of materials to be recommended to the Board. The honorarium is to be determined based on current Department of Education fees paid for similar tasks.

Stat. Auth.: ORS 337.050  
Stats. Implemented: ORS 337.035  
Hist.: EB 16-1993, f. & cert. ef. 4-30-93; EB 5-1996, f. & cert. ef. 3-29-96; ODE 3-2009, f. & cert. ef. 6-29-09

## 581-011-0070

### Adoption Period for Instructional Materials

(1) The State Board of Education shall adopt instructional materials by rule prior to October 31 each year.

(2) The adoption period consists of the seven-year period following adoption of an instructional materials list by the State Board of Education in accordance with the provisions of ORS 337.050.

Stat. Auth.: ORS 337.050  
Stats. Implemented: ORS 337.035, 337.050 & 337.055  
Hist.: 1EB 215, f. 1-29-76, ef. 2-25-76; 1EB 245, f. & ef. 9-23-76; EB 5-1996, f. & cert. ef. 3-29-96; ODE 8-1998, f. & cert. ef. 6-23-98; ODE 3-2009, f. & cert. ef. 6-29-09

## 581-011-0071

### Instructional Materials Adopted by the State Board of Education

(1) The State Board of Education shall adopt a list of basal instructional materials annually in the subject matter cycle adopted by the Board according to the criteria adopted by the Board under OAR 581-011-0117.

(2) The Subject Matter Cycle is the State instructional materials list adoption schedule adopted by the Board as required by ORS 337.035. Pursuant to 337.120, district school boards shall adopt instructional materials for each grade and subject field for which instruction is provided by the district from the approved list except as otherwise provided by 337.141 (Independent Adoption using the State Criteria). As stated in 337.120 and OAR 581-022-1650, a district school board may also postpone adoption for up to two years.

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

Stat. Auth.: ORS 337.141  
Stats. Implemented: ORS 337.050  
Hist.: 1EB 1-1983, f. 2-14-83, ef. 2-15-83; 1EB 6-1983, f. 5-10-83, ef. 5-11-83; 1EB 12-1983, f. & ef. 11-3-83; 1EB 1-1984, f. & ef. 1-20-84; 1EB 9-1984, f. & ef. 4-13-84; EB 1-1989, f. & cert. ef. 1-23-89; EB 14-1989, f. & cert. ef. 4-19-89; ED 1-1990, f. & cert. ef. 1-19-90; EB 14-1994, f. & cert. ef. 10-3-94; EB 17-1994, f. & cert. ef. 12-15-94; ODE 23-2007, f. & cert. ef. 10-26-07; ODE 3-2009, f. & cert. ef. 6-29-09

## 581-011-0075

### Proposal (BID) Forms

(1) Instructional materials proposals submitted by publishers must be on forms supplied by the Department of Education. A separate continuation sheet must be used for each subject category on which a proposal is submitted. Proposal forms will be provided by the Department of Education. Samples submitted and specifications set forth in the proposals shall conform exactly with the instructional materials, which the publisher will be able to deliver.

(2) The continuation sheets shall specify the subject, category, and publisher name and shall list the author and exact title of each item of instructional material (including series title, if any), grade level, date of copyrights and prices. Each continuation sheet shall also contain the following explanation of terms which are considered a part of the proposal:

(a) The wholesale (volume discount) price at depository is the price at which the instructional materials will be furnished to the State Board of Education and to school districts at the wholesale depository, or wholesale depositories, maintained in the state;

(b) The retail price (list price) is the price at which the instructional materials will be furnished to the general public;

(c) The publisher's wholesale price is the price at which the instructional materials will be furnished to the Department of Education, viewing sites, and to school districts f.o.b.;

(d) On both the proposal and contract the wholesale at publisher price and the wholesale at depository price shall be the same thus requiring the publisher to pay the freight to transport the contracted materials to the Oregon depository.

(3) The bid forms shall contain such other information and requirements as the Department of Education determines are necessary.

Stat. Auth.: ORS 337.030, 337.035, 337.060, 337.065, 337.075 & 337.260  
Stats. Implemented: ORS 337.060  
Hist.: 1EB 215, f. 1-19-76, ef. 2-25-76; 1EB 245, f. & ef. 9-23-76; EB 21-1992, f. & cert. ef. 6-23-92; ODE 3-2009, f. & cert. ef. 6-29-09

## 581-011-0080

### Contract Forms and Authority

(1) The State Board delegates to the Superintendent of Public Instruction the authority to enter into contracts with publishers.

(2) The contract entered into by the superintendent with publishers whose instructional materials have been adopted by the State Board of Education shall be on a form furnished by the Department of Education. The contract shall require the publisher to maintain at least one depository to be designated by the superintendent, where such instructional materials may be purchased, and to furnish such instructional materials according to law and the conditions named in the proposal. The contract shall contain such other information and requirements as the Department of Education determines are necessary.

Stat. Auth.: ORS 337.030, 337.035, 337.060, 337.065, 337.075 & 337.260  
Stats. Implemented: ORS 337.090  
Hist.: 1EB 215, f. 1-29-76, ef. 2-25-76; 1EB 245, f. & ef. 9-23-76; 1EB 2-1978, f. & ef. 1-20-78; 1EB 1-1984, f. & ef. 1-20-84; EB 21-1992, f. & cert. ef. 6-23-92; ODE 3-2009, f. & cert. ef. 6-29-09

## 581-011-0086

### Substitutions of New Editions or Versions of State-Adopted Instructional Materials

(1) The State Board of Education may approve the request of a publisher to substitute a more recent edition of any officially adopted instructional material.

(2) In order to meet the qualifications for approval, a new edition of a state-adopted material must:

(a) Be submitted by the publisher to the State Superintendent of Public Instruction, Department of Education, with a letter of request indicating the category of the adopted edition, title, author, copyright and publication dates of substitution edition, and copyright and publication dates of adopted edition. The publisher must state that the materials will be supplied to Oregon schools at the contract price of the originally adopted edition. A list of the nature of the changes between the two editions must be enclosed with the letter.

(b) Be supplied in addition to, rather than in place of, the adopted edition. School districts cannot be required to use a substituted edition or version of a state-adopted material; both editions must be available for distribution in the state. However, in the event the substitution contains only minor copyright revisions or revisions that ensure they are current and accurate, the Board may determine that it is not necessary for the originally adopted edition to be available for distribution.

(c) Be compatible with the previous edition or version in pagination, illustrations, content, etc., to the degree that the materials may be easily used interchangeably in the classroom.

Stat. Auth.: ORS 337.050(2) & 337.141  
Stats. Implemented: ORS 337.050  
Hist.: EB 30-1991, f. & cert. ef. 12-18-91; EB 5-1996, f. & cert. ef. 3-29-96; ODE 3-2009, f. & cert. ef. 6-29-09

## 581-011-0087

### Digital, Electronic, or Web-based Materials and Media

(1) As indicated in OAR 581-011-0050(1) and (2), Instructional materials are defined as any organized system which constitutes the major instructional vehicle for a given course of study, or any part thereof. Instructional Material may include digital content or software in a format such as electronic and internet or web-based materials or media.

(2) Contract, review, and evaluation process involving digital, electronic, or web-based materials and media shall be the same as print materials.

(3) As stated in ORS 581-011-0086, the State Board of Education must approve the request of a publisher to substitute a more recent edition or version of any officially adopted material. However, software updates that improve functionality, performance, or accuracy are allowed if approved by the Department of Education. New and revised editions or versions must be sold at the same or lower price as those previously approved.

(4) According to ORS 337.060 a publisher or other supplier who submits a proposal under 337.060 is required to pay a fee equal to the retail price expended by a school district during the length of the contract period,



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or \$50, whichever is greater, for each title or item of instructional material proposed by the publishers or supplier for review and adoption by the Board. Bid proposals must include available retail price structures such as per-student, per-computer, subscription and other unit price structures and may include models where the cost is divided over multiple years and paid annually (as opposed to a single payment). Bid proposal fees are payable prior to consideration of the proposal.

(5) Materials that comply with the interoperability standards can be considered for adoption according to ORS 337.075.

(6) Materials shall be accessible consistent with OAR 581-015-2060, 581-022-1640, 581-011-1185, 581-011-1186, 581-011-0052 and compliant with all state or federal laws regarding accessibility.

(7) Materials cannot include free or gratis equipment such as computer hardware, technology devices or equipment, which are intended to deliver or display the material but which are not instructional materials. This includes but is not limited to computers, laptops, handheld devices, microscopes, CD/DVD players, overhead or LCD projectors, electronic whiteboards, phone/music/transmitting and listening devices, and cameras.

(8) In accordance with ORS 337.090 the Board may assess penalties according to 337.090 against publishers who sell materials in this state at a higher price than specified in the contract and may on behalf of the state, rescind the contract and notify the publisher thereof, or bring the appropriate action or suit to enforce the provisions of the publisher's bond or letter of credit, payable to the State of Oregon for the benefit of the Common School Fund.

Stat. Auth.: ORS 337.035  
Stats. Implemented: ORS 337.035  
Hist.: ODE 3-2009, f. & cert. ef. 6-29-09

## 581-011-0090

### Assessment of Submission Fees

The following provisions shall govern the payment and collection of submission fees required of publishers who submit instructional materials for adoption. These rules are established pursuant to ORS 337.065.

(1) The fee, the retail price or \$50 whichever is greater, will be levied for each title or item of instructional material which is submitted by the publisher for review and possible adoption by the State Board of Education. An "item of instructional material" as used in this subsection is a component, set or kit of instructional materials packaged and sold as a unit. The publisher will indicate on the submission forms and the official proposal forms furnished by the Department of Education only the item(s) proposed for adoption.

(2) No fee will be required for teacher's editions of instructional materials which contain the same textual material as students' content for teacher use even though they may be evaluated in conjunction with the basic instructional program to support its strength. However, in those instances in which a teacher's guide in itself constitutes the basic program, the fee will be charged.

(3) An item of instructional material which is submitted in multiple forms (e.g., hardback, softback, electronic, loose-leaf or broken into several parts which are produced as separate units -- unless these parts are submitted for adoption at separate grade levels) which contain the same content and are evaluated essentially as one item will be assessed only one fee for the most costly format. If the materials are submitted as a set or kit for a continuous sequence of grades, a separate fee will be charged for each grade encompassed. If an item of instructional material is submitted in more than one category, a separate submission form and official proposal form must be completed for each category. A separate fee will be assessed for each category.

(4) Official forms for submission of instructional materials by publishing companies for consideration for adoption shall carry instructions and provide columns for entering the retail price and the fee to be paid for each item. Such fees will be checked for accuracy by the Department of Education on receipt of the forms, and the company will be billed for the amount due. The publisher's materials are approved for evaluation for adoption upon receipt of the correct fee. No fees will be refunded once the evaluation has been completed except in cases of fees miscalculation.

Stat. Auth.: ORS 337.030, 337.035, 337.060, 337.065, 337.075 & 337.260  
Stats. Implemented: ORS 337.065  
Hist.: 1EB 215, f. 1-29-76, ef. 2-25-76; 1EB 245, f. & ef. 9-23-76; EB 21-1992, f. & cert. ef. 6-23-92; EB 5-1996, f. & cert. ef. 3-29-96; ODE 3-2009, f. & cert. ef. 6-29-09

## 581-011-0095

### Submission of Instructional Materials

The following rules are in effect between publishers and their representatives and members of the State Board of Education:

(1) No materials may be considered by the Board unless delivered at least 60 days prior to the adoption date.

(2) All publishers are required to prepare summaries which include documentation and analysis on their submitted instructional materials showing how they conform to the criteria adopted by the State Board of Education for the review and selection of instructional materials. Forms for

preparing such summaries are available from the Department of Education. Completed summaries must be submitted to appropriate evaluation committee members and Department of Education staff as directed by the Department of Education.

Stat. Auth.: ORS 337.030, 337.035, 337.060, 337.065, 337.075 & 337.260  
Stats. Implemented: ORS 337.065  
Hist.: 1EB 215, f. 1-29-76, ef. 2-25-76; 1EB 245, f. & ef. 9-23-76; EB 21-1992, f. & cert. ef. 6-23-92; ODE 3-2009, f. & cert. ef. 6-29-09

## 581-011-0114

### Instructional Materials Caravan

(1) The Oregon Department of Education, in cooperation with Education Service Districts and School Districts throughout the state, may conduct an Instructional Materials Caravan.

(a) Publishers or suppliers whose materials were adopted by the State Board of Education in the Subject Matter Cycle may participate in the Caravan.

(b) The Department may require publishers to pay a fee to participate in the caravan in addition to the bid submission fee charged for review according to ORS 337.065.

(2) Publishers shall follow the guidelines of the caravan as established by the Department of Education.

(a) Only Board adopted materials are to be presented, shown, or included in the Caravan.

(b) Pupil editions, teacher editions (samplers included) and ancillaries, in any form can be reviewed by attendees but must be returned at the end of the presentation. No gifts, food items, gadgets, "doohickeys" or sample materials which include media are to be given to participants attending the presentations.

(c) Pamphlets, brochures, catalogues, or two page reports describing the adopted program may be distributed including correlations to the Oregon Standards. Publisher representatives may attach business cards to these items but no personal contact information is to be gathered from caravan participants.

(d) Publishers may not participate in any other events involving caravan participants during the caravan period.

(e) Violations of caravan guidelines may result in a publisher being removed from the caravan.

Stat. Auth.: ORS 337.035  
Stats. Implemented: ORS 337.035  
Hist.: ODE 3-2009, f. & cert. ef. 6-29-09

## 581-011-0117

### Criteria for the Selection and Adoption of Instructional Materials

The State Board of Education shall adopt basal instructional materials criteria annually in the subject matter cycle adopted by the Board and described in OAR 581-011-0071.

Stat. Auth.: ORS 337.035  
Stats. Implemented: ORS 337.035  
Hist.: 1EB 3-1982, f. & ef. 1-26-82; EB 31-1987, f. & ef. 12-10-87; EB 1-1994, f. & cert. ef. 2-4-94; EB 3-1995, f. & cert. ef. 1-24-95; EB 1-1996, f. & cert. ef. 1-29-96; ODE 3-2009, f. & cert. ef. 6-29-09

## 581-022-1622

### Independent Adoptions of Instructional Materials

(1) Upon prior notice to the State Board of Education (Board), the district school board of any school district may adopt independently instructional materials for use in place of or in addition to those adopted by the Board, provided they meet the guidelines and criteria established by the Board. Such district adoptions shall be known as independent adoptions.

(2) The Board delegates to the State Superintendent of Public Instruction, the authority to receive from the school districts their notifications of independent adoptions of instructional materials.

(3) In order to give proper notification that an independent adoption is being made, the administrative head of the district must send to the State Superintendent of Public Instruction, prior to placing the instructional materials into use in the local schools, a notification, approved by the local school board. The notification shall include the following information:

(a) The subject, category, and grade level(s) in which the instructional materials will be used;

(b) The title of the instructional materials;

(c) The publisher of the instructional materials;

(d) The copyright date of the instructional materials;

(e) The date on which the local school board approved the independent adoption;

(f) The date on which the district intends to install the instructional materials for use in the school system; and

(g) A statement that a completed criteria checklist showing the degree to which the instructional materials meet the criteria established by the State Board of Education is on file in the district office. (Criteria checklists for the specific subject/category are available from the Department of Education.)

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(h) A statement of assurance that the independently adopted instructional materials will comply with the most current National Instructional Materials Accessibility Standard (NIMAS) specifications regarding accessible instructional materials.

(4) Independent adoptions are valid only for the period ending with the close of the current state adoption period for the subject area identified.  
Stat. Auth.: ORS 337.050(2) & ORS 337.141  
Stats. Implemented: ORS 337.141  
Hist.: 1EB 215, f. 1-29-76, ef. 2-25-76; 1EB 245, f. & ef. 9-23-76; 1EB 19-1982, f. & ef. 11-23-82; EB 2-1991, f. & cert. ef. 2-28-91; EB 21-1991(Temp), f. 10-30-91, cert. ef. 11-1-91; EB 30-1991, f. & cert. ef. 12-18-91; ODE 10-2001, f. & cert. ef. 5-15-01; Renumbered from 581-011-0085, ODE 25-2008, f. & cert. ef. 9-26-08; ODE 3-2009, f. & cert. ef. 6-29-09

## 581-022-1640

### Instructional Materials Adoption

(1) For each program and course in grades K-12, each school district, on a cycle established by the State Board of Education, shall select and provide students with free appropriate instructional and resource materials produced in accordance with the National Instructional Materials Accessibility Standard (NIMAS). These materials shall contribute to the attainment of district, program, and course or grade level goals and reflect recent knowledge, trends, and technology in the field. The school district process for selecting and adopting instructional materials shall include opportunities for citizen and parent involvement.

(2) The school district process must identify whether the district coordinates with the National Instructional Materials Access Center (NIMAC) when purchasing print materials under OAR 581-011-1185 and 581-011-1186.

(3) Districts that do not coordinate with NIMAC must provide instructional materials to persons who are blind and persons with print disabilities in accessible formats under 581-015-2060.

(4) Sufficient quantities, including those produced in alternate formats and those that cannot be produced from NIMAS files, shall be available in a timely manner to accommodate the number of students who will be using them at any one time. A timely manner means the materials are available at the same time materials are available for students who do not need materials in alternate formats.

Stat. Auth.: ORS 326.051  
Stats. Implemented: ORS 337.150  
Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 11-1998, f. & cert. ef. 6-23-98; ODE 13-2007, f. 4-25-07, cert. ef. 4-27-07; ODE 3-2009, f. & cert. ef. 6-29-09

## 581-022-1650

### Postponement of Purchase of State-Adopted Instructional Materials

If a district seeks to postpone regular purchase of state-adopted materials as required by ORS 337.120, it shall submit an application to the Department which shall include:

- (1) The reason for seeking postponement;
- (2) The subjects or categories for which postponement is sought;
- (3) The projected dates for purchase and implementation of new instructional materials which shall not be later than two years from the beginning of the school year following the state adoption;
- (4) Identification of the instructional materials to be used during the postponement;

(5) Assurance that the postponement will not delay future purchases in other subject areas; and

(6) Local school board approval of the application and the date of such approval.

Stat. Auth.: ORS 337.120  
Stats. Implemented: ORS 337.120  
Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 3-2009, f. & cert. ef. 6-29-09

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**Rule Caption:** Modifies requirements for school and district performance reports.

**Adm. Order No.:** ODE 4-2009

**Filed with Sec. of State:** 6-29-2009

**Certified to be Effective:** 6-29-09

**Notice Publication Date:** 4-1-2009

**Rules Amended:** 581-022-1060

**Subject:** The 2007 legislature modified the criteria used in the school and district performance reports issued each year. The rule implements these modifications.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

## 581-022-1060

### School and District Performance Report Criteria

(1) The Superintendent of Public Instruction will annually collect data from schools and school districts on student performance, student behavior and school characteristics and will annually produce a performance report for each school and school district.

(2) The Superintendent will notify the public and the media by December 15 of each year that school and district performance reports are available at each school and school district and at the Department of Education website and office. The Superintendent will include in the notice that Consolidated District Improvement Plans and School Improvement Plans as required in ORS 329.095 are available from the school and school district offices.

(3) By January 15 of each year, school districts shall send a copy of the state provided school and school district performance report to the parent(s) or guardian(s) of each child enrolled in a public school in the school district. Each school and school district report shall contain the information required by ORS 329.105.

(4) School performance reports will include ratings assigned by the Superintendent, based on valid scoring scales.

(5) School ratings shall be reported as:

- (a) Outstanding;
- (b) Satisfactory; or
- (c) In Need of Improvement;
- (6) Criteria for a school rating will include

- (a) Student performance as measured by statewide assessments;
- (b) Improvement in student performance;
- (c) Percentage of students participating in statewide assessment; and
- (d) Student attendance rate and
- (e) Student graduation rate.

(7) A school that receives a rating of “Met” on its annual Adequate Yearly Progress report shall receive a rating of no lower than “Satisfactory” for that same school year.

(8) A school receiving rating of “In Need of Improvement” shall file its revised school improvement plan with the Superintendent, the school board and the 21st Century Schools Council for the school by March 31 following the report.

(9) School performance reports may include information other than that listed in ORS 329.105 or sections (4), (5) and (7) of this rule. Such information will not be part of the calculation of the school rating.

(10) School district performance reports will be developed and must include the overall rating of each school in the district. The district performance report may include information other than that listed in ORS 329.105 or section (4) of this rule.

(11) School and school districts may include information in addition to that listed in ORS 329.105 or sections (4) and (5) of this rule in their locally prepared and distributed school and school district performance reports.

(12) School and school district performance reports, in conjunction with electronic supplements of the performance reports, will serve as the means by which the state meets the report card requirements of section 1111 of the No Child Left Behind Act of 2001.

Stat. Auth.: ORS 326.051  
Stats. Implemented: ORS 329.105  
Hist.: ODE 36-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 5-2007, f. & cert. ef. 2-21-07; ODE 25-2008, f. & cert. ef. 9-26-08; ODE 4-2009, f. & cert. ef. 6-29-09

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**Rule Caption:** Modifies graduation requirements for certain high school students.

**Adm. Order No.:** ODE 5-2009(Temp)

**Filed with Sec. of State:** 6-29-2009

**Certified to be Effective:** 6-30-09 thru 12-22-09

**Notice Publication Date:**

**Rules Amended:** 581-022-1130

**Subject:** On April 1, 2009, Governor Kulongoski signed HB 2061 into law. This law waives the increased graduation credit requirements passed by the 2005 Legislature and set to go into effect July 1, 2009. These requirements are one additional English credit (for a total of 4) and one additional mathematics credit (for a total of 3). This waiver applies to students who began ninth grade during the 2005–2006 school year, attended school consecutively during the 2006–2007, 2007–2008 and 2008–2009 school years and who will receive their diploma prior to July 1, 2010.

This law is binding and has immediate effect. OAR 581-022-1130, which outlines the diploma implementation timeline, conflicts with this new law.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

## 581-022-1130

### Diploma Requirements

(1) Each district school board and public charter school with jurisdiction over high school programs shall award diplomas to all students who fulfill all state requirements as described in sections (2) to (11) of this rule

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and all local school district requirements as described in district school board policies or all public charter school requirements as described in the policies or charter of the public charter school.

(2) Unit of Credit Requirements for students graduating before July 1, 2009:

(a) Each student shall earn a minimum of 22 units of credit to include at least:

- (A) English Language Arts — 3 (shall include the equivalent of one unit in Written Composition);
- (B) Mathematics — 2;
- (C) Science — 2;
- (D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance));
- (E) Health Education — 1;
- (F) Physical Education — 1;
- (G) Career and Technical Education, The Arts or Second Language — 1 (one unit shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 22;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(3) Except as provided in section (4) of this rule, Unit of Credit Requirements for students graduating on or after July 1, 2009 and before July 1, 2012:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

- (A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);
- (B) Mathematics — 3;
- (C) Science — 2;
- (D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance));
- (E) Health Education — 1;
- (F) Physical Education — 1;
- (G) Career and Technical Education, The Arts or Second Language 1 (one unit shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(4) Notwithstanding sections (2) and (3) of this rule, for students who began grade 9 during the 2005–2006 school year and who attended school during the 2006–2007, 2007–2008 and 2008–2009 school years, the unit of credits required for graduating is as described in section (2) of this rule if the student graduates prior to July 1, 2010.

(5) Unit of Credit Requirements for students graduating on or after July 1, 2012:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

- (A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);
- (B) Mathematics — 3;
- (C) Science — 3;
- (D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance));
- (E) Health Education — 1;
- (F) Physical Education — 1;
- (G) Career and Technical Education, The Arts or Second Language — 3 (units shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(6) Unit of Credit Requirements for students graduating on or after July 1, 2014:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

- (A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);
- (B) Mathematics — 3 (shall include one unit at the Algebra I level and two units that are at a level higher than Algebra I);
- (C) Science — 3;
- (D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance));
- (E) Health Education — 1;
- (F) Physical Education — 1;
- (G) Career and Technical Education, The Arts or Second Language — 3 (units shall be earned in any one or a combination).

(b) A district school board or public charter school with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board or public charter school may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district or public charter school may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(7) Each student shall demonstrate proficiency in essential skills adopted by the State Board of Education as provided in OAR 581-022-0615;

(8) School districts shall develop a process that provides each student the opportunity to develop an education plan and build an education profile in grades 7 through 12 with adult guidance. The plan and profile shall be reviewed and updated periodically (at least annually) and be supported by a Comprehensive Guidance Program as defined in OAR 581-022-1510.

(9) Each student shall develop an education plan and build an education profile.

(a) Each student shall develop an education plan that:

- (A) Identifies personal and career interests;
- (B) Identifies tentative educational and career goals and post high school next steps (i.e. college, workforce, military, apprenticeship, other);
- (C) Sets goals to prepare for transitions to next steps identified in section (7)(b);

(D) Designs, monitors and adjusts a course of study that meets the interest and goals of the student as described in subsection (a)(A), (B) and (C) of this rule that includes but is not limited to:

- (i) Appropriate coursework and learning experiences;
- (ii) Identified career-related learning experiences; and
- (iii) Identified extended application opportunities.

(b) Through the education profile each student shall:

- (A) Monitor progress and achievement toward standards including:
  - (i) Content standards;
  - (ii) Essential skills;
  - (iii) Extended application standard; and
  - (iv) Other standards where appropriate (e.g. industry standards).
- (B) Document other personal accomplishments determined by the student or school district.

(C) Review progress and achievement in subsection (b)(A) and (B) of this subsection at least annually.

(10) Each student shall build a collection of evidence, or include evidence in existing collections(s), to demonstrate extended application (as defined in OAR 581-022-0102);

(11) Each student shall participate in career-related learning experiences outlined in the education plan (as defined in OAR 581-022-0102);



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(12) Notwithstanding sections (1) to (11) of this rule, each district school board or public charter school governing board with jurisdiction over high school programs shall award a modified diploma to those students who have demonstrated the inability to meet the full set of academic content standards even with reasonable modifications and accommodations and who fulfill all requirements as described in OAR 581-022-1134.

(13) Notwithstanding sections (1) to (11) of this rule and as provided in OAR 581-022-1135, schools districts and public charter schools shall make an alternative certificate available to students as an alternative for students who do not obtain the regular diploma or modified diploma.

(14) Attendance Requirements:

(a) Twelve school years shall be required beginning with grade 1, except when the school district adopts policies providing for early or delayed completion of all state and school district credit and performance requirements;

(b) Notwithstanding subsection (a) of this section, a student may satisfy the requirements of section (2) or (3) of this rule in less than four years. If the school district or public charter school has the consent of the student's parent or guardian, a school district or public charter school shall award a diploma to a student upon request from the student, if the diploma is awarded:

(A) Prior to July 1, 2009 and the student satisfies the requirements of section (2) of this rule.

(B) On or after July 1, 2009 and before July 1, 2012 and the student satisfies the requirements of section (3) or (4) of this rule.

(C) On or after July 1, 2012 and before July 1, 2014 and the student satisfies the requirements of section (5) of this rule.

(D) On or after July 1, 2014 and the student satisfies the requirements of section (6) of this rule.

(c) If a school district or public charter school has the consent of a student's parent or guardian, the school district or public charter school may advance the student to the next grade level if the student has satisfied the requirements for the student's current grade level.

(d) The requirement for obtaining the consent of a student's parent or guardian under subsections (b) and (c) of this section does not apply to a student who is:

(A) Emancipated pursuant to ORS 419B.550 to 419B.558; or

(B) 18 years of age or older.

(e) The district school board may adopt policies for alternative learning experiences, such as credit by examination and credit for off-campus experiences;

(f) With any modification of the attendance requirements for graduation, school district and public charter school staff shall consider age and maturity of students, access to alternative learning experiences, performance levels, school district or public charter school guidelines and the wishes of parents and guardians.

Stat. Auth.: ORS 326.051 & 329.451

Stats. Implemented: ORS 326.051, 329.451 & 339.280

Hist.: EB 2-1997, f. 3-27-97, cert. ef. 9-1-97; ODE 12-2002, f. & cert. ef. 4-15-02; ODE 18-2006, f. 12-11-06, cert. ef. 12-12-06; ODE 18-2007, f. & cert. ef. 9-10-07; ODE 18-2008, f. & cert. ef. 6-27-08; ODE 5-2009(Temp), f. 6-29-09, cert. ef. 6-30-09 thru 12-22-09

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**Rule Caption:** Modifies rules relating to talented and gifted students.

**Adm. Order No.:** ODE 6-2009

**Filed with Sec. of State:** 6-29-2009

**Certified to be Effective:** 6-29-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 581-022-1310, 581-022-1330

**Subject:** Academically talented students are identified currently using a nationally standardized test. The rule allows school districts to use, in addition to a nationally standardized test, an internationally standardized test and the Oregon Assessment of Knowledge And Skills.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

## 581-022-1310

### Identification of Academically Talented and Intellectually Gifted Students

(1) Each school district shall have local district policies and procedures for the identification of talented and gifted students as defined in ORS 343.395 who demonstrate outstanding ability or potential in one or more of the following areas:

(a) General intellectual ability as commonly measured by measures of intelligence and aptitude.

(b) Unusual academic ability in one or more academic areas.

(2) The policies and procedures must meet the following requirements:

(a) Districts shall make efforts to identify students from ethnic minorities, students with disabilities, and students who are culturally different or economically disadvantaged.

(b) A team shall make the final decisions on the identification of students using the information collected under paragraphs (c) and (d) of this section. No single test, measure or score shall be the sole criterion. A record of the team's decision, and the data used by the team to make the decision, shall become part of the education record for each student considered.

(c) Districts shall collect behavioral, learning and performance information and include the information in all procedures for the identification of students.

(d) The following measures and criteria for identifying the intellectually gifted and the academically talented shall be used by the team:

(A) Intellectually gifted students shall score at or above the 97th percentile on a nationally standardized test of mental ability; and

(B) Academically talented students shall score at or above the 97th percentile on a test of total reading or a test of total mathematics from a nationally standardized test battery, a nationally standardized test of reading or mathematics, or a test of total reading or total mathematics on the Oregon Assessment of Knowledge and Skills

(e) Despite a student's failure to qualify under paragraphs (d) (A) and (B) of this subsection, districts, by local policies and procedures, shall identify students who demonstrate the potential to perform at the 97th percentile.

(3) School districts may identify additional students who are talented and gifted as defined in ORS 343.395, as determined by local district policies and procedures, if the students demonstrate outstanding ability or potential in one or more of the following areas:

(a) Creative ability in using original or nontraditional methods in thinking and producing.

(b) Leadership ability in motivating the performance of others either in educational or noneducational settings.

(c) Ability in the visual or performing arts, such as dance, music or art.

Stat. Auth.: ORS 343.391 - 343.413

Stats. Implemented: ORS 326.051

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 6-2009, f. & cert. ef. 6-29-09

## 581-022-1330

### Programs and Services for Talented and Gifted Students

(1) Each school district shall have a written plan for programs and services beyond those normally provided by the regular school program in order to realize the contribution of talented and gifted children to self and society.

(2) The instruction provided to identified students shall be designed to accommodate their assessed levels of learning and accelerated rates of learning.

(3) Assessments for the development of an appropriate academic instructional program shall include the information used by the team for identification purposes and also may include one or more of the following:

(a) An academic history which may include grades, portfolio assessment records or other progress records and achievement information that demonstrates the student's level of learning and rate of learning;

(b) Other evaluation methods such as formal tests or informal assessment methods designed by teachers to determine the student's instructional level and rate of learning related to specific academic programs;

(c) Student interest, style, and learning preferences information from inventories or interviews; and

(d) Other measures determined by the school district to be relevant to the appropriate academic instructional program for the student.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 343.391 - 343.413

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 6-2009, f. & cert. ef. 6-29-09

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**Rule Caption:** Clarifies authority to impose civil penalties on person who operates unlicensed private career school.

**Adm. Order No.:** ODE 7-2009

**Filed with Sec. of State:** 6-29-2009

**Certified to be Effective:** 6-29-09

**Notice Publication Date:** 4-1-2009

**Rules Amended:** 581-045-0190

**Subject:** ORS 345.992 specifies that the Department of Education may impose a civil penalty on a person who operates a private career school without a license from the department. However, the state board never adopted rules to specify the amount of the penalty. The rule will apply the same schedule of penalties that applies to licensed

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schools that was previously adopted by the state board to a person who operates a school without a license.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

## 581-045-0190

### Civil Penalties

(1) Amendments to OAR 581-045-0001 through 581-045-0210 must be implemented by the schools within 90 days after the effective date of the amendments. Failure to implement rule changes within 90 days shall subject a school to penalties under ORS 345.995 and this rule.

(2) Except as provided in section (5) of this rule, any licensee under the provisions of ORS Chapter 345 that violates the provisions of, or the rules pertaining to, ORS Chapter 345, is subject to a penalty under ORS 345.992 or 345.995. Any person who violates ORS 345.030 by operating a career school in this state without obtaining a license under ORS 345.010 to 345.450 is subject to penalty under ORS 345.992. Penalties imposed under this section shall not exceed the amounts in the following schedule:

- (a) First violation — \$300;
- (b) Second violation — \$400;
- (c) Third violation — \$500; and
- (d) Each additional violation — \$500.

(3) Penalties listed in subsections (2)(a)–(d) of this rule may be assessed for each violation of statutes or rules for which a school is charged in writing by the Superintendent. In the event a school is cited for violation of a specific statute or rule on the first occasion, the “first violation” penalty amount will be assessed. Subsequent or repetitive violations of the same statute or rule will cause second, third, and additional penalty amounts to be assessed respectively.

(4) Each commission of an act in violation of a regulation shall constitute a separate violation. The imposition of penalties under OAR 581-045-0001 through 581-045-0210 shall be in addition to, and does not preclude the imposition of, any other penalties for the same act or conduct pursuant to any other provision of law.

(5) Penalties of \$25 per day, up to a maximum of \$500, may be imposed for each calendar day after a license renewal is due under OAR 581-045-0062 or after payment to the Tuition Protection Fund is due under 581-045-0029.

(6) Failure to pay penalties within 30 days of the service of a final order imposing penalties, unless stayed pending appeal by subsequent order of the Superintendent or a court of competent jurisdiction, may result in revocation of license to operate a school.

Stat. Auth.: ORS 345.992 & 345.995  
Stats. Implemented: ORS 345.995  
Hist.: EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 7-2009, f. & cert. ef. 6-29-09

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**Rule Caption:** Modifies rules relating to private prekindergarten through grade 12 schools.

**Adm. Order No.:** ODE 8-2009

**Filed with Sec. of State:** 6-29-2009

**Certified to be Effective:** 6-29-09

**Notice Publication Date:** 3-1-2009

**Rules Adopted:** 581-045-0522, 581-045-0538

**Rules Amended:** 581-045-0500, 581-045-0505, 581-045-0515, 581-045-0525, 581-045-0530, 581-045-0535, 581-045-0545, 581-045-0550, 581-045-0555, 581-045-0565, 581-045-0570

**Rules Repealed:** 581-045-0575

**Subject:** Most of the rule revisions are to clarify existing rules. The rules require compliance with fire safety rules and child care standards relating to safety and sanitation. The rules also implement a child abuse reporting and training law enacted by the 2007 legislature.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

## 581-045-0500

### Registration

Registration is renewable annually on or before October 15. Registration not received by Department of Education by October 15, shall be considered lapsed and may only be renewed in the manner required for initial registration. Initial registrations received on or before March 31 shall be for the current school year. Initial registrations received after March, 31 will be processed for the next school year. Elementary and secondary private schools shall be any combination of Grades Pre-Kindergarten through 12 for purposes of registration.

Stat. Auth.: ORS 345.535  
Stats. Implemented: ORS 345.515 & 345.525  
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91; ODE 8-2009, f. & cert. ef. 6-29-09

## 581-045-0505

### Statement of Philosophy

The school shall file with the Department of Education a written statement of its philosophy. The school goals shall reflect the Goals for Elementary and Secondary Education in OAR 581-022-1020 with the exception of any goal which is contrary to or inconsistent with the school's statement of philosophy.

Stat. Auth.: ORS 345.535  
Stats. Implemented: ORS 345.525 & 345.535  
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91; ODE 8-2009, f. & cert. ef. 6-29-09

## 581-045-0515

### Reports

The school shall furnish promptly such reports and information as the Department of Education requires by rule or other law and shall maintain a file of copies of such reports, including the school registration, in its own office.

Stat. Auth.: ORS 345.535  
Stats. Implemented: ORS 345.525 & 345.535  
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91; ODE 8-2009, f. & cert. ef. 6-29-09

## 581-045-0522

### Criminal Records Check of Employees

A private school registered with the Department of Education, per ORS 326.603, may require all employees, whether part-time or full-time who have direct, unsupervised contact with students as determined by the school, to comply with the requirements of 181.539 involving a state or nationwide criminal records check under 181.534.

Stat. Auth.: ORS 326.603  
Stats. Implemented: 326.603  
hist.: ODE 8-2009, f. & cert. ef. 6-29-09

## 581-045-0525

### Administrator Qualifications

(1) The school shall provide information showing that administrators of the school qualify in any one of the following three ways:

(a) Possess a current administrative certificate or license from any state.

(b) Be currently enrolled in an educational program leading to an administrative certificate or license from any state.

(c) Possess relevant verifiable experience, other than the above, according to clearly defined hiring criteria and minimum qualifications for the position which are consistent with the educational goals of the school and filed with the Department of Education. Annual registration renewal must include the criteria and minimum qualifications for the position for any staff member qualifying under this category.

(2) The names of administrators and the manner in which they qualify, under subsection (1)(a), (b) or (c) of this rule, must be reported on the Staff Roster with each annual registration.

(3) For administrators qualifying under subsection (1)(c) of this rule, the school must provide with the annual renewal a description of the minimum hiring criteria and qualifications for the position.

Stat. Auth.: ORS 345.535  
Stats. Implemented: ORS 345.525 & 345.535  
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91; ODE 8-2009, f. & cert. ef. 6-29-09

## 581-045-0530

### Teacher Qualifications

(1) Private schools shall not knowingly misrepresent to the public the certification, training, and qualifications of the teaching staff. The teacher must qualify by meeting one of the following three criteria:

(a) Possess a current teaching certificate or license from any state;

(b) Possess a B.S. or B.A. degree and be teaching at least half time in the subject in which the degree was awarded;

(c) Possess relevant verifiable experience, other than the experience described in paragraph (a) or (b) of this subsection, that meets the school's clearly defined hiring criteria and minimum qualifications for the position. Said hiring criteria and minimum qualifications shall be consistent with the educational goals of the school and filed with the Department of Education.

(2) The names of teachers and the manner in which they qualify, under subsection (1)(a), (b) or (c) of this rule, must be reported on the Staff Roster with each annual registration.

(3) For staff qualifying under subsection (1)(c) of this rule, the school must provide with the annual renewal a description of the minimum hiring criteria and qualifications for the position.

Stat. Auth.: ORS 345.535  
Stats. Implemented: ORS 345.525 & 345.535  
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91; ODE 8-2009, f. & cert. ef. 6-29-09

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## 581-045-0535

### Program of Studies

(1) The curriculum in Kindergarten through Grade 12 shall be such that it considers the goals of modern education as defined in OAR 581-022-1020 and the requirements of a sound, comprehensive curriculum consistent with the philosophy of the school. Particular emphasis shall be given to establishing the highest practical standards which shall approximate those standards expected of Oregon's public schools as defined in Oregon Administrative Rule division 022 except when the standard is contrary to or inconsistent with the school's statement of philosophy. Secondary schools shall establish academic standards necessary for admission to community colleges and institutions of higher education and issuance of a high school diploma. Appropriate guidelines are found in 581-022-1130. Courses shall be taught for a period of time equivalent to that required for students attending public schools as defined in 581-022-1620 and 581-022-0102 in the definition of "unit of credit".

(2) Private schools shall not knowingly misrepresent their accreditation status.

Stat. Auth.: ORS 345.535  
Stats. Implemented: ORS 345.525 & 345.535  
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91; ODE 8-2009, f. & cert. ef. 6-29-09

## 581-045-0538

### Child Abuse Reporting and Training

(1) The school must comply with the provisions of ORS 339.372 on developing policies on the reporting of child abuse.

(2) The school staff shall comply with the provisions of ORS 339.375 regarding the reporting of child abuse and the disclosure of records.

(3) The school shall comply with ORS 339.377 regarding child abuse prevention training.

(a) The school shall make available to students, each school year, training which is designed to prevent child abuse.

(b) The school shall provide training for all school employees on the prevention and identification of child abuse and on the obligations of school employees to report child abuse under the provisions of ORS 419.005 to 419B.050 and policies adopted by the school board or governing body. This training shall be updated and presented to all employees on an annual basis.

(c) The school shall make training detailed in section (3)(b) of this rule available to parents and legal guardians of the school's students. The training shall be provided separately from the training provided to school employees. This training shall be made available each school year.

(d) Sections (a), (b) and (c) of this subsection, apply to private schools offering kindergarten through grade 12.

Stat. Auth.: ORS 339.372, 339.375 and 339.377  
Stat. Implemented: ORS 339.372, 339.375 and 339.377  
Hist.: ODE 8-2009, f. & cert. ef. 6-29-09

## 581-045-0545

### Student Records

(1) The school shall maintain an adequate system of student records in compliance with OAR 581-022-1670.

(2) In the event of permanent school closure, the school shall arrange to transfer permanent student records to the local education service district office, county unit office, local school district, or another depository for student records. The school must inform the Department in writing of the location of the records including the name and location of the depository.

Stat. Auth.: ORS 345.535  
Stats. Implemented: ORS 345.525 & 345.535  
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91; ODE 8-2009, f. & cert. ef. 6-29-09

## 581-045-0550

### Transfer of Progress Records

The school shall transfer promptly to any other educational institution all progress records in conformance with the requirements for school districts listed in ORS 339.260. Student records necessary for use in the appropriate placement of the student shall not be withheld from other institutions because of nonpayment of fees or tuition.

Stat. Auth.: ORS 345.535  
Stats. Implemented: ORS 345.525 & 345.535  
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91; ODE 8-2009, f. & cert. ef. 6-29-09

## 581-045-0555

### Media Centers

The school shall have instructional media centers to provide services for all students which shall approximate the goals of OAR 581-022-1520 except for the requirements of certification of staff.

Stat. Auth.: ORS 326.215, 339.030, 343.055, 345.535, 433.245, 453.205 & 453.255  
Stats. Implemented: ORS 345.525 & 345.535  
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91; ODE 8-2009, f. & cert. ef. 6-29-09

## 581-045-0565

### Denial or Revocation of Registration

(1) The Department, may on its own initiative, deny, revoke or suspend a school's registration if evidence is documented indicating the:

(a) School is not in compliance with ORS 345.525 or 345.535 or OAR 581-045-0500 to 581-045-0580;

(b) School knowingly made false, deceptive, inaccurate, or misleading representations of fact in any oral, written, visual or electronic presentation in connection with registration requirements required under ORS 345.505 to 345.575 or OAR 581-045-0500 to 581-045-0580; or

(c) School did not furnish information or a report as required under ORS 345.505 to 345.575 or OAR 581-045-0500 to 581-045-0580.

(2) In the event that registration or renewal of registration is denied, revoked or suspended, the school shall be notified with a statement of the reason(s) for the denial, revocation or suspension and a hearing shall be provided under ORS 183.413 to 183.464.

Stat. Auth.: ORS 345.535  
Stats. Implemented: ORS 345.555  
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91; ODE 8-2009, f. & cert. ef. 6-29-09

## 581-045-0570

### Site

(1) The school site shall be well-maintained and large enough to provide for school needs to approximate the provisions of OAR 581-022-1430 relating to an asbestos management plan and 581-022-1530(3), (4), and (5) relating to auxiliary services. A school receiving state or federal funds shall be accessible to persons with a disability.

(2) The school site shall comply with all rules of the State Fire Marshall relating to fire safety and with Health Division and Child Care Division standards relating to safety and sanitation. Evidence of such compliance shall be provided upon initial registration, when registration lapses and upon request. Such evidence of compliance shall not be more than two years old.

Stat. Auth.: ORS 345.535  
Stats. Implemented: ORS 345.535  
Hist.: 1EB 109, f. 3-30-64; 1EB 256, f. & ef. 12-20-76; EB 5-1991, f. & cert. ef. 2-28-91; ODE 8-2009, f. & cert. ef. 6-29-09

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**Rule Caption:** Increases maximum length allowed for school buses.

**Adm. Order No.:** ODE 9-2009

**Filed with Sec. of State:** 6-29-2009

**Certified to be Effective:** 6-29-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 581-053-0517

**Subject:** House Bill 2562 (2009) increased the maximum allowable length for school buses to 45 feet. The bill took effect March 26, 2009. The rule implements the bill by increasing the maximum allowable length from 40 to 45 feet.

**Rules Coordinator:** Paula Merritt—(503) 947-5746

## 581-053-0517

### Minimum Standards for School Bus Bodies

(1) Aisle:

(a) Minimum clearance of all aisles shall be 12 inches;

(b) Aisle supports of seat backs shall be slanted away from aisle sufficiently to give aisle clearance of 15 inches at tops of seat backs.

(2) Battery:

(a) Battery is to be furnished by chassis manufacturer;

(b) When battery is mounted as described in electrical section, Battery of Chassis Standard, i.e., the body manufacturer shall securely attach battery on slide-out or swing-out tray in closed, vented compartment in body skirt whereby battery may be accessible for convenient servicing and removal from the outside. Battery compartment door or cover shall be hinged at front or top and secured by adequate and conveniently operated latch or other type fastener. This includes Type A-1, A-2 buses unless the battery(ies) are mounted assessable under the hood;

(c) Access to battery through body floor not permitted;

(d) Buses may be equipped with a battery shut-off switch. The switch is to be placed in a location not readily accessible to the driver or passengers.

(3) Body Sizes: It is the body supplier's responsibility to determine that the completed body-on-chassis type bus will fulfill weight distribution requirements as explained in OAR 581-053-0512, Bus Chassis, section (30), Weight Distribution. Body manufacturer shall determine the vehicle's maximum designed and equipped passenger capacity and post it along with GVWR and vehicle compliance information.



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(4) Bumper (Front): See OAR 581-053-0512, Bus Chassis, section (6) Bumper, Front. Deer guards may be added to a front bumper to protect the front grill. Deer guards may not be in any portion of the driver's forward view, including use of all mirrors.

(5) Bumper (Rear):

(a) Rear bumper for all body on chassis units shall be of pressed steel channel or equivalent material at least 3/16-inch thick and eight inches wide (high), and of sufficient strength to permit pushing by another vehicle without distortion. Type A-1 and A-2 buses (not body on chassis) may be manufacturers' standard;

(b) Bumper for all body on chassis units shall wrap around back corners of bus. It shall extend forward at least 12 inches, measured from rear-most point of body at floor line. Type A-1 and A-2 buses (not body on chassis) may be manufacturers' standard;

(c) Bumper shall be attached to chassis frame in such manner that it may be easily removed, shall be so braced as to develop full strength of bumper section from rear or side impact, and shall be so attached as to prevent the insertion of small fingers between the body and bumper;

(d) Bumper shall extend beyond rear-most part of body surface at least one inch, measured at floor line;

(e) An energy absorbing rear bumper may be used providing a self-restoring energy absorbing bumper system so attached as to prevent the hitching of rides and of sufficient strength to:

(A) Permit pushing by another vehicle without permanent distortion to the bumper, chassis, or body;

(B) Withstand repeated impacts without damage to the bumper, chassis, or body according to the following performance standards:

(i) 2.0 MPH fixed barrier impact (FMVSS cart and barrier test);

(ii) 4.0 MPH corner impact at 30 degrees (Part 581 CFR Title 49);

(iii) 5.0 MPH buses (Part 581 CFR Title 49).

(C) The manufacturer of the energy absorbing system shall provide evidence from an approved test facility (capable of performing the above FMVSS tests) that their product conforms to the above.

(6) Ceiling: See section (19) of this rule, Insulation, and section (20), of this rule, Interior.

(7) Color:

(a) The school bus body shall be painted a uniform National School Bus Yellow. The body exterior paint trim, bumper, lamp hoods, and emergency door lettering shall be black. The roof of the bus may be painted white. The white color may extend across the roof down to the drip rails or within 6 inches above the passenger windows on the sides of the bus except that front and rear caps shall remain National School Bus Yellow. Retroreflective material may be used as trim on rear bumper. Beltline lettering may be yellow;

(b) Retroreflective material approved by the Department of Education shall be installed as a background for the required school bus lettering both on the front and rear of the body of buses purchased after September 1, 1993. Maximum dimensions: 12" x 36", unless equipped with approved lighted school bus signs. Retroreflective material shall have reflective values equal or greater than 3M Scotchlite Diamond Grade and retain at least 50 percent of those values for a minimum of six years;

(c) Additional retroreflective material, if used, shall be automotive engineering grade or better, meeting initial reflectance values in FHWA FP-85 and retaining at least 50 percent of those values for a minimum of six years. Retroreflective materials and markings, if used, may include any or all of the following:

(A) Front and rear bumper: may be marked diagonally 45 degrees down to centerline of pavement with two-inch wide strips of noncontrast reflective material;

(B) Rear of the bus body may be marked with a strip of retroreflective National School Bus Yellow matching material no greater than two inches wide to be applied to the back of the bus, extending from the left lower corner of the "SCHOOL BUS" lettering, across to the left side of the bus; then vertically down to the top of the bumper; across the bus on a line immediately above the bumper to the right side, then vertically up to a point even with the strip placement on the left side, and concluding with a horizontal strip terminating at the right lower corner of the "SCHOOL BUS" letter;

(C) Sides of bus body: may be marked with retroreflective National School Bus Yellow matching material comprising background for letters at least six inches but no more than twelve inches in width, extending the length of the bus body and located (vertically) as close as practicable to the beltline. Two-inch wide reflective material having high intensity reflectance values (3M Scotchlite Diamond Grade or equivalent) may be substituted for the six inch to twelve-inch wide materials;

(D) See appendix for diagram defining locations of marking referred to above.

(8) Construction:

(a) Construction shall be of prime commercial quality steel, or other metal, or other material with strength at least equivalent to all-steel as certified by bus body manufacturer;

(b) Construction shall provide a water-tight and reasonably dustproof unit;

(c) Must meet or exceed applicable federal motor vehicle safety standards for construction, effective April 1, 1977.

(9) Crossing Arm: A crossing arm may be mounted on the front of a school bus in accordance with the following specifications:

(a) Installed on the front bumper as close as practicable to the right (curb) side, opening left to right and providing an extension of the curbside of bus;

(b) Arm shall be located at least 18 inches but not more than 24 inches above ground level and in the closed position; arm shall not cover numbers on license plate;

(c) Installed in a manner to limit the outward deployment to 90 degrees from the front bumper;

(d) Arm shall extend 70 inches from the front bumper in its extended position;

(e) Arm shall be activated through the existing bus safety light system assuring the driver is required to take no additional action to either deploy or retract the arm. No outward movement of the arm may occur before red flashing sequence begins;

(f) Override switches are prohibited;

(g) Crossing arm must be safeguarded from damage due to pushing or pulling by hand through the use of a clutch-like device or equivalent, double spring hinges are not acceptable;

(h) The arm may be equipped with an amber flashing light that functions only when the arm is in the fully extended position;

(i) Entire unit shall have no sharp edges or other projections that could injure children or others due to casual contact;

(j) Unit shall provide secure mounting opportunities to prevent misalignment or failure due to extreme weather conditions;

(k) Shall meet or exceed all requirements in SAE Standard J1133;

(l) Shall be either air, vacuum, or electrically operated and in conformance to section (39)(g) of this rule;

(m) Crossing arm color shall either appear in an unpainted state or comply with trim requirements listed in section (7)(a) of this rule;

(n) All components and connections shall be weatherproofed.

(10) Defrosters:

(a) Defrosting and defogging equipment shall direct a sufficient flow of heated air onto the windshield, the window to the left of the driver and the glass in the viewing area directly to the right of the driver to reduce the amount of frost, fog and snow;

(b) The defroster units shall have separate blower motors, in addition to the heater motors. Type A-1 and A-2 buses may have manufacturers' standard defrosters;

(c) A right front windshield and door defrosting unit with a separate hot water core and separate blower motors shall be provided on Type C buses;

(d) The defrosting system shall conform to SAE performance standards J-381 and 382;

(e) The defroster and defogging system shall be capable of furnishing heated outside ambient air, except that part of the system furnishing additional air to the windshield, entrance door and stepwell may be of the recirculation air type;

(f) Auxiliary fans are not to be considered as a defrosting and defogging system:

(A) Auxiliary fans, if used, must be mounted above the windshield, so as not to interfere with the driver's vision of the roadway, mirrors or students outside the bus;

(B) The fan blades shall be covered with a protective cage.

(11) Doors: Service Door:

(a) Service door shall be under control of driver, and so designed as to afford easy release and provide a positive latching device for manual operating door so as to afford easy release and prevent accidental opening. When hand lever is used, no part shall come together so as to shear or crush fingers;

(b) Service door shall be located on right side of bus opposite driver and within direct view;

(c) Service door shall have minimum horizontal opening of 24 inches and minimum vertical opening of 68 inches. Type A-1 and A-2 buses shall have a minimum opening of 1,200 square inches;

(d) Service door shall be of split type, (sedan type) or jack-knife type. (Split type door includes any sectioned door, which divides and opens inward or outward.) If one section of split type door opens inward and other opens outward, front section shall open outward. Manual door controls shall not require more than 25 pounds of force to operate at any point throughout the range of operation;

(e) If power operated, pressure shall be controlled by a regulator valve or switch and provision shall be made for opening the door manually in the event of driver disability or mechanical failure. Emergency release valve or switch for power operated doors shall be located in an accessible place, in

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plain view, as near the service door as practicable. Valve or switch shall be properly identified and "open" and "closed" position plainly marked;

(f) Lower as well as upper panels shall be of approved safety glass. Bottom of lower glass panel shall not be more than ten inches from top surface of bottom step. Top of upper glass panel shall not be more than six inches from top of door. Type A-1 and A-2 buses shall have a minimum 350 square inch upper glass panel;

(g) Vertical closing edges shall be equipped with flexible material to protect children's fingers. Type A-1 and A-2 buses may be equipped with chassis manufacturers' standard entrance door;

(h) There shall be no door to left of driver. (This shall not be interpreted to conflict with emergency doors or windows.) Type A-1 and A-2 and B buses may be equipped with manufacturers' left side driver's door;

(i) All doors shall be equipped with an energy absorbing pad at the top edge of each door opening. Pad shall be at least 3 inches wide and 1 inch thick and extend the full width of the door opening. Pad not required on Type A-1 and A-2 and B buses, left side driver's door.

### (12) Emergency Exits:

(a) All buses purchased after January 1, 1999 shall be equipped with required emergency exits and identification listed in 49 CFR Part 571 FMVSS 217 as it has been adopted by National Highway Traffic Safety Administration for June 9, 1995 implementation plus all applicable standards specified in this rule: These rule changes apply to buses ordered after July 1, 2004.

(b) For buses equipped with a rear emergency door additional exits as listed below:

(A) Buses designed or equipped with a passenger capacity of 1-22 shall provide [one of] the following:

(i) 2 swing-out windows, one on each side of the bus approximately mid-point of the passenger compartment and One FMVSS 217 complying roof hatch; or

(ii) Side windows with a 12 inch vertical drop and One FMVSS 217 complying roof hatch.

(B) Buses designed or equipped with a passenger capacity of 23 to 45 shall provide:

(i) One FMVSS 217 complying left side emergency door and One FMVSS 217 complying roof hatch; or

(ii) Two FMVSS 217 complying swing-out windows one on each side of the bus approximately mid-point of the passenger compartment and One FMVSS 217 complying roof hatch.

(C) Buses designed or equipped with a passenger capacity of 46 to 62 shall provide:

(i) One FMVSS 217 complying left side emergency door and One FMVSS 217 complying roof hatch; or

(ii) Four FMVSS 217 complying swing-out windows; two on each side of the bus approximately mid-point of the passenger compartment, but not immediately adjacent to each other and one FMVSS 217 complying roof hatch.

(D) Buses designed or equipped with a passenger capacity of 63 and above shall provide:

(i) One FMVSS 217 complying left side emergency door and One FMVSS 217 complying roof hatch; or

(ii) Four FMVSS 217 complying swing-out windows; two on each side of the bus approximately mid-point of the passenger compartment, but not immediately adjacent to each other and One FMVSS 217 complying roof hatch.

(c) For buses equipped with a rear push-out window, a left side emergency door shall be provided and the following additional exits as listed below:

(A) Buses designed or equipped with a passenger capacity of 1-22 shall provide one of the following:

(i) Two FMVSS 217 swing-out windows, one on each side of the bus approximately mid-point of the passenger compartment; or

(ii) Side windows with a 12 inch vertical drop and One FMVSS 217 complying roof hatch.

(B) Buses designed or equipped with a passenger capacity of 23-45 shall provide: Two FMVSS 217 complying swing-out windows and One FMVSS 217 complying roof hatch.

(C) Buses designed or equipped with a passenger capacity of 46-57 shall provide:

(i) One FMVSS 217 complying right side door and One FMVSS 217 complying roof hatch; or

(ii) Four FMVSS 217 complying swing-out windows and One FMVSS 217 complying roof hatch.

(D) Buses designed or equipped with a passenger capacity of 58 and above shall provide:

(i) One FMVSS 217 complying right side door and One FMVSS 217 complying roof hatch; or

(ii) Four FMVSS 217 complying swing-out windows; and One FMVSS 217 complying roof hatch.

(d) Selection of the added exits (if any) necessary to comply with the "additional emergency exit area" requirements of FMVSS 217 shall be made by the vehicle purchaser in conformance to applicable rules;

(e) Manufacturer shall identify all emergency exits used for calculations relating to FMVSS 217 compliance and list the daylight (clear) opening for each exit;

(f) A document identifying the following shall be provided by the vehicle seller to the Oregon Department of Education and bus purchaser prior to the bus being introduced into a bus system for the first time:

(A) Bus manufacturer;

(B) Bus identification number;

(C) Bus designed and equipped passenger capacity;

(D) Bus purchaser and district(s) served;

(E) All emergency exits used for FMVSS 217 compliance; and

(F) Total square inches/square cm clear opening for each emergency exit provided in the bus.

(g) Swing out windows shall provide a minimum clear opening of 18" x 24". If side emergency swing-out windows can be opened from outside the bus the words "Emergency Exit" shall be placed directly above the window in letters at least two inches high on the exterior of the bus. If the words "Emergency Exit" are placed on the exterior of the bus above swing-out windows inoperable from outside, the label must include the following statement in letters approximately one inch high "Operates From Inside Only."

(h) Rear emergency door exits:

(A) Type A-1 and A-2 buses with double rear emergency doors shall be hinged on the outside and have a three point fastening device;

(B) Upper portion of emergency door shall be equipped with approved safety glazing, exposed area of not less than 400 square inches;

(C) Lower portion of rear emergency door shall be equipped with approved safety glass and shall have an exposed area of not less than 350 square inches of approved safety glazing. Type A-1 and A-2 buses are not required to have lower rear emergency door glazing;

(D) There shall be no steps leading to emergency door;

(E) Clearance between outside emergency door handle and the emergency door shall not exceed 1/4-inch when handle is in closed position. Handle shall not provide a firm handhold to someone trying to "hitch" a ride. Handles shall be positioned to prevent snagging of clothing or pinching of fingers;

(F) Emergency door hinge shall not provide an opening for insertion of fingers when door is closed;

(G) If emergency door is lockable, provision must be made to prevent the bus from starting while the door is locked. An audible warning that does not affect engine operation shall be provided to alert the driver should the door be locked while the bus is in operation;

(H) An adequately padded head bumper shall be placed on the interior directly above any emergency exit door opening. The pad shall extend the full width of the door opening and shall be at least three inches wide and one inch thick.

(i) Approximately one inch/three centimeter retroreflective exterior perimeter marking shall be yellow in color, of automotive engineering grade material, and in compliance with both the retroreflective requirement of FMVSS and durability specifications listed in National Minimum Standards for reflective material;

(j) Roof emergency exit:

(A) Roof emergency exit, when required, shall be installed in a school bus body in accordance with FMVSS 217;

(B) A roof exit shall be waterproof and provide a minimum clear opening of 16" x 16"; and have an audible warning signal able to be heard at the driver's area. These rule changes apply to buses ordered after July 1, 2004.

(C) Roof exit may also serve as a roof ventilator; however, this may not be used in place of the required static vent.

(13) Emergency Equipment:

(a) Belt cutter: Each bus equipped with passenger seat belts or webbed restraining devices shall have a belt cutter mounted in the driver's compartment, readily accessible and in plain view of the driver. Device shall be of a design offering protected cutting edges to prevent accidental or intentional injury to drivers or passengers;

(b) Emergency road reflectors:

(A) Each bus shall be equipped with at least three DOT triangle reflectorized disabled vehicle warning devices;

(B) Reflectors must be in a container securely mounted with nut-and-bolt fasteners enhanced with large flat (fender) washers or held in place by a nut-and-bolt mounted metal bracket that also protects and secures the container lid. Both shall be located in an accessible location. Reflectors shall not be mounted in any engine compartment;

(C) If not mounted in plain view of the driver, the location shall be clearly designated.

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(c) Body fluid cleanup kit: Buses purchased after September 1, 1993 shall have a removable moisture proof and dust proof body fluid cleanup kit, mounted in an accessible place within the driver's compartment. This place shall be marked to identify its location. Contents shall include at least the following items:

- (A) Two pair rubber/latex gloves;
- (B) Two four-ounce packages of stabilized chlorine absorbent deodorant (or equivalent) capable of stabilizing at least 1 litre/36 fl. oz. of body fluids;
- (C) One spatula for pick up of congealed fluid;
- (D) One plastic bag in which to place congealed fluid;
- (E) One red plastic bag with tie, identified for infectious waste and as a bio-hazard;
- (F) One two-ounce bottle of germicidal detergent to apply to a contaminated area;
- (G) Four paper towels to wipe up contaminated area;
- (H) One one-ounce antiseptic alcohol hand rinse (or equivalent);
- (I) One placard of step by step use instructions;
- (J) Germicidal detergents, stabilized chlorine absorbent deodorant, alcohol hand rinse, or their equivalents shall provide documentation of EPA approval regarding their microbiological efficacy for at least the following:
  - (i) *Staphylococcus aureus*;
  - (ii) *Pseudomonas aeruginosa*;
  - (iii) *Salmonella choleraesuis*;
  - (iv) *Streptococcus* species;
  - (v) Herpes simplex Type II;
  - (vi) HIV (Associated with AIDS);
  - (vii) Fungi (athlete's foot);
  - (viii) Poliovirus; and
  - (ix) Tuberculosis.
- (K) Documentation of efficacy for Hepatitis B may be hospital or test studies. The certified effective shelf life of these products shall be a minimum of 12 months. Product expiration date shall be clearly displayed on all time-sensitive products.

(d) Fire extinguishers:

(A) Each bus shall be equipped with at least one pressurized, dry, chemical type fire extinguisher, mounted in a bracket and located in the driver's compartment, readily accessible and in plain view of the driver. A pressure gauge shall be mounted on the extinguisher so as to be readily read without removing the extinguisher from its mounted position;

(B) The fire extinguisher shall be of a type approved by the Underwriters Laboratories, Inc., with a rating of not less than 2 A-10 BC. The extinguisher shall have a minimum five pound capacity and equipped with a hose and nozzle;

(C) The operating mechanism shall be sealed with a type of seal that will not interfere with the use of the fire extinguisher;

(D) Extinguishers with plastic heads are not permitted.

(e) First aid kit:

(A) Each bus shall have a readily removable, moisture proof and dust-proof first-aid kit container mounted in an accessible place within driver's compartment. If not mounted in plain view of the driver, the location shall be clearly designated;

(B) The first aid kit contains a minimum of 24 units that shall include the following:

- (i) One 1" adhesive compress — 16 per unit;
- (ii) Two 2" bandage compress — 4 per unit;
- (iii) Two 3" bandage compress — 2 per unit;
- (iv) Two 4" bandage compress — 1 per unit;
- (v) Two 3" x 3" plain gauze pads — 4 per unit;
- (vi) Two 2" x 6 yards gauze roller bandage — 1 per unit;
- (vii) Three 1/2 square yard gauze;
- (viii) Three 24" x 72" gauze;
- (ix) Four Triangular bandage;
- (x) One 1/2 x 5 yard adhesive tape-one per unit;
- (xi) One round nose scissors and tweezers. Latex gloves-one pair; and
- (xii) One microshield for mouth to mouth airway (to lay on top of other contents).

(C) Specific local requirements may be substituted in lieu of 2 units of 1/2 square yard gauze.

(14) Floor:

(a) Floor in underseat area, including tops of wheelhousing, driver's compartment and toeboard, shall be covered with rubber floor covering or equivalent having minimum overall thickness of .125 inch:

(A) Floor covering in aisle shall be of aisle-type fire-resistant rubber or equivalent, wear-resistant and ribbed or equivalent non-slip material. Minimum overall thickness shall be .1875 inch measured from tops of ribs;

(B) Floor covering must be permanently bonded to floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be of type recommended by

manufacturer of floor-covering material. All seams must be sealed with waterproof sealer.

(b) Edge of floor at stepwell shall be treated as a step edge and shall be protected as required in section (37)(c) of this rule;

(c) A vapor and liquid proof inspection plate provided for access to the fuel tank sending unit is permissible;

(d) A subfloor of 5-ply plywood, at least 5/8 inch nominal thickness or equivalent, may be installed over the standard school bus floor. Plywood shall equal or exceed properties of exterior-type softwood plywood, C-D grade as specified in standards issued by the Department of United States Commerce. Floor shall be level from front to back and from side to side except for wheelhousing, toeboard and driver's seat platform areas;

(e) For Type A-1 and A-(1)2 buses that are not constructed with a standard school bus floor, the existing metal floor in the passenger area shall be covered with not less than 1/2-inch nominal thickness exterior C-D grade plywood. All plywood seams shall extend from side to side (laterally), longitudinal seams not permitted.

(15) Heaters:

(a) At least one heater of hot water type is required in all buses;

(b) If only one heater is used, it shall be of fresh-air or combination fresh-air and recirculation type;

(c) If more than one heater is used, additional heaters may be of recirculation air type;

(d) The heating system shall be capable of maintaining throughout the bus a temperature of not less than 50 degree Fahrenheit at average minimum January temperature as established by the U.S. Department of Commerce, Weather Bureau, for the area in which the vehicle is to be operated;

(e) All heaters installed by body manufacturers shall bear a name plate which shall indicate the heater rating in accordance with SBMI Standard No. 001, said plate to be affixed by the heater manufacturer which shall constitute certification that the heater performance is as shown on the plate;

(f) Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or sharp edges, and shall not interfere with or restrict the operation of any engine function. Heater hose shall conform to SAE J20c. Heater hoses on the interior of the bus shall be shielded to prevent scalding of the driver or passengers;

(g) Each hot water heater system installed by a body manufacturer shall include a shutoff valve installed in the pressure and return lines near the engine in an accessible location. There shall be a water flow regulating valve or airflow regulating door for the front heater installed for convenient operation by the driver while seated;

(h) Return heater lines on body company installed heaters shall be equipped with bleeder valves in an accessible location to allow for removal of heater line air;

(i) Combustion type heaters may be installed and shall comply with all the following:

(A) The combustion type heater must be installed outside the passenger compartment;

(B) Exhaust exit from the heater must meet the same location requirements as for engine exhaust;

(C) The heater must have been tested by a qualified laboratory and certified as complying with the following regulations:

(i) Code of Federal Regulations, CFR 300-399, Transportation Heaters, 393.77 and CFR 49: Part 571, Transportation: Motor Vehicle Safety Standard 301; Fuel System Integrity;

(ii) American Institute of Electrical and Electronic Engineers, IEEE1: Temperature Limits in Rating Electrical Equipment;

(iii) UL 307A: Liquid Fuel-Burning Heating Appliances, UL 756C: Polymeric Materials — Use in Electrical Equipment, and UL 796: Printed Wiring Boards;

(iv) TE-12: Impact Testing of Vehicular Components.

(D) Provide isolation valves at the heater for both the coolant feeder and return lines;

(E) Heater must be equipped with a pressure relief valve preset to release any internal system pressure over 50 psi;

(F) An impact switch for the heater's electric fuel pump that will stop the pump with special inertial mechanics.

(j) Portable heaters may not be used.

(16) Identification:

(a) School bus bodies shall bear the words "School Bus" in black letters at least eight inches high and of proportionate width on both front and rear of body. Lettering shall be placed as high as possible without impairment of its visibility;

(b) A warning sign, calling attention to the school bus stop law shall be installed on the rear of all school buses. It shall be centered on the back of the bus and occupy the space, belt high, directly beneath the upper window in the rear door. Signs on transit type buses shall occupy approximately the same area. Signs on Type A buses with double rear door having



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obstructions such as door handles and recessed license plate holders that prevent sign centering shall be placed completely on the right side (rear) door in a manner that all reflective letters are located on that door and as high on the lower portion of the door as practicable in relationship to the door handle, but the top of the sign may be no more than four inches below handle shaft. Sign shall conform to the following:

(A) Decals with white reflectorized letters conforming to retroreflective requirements listed in section (7)(c) of this rule mounted on a flat black background;

(B) Decal shall have (be 9 inches by 30 inches with) lettering as shown below:

UNLAWFUL TO PASS (3 inches in height)  
WHEN (1 inches in height)  
RED LIGHTS FLASH (3 inches in height)

(C) Electronic Motorist alert sign may be installed on the rear of school buses. This sign shall illuminate and flash a message with a minimum of three inputs: (1) when the hazard warning lights are activated, illuminate and flash an amber caution alert message and or (2) when the amber School Bus Safety Lights are activated, illuminate and flash an amber caution alert message or (3) when the red School Bus Safety Lights are activated, illuminate and flash a red warning message to motorist. Assembly must be sealed weather tight construction approximately 23 1/2" X 8 3/4" X 1 3/8" in size. The minimum viewing angle from the rear of the bus shall be 30 degrees (15 degrees on each side of perpendicular axis). Hazard warning light display message shall be amber "CAUTION STOPPING"; School Bus Safety amber light display message shall be alternating amber "CAUTION" then "STOPPING"; School Bus Safety red light display message shall be alternating red "STOP" (within an octagon outline) then "DO NOT PASS". Frequency of standard alternating message flash and or alternating different message flash may be controlled by hazard warning and School Bus Safety Light flashers. Illumination intensity and quantity of L.E.D. lights shall be sufficient to result in a clear legible message.

(i) Mounting on front engine buses, device shall be located in the most attainable vertical center of rear emergency door, between upper and lower windows in the lowest possible mounting position.

(ii) Mounting on rear engine buses, device shall be vertically centered and horizontally adjacent to the left and right upper brakes lights as possible.

(iii) Electronic Motorist alert sign may also be installed on the front of busses if they are mounted and used on the rear of buses. This sign must be wired and activated in same manner as the sign on the rear of buses. Sign shall be mounted on the front of the bus, below the windshield, vertically and horizontally centered as possible.

(D) It is prohibited for any school bus to display a warning sign, which does not meet B or C in this section;

(c) The name of the school district IE: (and contractor company name if applicable) contractor company name shall be placed on the side of each bus. Such signs shall appear in the area directly below the side windows and the letters and figures in such signs shall not be less than four inches nor more than six inches in height and of proportionate width;

(d) School team name or contractor's insignia may be placed above the side windows on the front portion of the bus body. All such lettering must be approved by the Pupil Transportation Section of the Oregon Department of Education;

(e) At least one bus identification number at least four inches in height shall be placed on a flat vertical surface on each side and on the front and rear of the bus. At least one complete unit number shall be visible from any point 50 feet from the bus. Symbols may be used in lieu of numbers. Type A-1 and A-2 bus numbers may be three inches in height. Bus identification numbers are not required if the school has only one route bus;

(f) Only signs and lettering approved by state law or by the regulations of the Department of Education shall appear on the inside or outside of a school bus.

(17) Inside Height: Clear inside body height shall be 72 inches or more measured at any point on the longitudinal center line from front vertical bow to rear vertical bow. Type A bus height shall be not less than 62 inches.

(18) Instruments, Gauges, Indicators: Body manufacturer shall in no manner obstruct the driver's visibility of required instruments, gauges or indicators provided by the chassis manufacturer. Body instrument panel lights shall be controlled by an independent rheostat switch.

(19) Insulation:

(a) Ceiling and walls in all new buses purchased after September 1, 1985, shall be insulated with proper material to deaden sound and to reduce vibration to a minimum. Thermal insulation of fire-resistant and non-water absorbing material approved by Underwriters Laboratories, Inc., is required in body ceiling and walls;

(b) If floor insulation is desired it must be 5-ply, at 5/8-inch thick plywood as specified in section (14) of this rule.

(20) Interior:

(a) Interior of bus shall be free of all unnecessary projections likely to cause injury including luggage/book racks on buses purchased after September 1, 1993 or retrofitting occurring after that date. This standard requires inner lining on ceilings and walls. If ceiling is constructed so as to contain lapped joints, forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged or otherwise treated to minimize sharp edges;

(b) Ceiling of bus shall be free of all projections that can cause injury in the event of a collision or rollover (see section (30) of this rule.);

(c) All materials used in the interior of a school bus body shall meet the requirements of Federal Motor Vehicle Safety Standard No. 302, Flammability of Interior Materials;

(d) Construction of buses manufactured after September 1, 1993 shall assure noise level taken at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 DBA when tested according to the procedure found in the Appendix (Noise Test Procedure).

(21) Lamps and Signals:

(a) All lamps on exterior of bus shall conform with and be installed as required by Oregon Motor Vehicle law and the Federal Motor Vehicle Safety Standard No. 108, effective January 1985;

(b) Headlamps, when furnished by body manufacturer, shall be of proper intensity and adjustment as specified by Oregon Motor Vehicle law;

(c) Stop-tail lamps: Buses shall be equipped with four combination red stop-tail lamps. Two combination lamps with a minimum 38 square inches of illuminated area shall be mounted on the rear of the bus on the beltline or immediately below. Two combination lamps with a minimum 12 square inches of illuminated area shall be placed on the rear of the body between the beltline and the floor line. Rear license plate lamp may be combined with one lower tail lamp. Stop lamps shall be activated by the service brakes and shall emit a steady light when illuminated. Type A-1 and A-2 buses with bodies supplied by chassis manufacturer may have manufacturer's standard stop and tail lamps;

(d) Clearance and identification lights: Each bus shall be equipped with clearance and identification lights as required by Oregon Motor Vehicle law and Federal Motor Vehicle Safety Standard No. 108;

(e) Reflectors: Each bus shall be equipped with reflectors as required by Oregon Motor Vehicle law and Federal Motor Vehicle Safety Standard No. 108;

(f) Directional signals: Each bus shall be equipped with front and rear turn signal lamps that conform to requirements of the Oregon Motor Vehicle law. Lamps shall have a minimum illuminated area of 38 square inches. Lamps shall be amber in color whether mounted at the front or rear. Type A-1 and A-2 buses may be equipped with manufacturer's standard front turn signals. Signal lamps shall be independent units and connected to chassis-supplied turn signal switch and four-way hazard warning switch to cause simultaneous flashing of turn signal lamps when needed as vehicular traffic hazard warning. A turn signal lamp with a minimum of 4 candlepower shall be mounted on each body side at approximately seat level height, located to the rear of the entrance door on the right side of the body and approximately the same location on the left side. These are to be connected to and function with the regular turn signal lamps. Type B buses may have the right side body turn signal forward of the entrance door;

(g) Back-up lamps: Two back-up lamps shall be provided in accordance with Federal Motor Vehicle Safety Standard 108;

(h) Back-up warning alarm: An automatic audible alarm shall be installed on the rear of all buses purchased after November 1, 1985, that complies with the Society of Automotive Engineers (SAE 994 Backup Alarm Standard specifying 974db(A) minimum;

(i) Interior dome lamps: Interior lamps shall be provided which will adequately illuminate interior aisles. There shall be at least one interior lamp for every two rows of passenger seats. One or two rear dome lamp(s) shall be wired through a separate switch. Separate circuit for rear dome lamp(s) is not required on buses with less than five rows of seats;

(j) Stepwell lamp: A stepwell lamp shall be provided which will adequately illuminate the entire stepwell. The lamp circuit shall be wired through the headlamp or clearance lamp system and shall be activated only when the door is opened;

(k) School Bus Safety Lights:

(A) Each school bus shall be equipped with a system meeting FMVSS 108 consisting of four red signal lamps designed to conform to SAE Standard J887, "School Bus Red Signal Lamps," July 1964, and four amber signal lamps designed to that standard, except for color, and except that their candle power shall be at least 2-1/2 times that specified for red signal lamps. Lamps shall have minimum of 17.25 square inches and shall be clearly visible in direct sunlight from a distance of 500 feet along axis of vehicle;

(B) The system shall be wired so that the system is activated by a manually operated spring-loaded switch clearly labeled and distinguishable from other switches. A circuit master switch is permitted if the manually operated activating switch and the master switch are together in one switch;

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(C) For buses equipped with power-controlled entrance doors, an additional spring loaded switch that will activate the red school bus safety lights prior to opening entrance door is permissible;

(D) The flashing mechanism shall be capable of carrying the full current load of the signal system;

(E) Right and left signal lamps shall flash alternately. Each signal lamp shall flash not less than 60 or more than 120 flashes per minute. The "on" period shall be long enough to permit bulb filament to come up to full brightness;

(F) Pilot lamps/monitors:

(i) Each bus shall be equipped with two, 3/8-inch illuminated pilot lamps — one amber and one red — to indicate when the respective amber or red system is actuated. Pilot lamps shall be placed within a 140° field of vision for a 95th percentile female anthropomorphic test dummy seated in a normal driving position. Pilot lamps shall also provide an unmistakable indication that the flasher system is operating and an unmistakable indication if any circuit is broken, any lamp is not operating or the system is not otherwise functioning normally unless a separate monitoring system performs all those functions; or

(ii) Each bus shall be equipped with a monitor system utilizing 3/8-inch illuminated red and amber lamps to indicate when the respective amber or red system is actuated. Monitor shall be placed within a 140° field of vision for a 50th percentile anthropomorphic test dummy seated in a normal driving position. Monitor shall also provide an unmistakable indication that the flasher system is operating and an unmistakable indication if any circuit is broken, any lamp is not operating or the system is not functioning normally.

(G) School Bus Safety Light system shall operate as follows:

(i) With entrance door closed, depress activation switch. Amber pilot light and amber bus safety lights shall go on;

(ii) Open entrance door; amber bus safety lights shall go off, and red pilot light and red bus safety lights shall go on;

(iii) Close entrance door; pilot and bus safety lights shall go off;

(iv) Reopen entrance door without depressing hand switch; no bus safety lights shall go on. Depress hand switch, red pilot light and red bus safety lights shall go on.

(H) There shall be a canceling switch that will deactivate the amber bus safety lights and flasher sequence if they are accidentally activated or if the driver discovers there is no need to make a stop after activating the switch;

(I) Installation requirements:

(i) Both red and amber signal lamps shall be installed in accordance with SAE Standard J887, except that each amber signal lamp shall be located near each red signal lamp, at the same level, but closer to the vertical centerline of the bus. Each signal lamp shall be mounted with its axis substantially parallel to the longitudinal axis of the vehicle;

(ii) Front and rear alternately flashing bus safety lights shall be spaced as far apart laterally as practicable;

(iii) Alternately flashing bus safety lights shall be mounted at the front above the windshield and at the rear so that the lower edge of the lens is not lower than the top line of the side windows;

(iv) Vertical and lateral vision of the front and rear alternately flashing warning bus safety lights shall not be obstructed by any part of the body or lamphouse insofar as standard bus body construction will permit;

(v) Where practicable, the area around lens of each alternately flashing warning bus safety light and extending outward at least 3 inches or more shall be painted black;

(vi) Front amber school bus safety lights shall be visible (directly or indirectly) from the driver's area inside the bus;

(vii) A separate fuse or circuit breaker, adequate to prevent damage to the system in the event of a short circuit, shall be provided between the power source and flasher system.

(J) Strobe Lamp:

(i) A white flashing lamp, approved by the Oregon Department of Education, may be installed on the longitudinal center of the roof on rear half of the bus but no closer than one foot from the rear of the bus body. The lamp shall have a single clear lens emitting light 360 degrees around its vertical axis and may not extend above the roof more than 6-1/2 inches or maximum legal vehicle height;

(ii) The lamp shall have a separate switch and be wired through the vehicle hazard lamp system. A pilot lamp to indicate when the light is in operation is required.

(22) Metal Treatment:

(a) All metal used in construction of bus body shall be zinc- or aluminum-coated or treated by equivalent process before bus is constructed. Included are such items as structural members, inside and outside panels and floor sills; excluded are such items as door handles, grab handles, interior decorative parts and other interior plated parts;

(b) All metal parts that will be painted shall be (in addition to above requirements) chemically cleaned, etched, zinc-phosphate coated and zinc-chromate or epoxy primed or conditioned by equivalent process;

(c) In providing for these requirements, particular attention shall be given lapped surfaces, welded connections of structural members, cut edges, punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas and surfaces subjected to abrasion during vehicle operation;

(d) As evidence that above requirements have been met, samples of materials and sections used in construction of bus body, when subjected to 1000-hour salt spray test as provided for in latest revision of ASTM designation, B-117 "Standard Method of Salt Spray (Fog) Testing," shall not lose more than 10 percent of material by weight.

(23) Mirrors:

(a) Exterior Mirror Systems:

(A) All buses purchased after September 1, 1993 shall be equipped with mirror systems complying with 49 CFR Part 571, FMVSS 111 as adopted by the National Highway Traffic Safety Administration for December 3, 1993 implementation, plus all applicable standards specified in this rule;

(B) Manufacturer shall certify compliance with mirror and direct/indirect visibility standards listed in the aforementioned FMVSS 111 and provide copy to bus purchaser for all buses manufactured prior to January 1, 1994.

(b) Interior Mirror:

(A) Interior mirror shall be either clear view laminated glass or clear view glass bonded to a backing which retains the glass in the event of breakage[s]. Mirror shall be a minimum of 6" x 30". Mirror shall have rounded corners and protected edges;

(B) Type A buses shall be equipped with a mirror providing at least 96 square inches of flat mirror surface;

(C) Bus seller shall certify compliance with mirror and direct/indirect visibility standards listed in the aforementioned FMVSS 111 and provide a copy to used bus purchasers when certification is not available from manufacturer for all buses manufactured prior to January 1, 1994.

(24) Mounting:

(a) Chassis frame shall support rear body cross member. Bus body shall be attached to chassis frame at each main floor sill, except where chassis components interfere, in such a manner as to prevent shifting or separation of body from chassis under severe operating conditions;

(b) Body front shall be attached and sealed to chassis in such manner as to prevent entry of water, dust or fumes through joint between chassis cowl and body;

(c) When floor is provided by bus body manufacturer, adequate insulating padding shall be placed at all contact points between body and chassis frame. Insulating material shall be approximately 1/4-inch thick and shall be so attached as to prevent movement under severe operating conditions.

(25) Mud Flaps:

(a) Mud flaps or splash aprons are required for rear wheels on all school buses and shall be provided by the body manufacturer;

(b) Flaps shall be of heavy-duty rubberized material or equivalent and shall extend at least the full width of tires from a point above the center of the tires to a point not more than ten inches above the surface of the highway when such vehicle is empty.

(26) Overall Length: Maximum length for school buses shall be limited to 45 feet (see OAR 581-053-0512, Bus Chassis, section (34), Turning Radius: ORS 818.080).

(27) Overall Width: Overall width of bus shall not exceed the maximum permitted by Oregon Motor Vehicle laws.

(28) Overhang: Body shall be so mounted as to comply with requirements described in chassis weight distribution standard. Body length extending beyond the rear axle shall not exceed three-fourths the length of the vehicle's wheel base per Oregon Vehicle Code.

(29) Racks: The installation of any kind of exterior luggage rack outside the bus is prohibited. This does not prohibit enclosed luggage compartments.

(30) Radios and Public Address Systems:

(a) Interior speakers mounted in the ceiling panels or side panels shall be either flush mounted or may protrude not more than 1-1/2 inches if the speaker housing is free of any corners or projections which can cause injury by striking with the head or in the event of a collision or rollover. Speakers protruding more than 1-1/2 inches may be mounted in the vertical end panels above the windshield or back windows as long as speakers are free of corners or projections that could cause injury;

(b) Speakers shall not be placed above any aisle;

(c) Buses purchased after November 1, 1985, shall be equipped with a public address system having interior and exterior speakers and a switch to separate from inside and outside.

(31) Rub Rails:

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(a) There shall be one rub rail located on each side of bus approximately at seat level which shall extend from rear side of entrance door completely around bus body (except for emergency door and access panel(s)) to point of curvature near outside cowl on left side;

(b) There shall be one rub rail located approximately at floor line which shall cover same longitudinal area as upper rub rail, except at wheel-housing, and shall extend only to radii of right and left rear corners;

(c) Both rub rails shall be attached at each body post and all other upright structural members;

(d) Both rub rails shall be four inches or more in width, shall be of 16-gauge steel, suitable material of equivalent strength, and shall be constructed in corrugated or ribbed fashion;

(e) Both rub rails shall be applied to the outside body or outside body posts. Pressed-in or snap-on rub rails do not satisfy this requirement. For Type A-1 and A-2 buses using chassis manufacturer's body, or Type B, C and D buses using rear luggage or engine compartment, rub rails need not extend around rear corners.

(32) Sanders: Where used, sanders shall:

(a) Be of hopper cartridge-valve type;

(b) Have metal hopper with all interior surfaces treated to prevent condensation of moisture;

(c) Be of at least 100 pound (grit) capacity;

(d) Have cover on filler opening of hopper, which screws into place, sealing unit airtight;

(e) Have discharge tubes extending to front of each rear wheel under fender;

(f) Have no-clogging discharge tubes with slush-proof, nonfreezing rubber nozzles;

(g) Be operated by electric switch with telltale light mounted on instrument panel;

(h) Be exclusively driver-controlled.

(33) Seat Belt:

(a) A Type 2 lap belt/shoulder harness seat belt shall be provided for the driver, a driver's seat with an integrated Type 2 lap/shoulder belt may be substituted. Each belt section shall be booted to keep belt and the button or buckle type latch off floor when not in use. Shoulder belt assemblies on Type B, C, and D buses shall provide for a height adjustment of at least four inches at its upper point of attachment to the bus. Belt shall be anchored or guided in a manner at the seat frame to prevent the driver from sliding sideways when belt is in use. Locking retractors may be either an ELR (Emergency Locking Retractor) or an ALR (Automatic Locking Retractor). All ALR equipped buses received after July 1, 1989, must include an approved anti-cinching device;

(b) Seat belts for passengers: Passenger seat belts may be installed in school buses with a GVWR of more than 10,000 pounds. The attachments, belts and installation shall meet the requirements of Federal Motor Vehicle Safety Standard Nos. 208, 209 and 210 as they apply to school buses with a GVWR of 10,000 pounds or less.

(34) Seats and Crash Barriers:

(a) Seats and barriers shall meet requirements of Federal Motor Vehicle Safety Standard No. 222;

(b) All seats shall have minimum depth of 15 inches;

(c) In determining seating capacity of bus, the minimum allowable rump width shall be 13 inches;

(d) Seat, seat back cushion and crash barrier shall be covered with a material having a minimum 42-ounce finished weight, 54-inch width and finished vinyl coating of 1.06 broken twill, or other material with equal tensile strength, tear strength, seam strength, adhesion strength, resistance to abrasion, resistance to cold, and flex separation. Material shall meet or exceed the criteria contained in the School Bus Seat Upholstery Fire Block Test for all buses purchased after September 1, 1993 (see Appendix);

(e) All seats shall be forward facing and shall be securely fastened to that part(s) of bus that support them with a nut-and-bolt type of fastener. Each seat leg shall be secured to the floor by a minimum of two nut-and-bolt type fasteners of at least grade 5 SAE strength. Sheet metal screw-type fasteners without a nut are not acceptable, except in areas where it is not possible to install a nut-and-bolt type fastener. Type A-1 and A-2 bus seat fasteners shall meet the requirements of Federal Motor Vehicle Safety Standards 209 and 210;

(f) No bus shall be equipped with jump seats or portable seats. Flip-up seats at side emergency exit doors are allowed;

(g) Seat spacing shall not be less than 24 inches between the front of the back of each seat and the rear of the back of the seat immediately ahead. This shall be measured at cushion height on a plane parallel to the center line of the bus;

(h) Driver's seat shall be so located in relationship to the steering wheel that the driver may assume a natural position while driving, have a clear view of the road, and sufficient leg room to operate safely and effectively the brake and clutch pedals and accelerator without cramping or interference. Minimum distance between steering wheel and back rest of

driver's seat shall be 11 inches. Driver's seat shall have a fore-and-aft adjustment of not less than four inches and shall on Type B, C, and D buses be capable of being raised and lowered at least three inches and shall be strongly attached to comply with acceptable installation procedures:

(A) Driver's seat supplied by the body company shall be a high back (suspension) seat with a minimum seat back adjustment of 15 degrees, not requiring the use of tools, and with a head restraint to accommodate a 95th percentile female anthropomorphic dummy as defined in FMVSS 208. The driver's seat shall be secured with nuts, bolts, and washers or flanged-head-end nuts;

(B) Driver's seat positioning and range of adjustment shall be designed to accommodate comfortable actuation of the foot control pedal by 95 percent of the adult female population. Each passenger seat and driver's seat shall have a positive type retention system to prevent the seat cushion from disengaging from the seat frame at the front and rear in the event of an accident or rollover.

(35) Steering Wheel: (See OAR 581-053-0512(29), Steering Gear, also.) Steering wheel outside circumference shall have at least two inches of clearance at all points.

(36) Steps:

(a) Service door entrance may be equipped with two-step or three-step stepwell. Risers in each case shall be approximately equal and shall not exceed 10 inches in height. When plywood floor is used on steel, differential may be increased by thickness of plywood used:

(A) First step at service door shall be not less than 10 inches and not more than 14 inches from ground, based on standard chassis specifications;

(B) Type D buses shall be equipped with a three-step stepwell. First step at service door shall be not less than 12 inches and not more than 16 inches from the ground based on standard chassis specifications.

(b) Steps shall be enclosed to prevent accumulation of ice and snow;

(c) Steps shall not protrude beyond side body line;

(d) Steps (if any) on Type A-1 and A-2 buses not manufactured originally as school buses may be chassis manufacturer's standard;

(e) At least one grab handle not less than 20 inches in length shall be provided to assist passengers during entry or egress in unobstructed locations inside doorway. Grab handle shall be designed, installed and maintained to minimize the opportunity for entanglement of passenger clothing and belongings.

(37) Step Treads:

(a) All steps, including floor line platform area, shall be covered with 3/16-inch rubber floor covering or other materials equal in wear resistance and abrasion resistance to top grade rubber;

(b) Metal back of tread, minimum 24-gauge cold roll steel, shall be permanently bonded to ribbed rubber;

(c) 3/16-inch ribbed step tread shall have a 1-1/2-inch white nosing as integral piece without any joint;

(d) Rubber portion of step treads shall have the following characteristics:

(A) Special compounding for good abrasion resistance and high coefficient of friction;

(B) Flexibility so that it can be bent around a 1/2-inch mandrel both at 130 degrees F and 20 degrees F without breaking, cracking or crazing;

(C) Show a durometer hardness 85 to 95.

(38) Steps, Windshield Access: There shall be at least one folding step or recessed foothold and suitably located handles on each side of the front of the body for easy accessibility for cleaning the windshield and lamps except when windshield and lamps are easily accessible from the ground. Standard does not apply to chassis not originally manufactured as school buses.

(39) Stop Signal Arms: All buses purchased after September 1, 1993 and all buses in service after August 1, 1995 shall be equipped with stop signal arms mounted in accordance with the following requirements:

(a) Shall meet all applicable requirements of the Federal Motor Vehicle Safety Standard 49 CFR 571.131;

(b) Shall be installed on the left side of the bus; the vertical center of the stop blade shall be at least seven inches but not more than 14 inches below the window line, on the first body post to the rear of the driver or as close as practicable;

(c) Shall be an octagon shaped sign 18 inches wide and 18 inches long exclusive of the mounting bracket. A windguard shall be provided. All sheet metal parts shall be 16 gauge metal or heavier;

(d) Shall have the word "STOP" on both sides in white letters six inches high and of proportionate width on a red background. The outer edge shall have a white border one-half inch wide. All other parts of the assembly shall be painted black;

(e) Shall be equipped with two, four-inch, double faced alternating flashing red lamps to be mounted near the perimeter of the sign with a minimum of 12 inches spacing between lamp centers. The stop arm and lamps shall be wired to the circuit of the flashing red warning lamps mounted on



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the front and rear of the bus and shall operate simultaneously with the red bus safety lamps. Lamps shall be LED or strobe ORS 820.105;

(f) May be reflectorized:

(A) Reflectorized material shall be of automotive engineering grade or better;

(B) Reflectorized material may be retroreflective or reflective.

(g) Shall be either air, vacuum, or electrically operated:

(A) Air operated stop arms:

(i) Air may be supplied from an air accessory tank or from the first (wet) tank;

(ii) If source is from the first (wet) tank a pressure protection valve shall be installed to prevent the tank air supply from falling below 60 pounds;

(iii) Stop arm system must have a pressure regulating valve;

(iv) All fittings shall be brass.

(B) Vacuum operated stop arms:

(i) Vacuum shall be supplied from a separate accessory tank. Tank shall be protected by a check valve;

(ii) All fittings shall be brass.

(40) Sun Visor: Interior adjustable sun visor, not less than 6 by 30 inches in size, shall be installed above windshield in position convenient for use by driver. If transparent visor is used, it shall be of such material so as not to prevent distinguishing between the colors of red and green traffic signals. Vehicles not originally manufactured as school buses may be equipped with manufacturer's standard visor. Buses purchased after November 1, 1985, shall have visors with protected edges.

(41) Tail Pipe: (See OAR 581-053-0512, Bus Chassis, section (14).

(42) Tool Compartment: A metal container of adequate strength and capacity for storage of tire chains, tow chains and such tools as may be necessary, may be provided. Container may be located inside or outside of passenger compartment. If inside, it shall have a cover and positive type latch to prevent opening in event of a severe impact or bus rollover, and shall be attached to the floor with a nut and bolt fastener, or may be securely attached to a seat frame under a seat.

(43) Tow Hooks:

(a) Type C buses shall be equipped with two rear tow hooks, or one center tow hook tied to both frame rails, that have sufficient strength to pull or be pulled by another vehicle of the same GVWR. Tow hooks shall be installed in order that no permanent distortion to the body or chassis will result if the bus must be towed. (See also OAR 581-053-0512, Bus Chassis, section (31), Tow Hooks);

(b) Type D vehicles shall be equipped with two rear tow hooks or tow eyes, and at least one front tow hook or eye, mounted or capable of immediate mounting. Hooks or eyes shall have sufficient strength to pull or be pulled by another vehicle of the same GVWR.

(44) Under carriage luggage compartments: Luggage compartments may be installed on the outside of the bus mounted below the floor level or in the rear of the bus. Access to compartments must be from the outside only. Compartment doors must have a positive retention to hold the doors open. Compartment doors must be lockable. These rule changes apply to buses ordered after July 1, 2004

(45) Undercoating:

(a) Entire underside of bus body, including floor sections, cross member and below floor line side panels, shall be coated with rust-proofing compound for which compound manufacturer has issued notarized certification of compliance to bus body builder that compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520b using modified test procedures\* for following requirements:

(A) Salt spray resistance — pass test modified to five percent salt and 1,000 hours;

(B) Abrasion resistance — pass;

(C) Fire resistance — pass.

(b) Undercoating compound shall be applied with suitable airless or conventional spray equipment to recommended film thickness and shall show no evidence of voids in cured film. \*Test panels are to be prepared in accordance with paragraph 4.6.12 of TT-C-520a with modified procedure requiring that tests be made on a 48-hour air cured film at thickness recommended by compound manufacturer.

(46) Ventilation:

(a) Body shall be equipped with suitable, controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions without opening of windows except in extremely warm weather;

(b) Static-type nonclosable exhaust ventilation shall be installed in low-pressure area of roof.

(47) Video surveillance cameras may be mounted inside or on either the forward or rear bulkhead, or to the ceiling in compliance with the following requirements:

(a) Surface mounted camera/camera housing/recording devices shall be mounted as far forward (if forward mounted) or as far rearward (if rear mounted) as possible and directly above the center of the windshield/rear window, and shall not:

(A) Extend into the passenger compartment more than 9 inches;

(B) Extend(s) down from the ceiling more than five inches;

(C) Be more than five inches wide;

(D) Interfere with the rear view mirror or sun visor.

(b) Recording devices or their housings shall not be mounted overhead in the passenger compartment;

(c) Video cameras/housings (not recorders) may be mounted overhead in the passenger compartment, provided they are over the seating area, but not over any part of the aisle, all edges must be rounded and/or protected with enclosure of shatterproof construction;

(d) Flush mounted cameras/housings may be mounted in any position in the front or rear bulkhead or ceiling provided that any modification to the body, in order to achieve flush mounting does not compromise the structural integrity of the body panels;

(e) All video related devices mounted to the interior bus body shall be securely fastened in a manner to prevent separation from the bus body in the event of collision or mishap;

(f) Recording devices/housings must allow ready access for camera and video recording medium removal with out the use of tools;

(g) All electrical connections shall be made with UL approved wiring and terminals, and protected by grommets any place it passes through metal panels. Any electrical load added to the vehicles electrical system shall be protected with appropriate over current device (fuse).

(48) Weight Distribution:

(a) Weight distribution of fully loaded bus on level surface shall be such as to not exceed the manufacturer's front Gross Axle Weight Rating (GAWR) and rear Gross Axle Weight Rating;

(b) Weight distribution of fully loaded bus on level surface shall be such that not more than 75 percent of gross vehicle weight is on rear tires and not more than 35 percent is on front tires. Type B and D buses with engine inside front of body and entrance door ahead of front wheels shall have not more than 75 percent of gross vehicle weight on rear tires or more than 50 percent on front tires. If entrance door is behind front wheels, not more than 75 percent of gross vehicle weight shall be on rear tires not more than 40 percent on front tires. With engine in rear, not more than 75 percent of gross vehicle weight shall be on rear tires or more than 40 percent on front tires.

(49) Wheelhousing:

(a) The wheelhousing opening shall allow for easy tire removal and service;

(b) Wheelhousing shall be attached to floor sheets in such a manner as to prevent any dust, water or fumes from entering the body. Wheelhousing shall be constructed of 16-gauge steel, or other material of equal strength;

(c) The inside height of the wheelhousing above the floor line shall not exceed 12 inches;

(d) The wheelhousing shall provide clearance for installation and use of tire chains on single and dual (if so equipped) power-driving wheels;

(e) No part of a raised wheelhousing shall extend into the emergency door opening.

(50) Windshield and Windows:

(a) All glass in windshield, windows and doors shall be of approved safety glass so mounted that its identification mark is visible and of a quality to prevent distortion in any direction. All glazing materials shall be on the approved list of the Oregon Department of Motor Vehicles;

(b) Windshield shall be of safety plate glass AS-1 grade as specified by American National Standards Institute Safety Code Z26.1-1966;

(c) Windshield glass may be heat absorbing and may have a horizontal gradient band starting slightly above the line of the operator's vision and gradually decreasing in light transmission to 20 percent or less at the top of the windshield in compliance with Federal Motor Vehicle Safety Standard 205;

(d) Glass in all side windows, doors and rear windows shall be AS-2 or better grade, as specified in Z26.1-1966, or AS-4 coated abrasion resistant rigid plastic meeting requirements of Federal Motor Vehicle Safety Standard 205. Rigid plastic cannot be used for windshields or windows immediately to the left or right of the driver;

(e) Side windows shall conform to the following:

(A) Buses shall provide full drop or split sash windows which provide an unobstructed opening of at least 12 inches and not more than 14 inches in height, obtained by lowering the sash, and at least 22 inches in width. Type A-1 and A-2 buses may have a full drop or split sash windows which provide an unobstructed opening of at least 9 inches and not more than 13 inches in height, obtained by lowering the sash, and at least 22 inches in width, provided the bus has 2 swing-out windows.

# ADMINISTRATIVE RULES

(B) One window on each side of the bus may be less than 22 inches in width.

(51) Windshield Washers: Bus shall be equipped with electric or air operated windshield washers.

(52) Windshield Wipers: Bus shall be equipped with two windshield wipers of air or electric type that meets FMVSS 104 powered by motor or motors of at least two speeds and with sufficient power to operate wipers under severe weather conditions. Type A-1 and A-2 bus manufacturer's standard is permitted.

(53) Wind deflectors may be installed according to manufacturer's standards on the rear roof to deflect snow, dust and dirt from the rear window.

(54) Wiring:

(a) All wiring shall conform to current standards of Society of Automotive Engineers;

(b) Circuits:

(A) Wiring shall be arranged in circuits, as required, with a circuit protection system. A system of color or number coding shall be used for all buses purchased after September 1, 1993 and an appropriate identifying diagram shall be provided the end user along with the wiring diagram provided by the chassis manufacturer. The following interconnecting circuits shall be color coded as noted:

- (i) Left rear directional light — yellow;
- (ii) Right rear directional light — dark green;
- (iii) Stop lights — red;
- (iv) Back-up lights — blue;
- (v) Tail lights — brown;
- (vi) Ground — white;
- (vii) Ignition feed, primary feed — black;
- (viii) The color of cables shall correspond to SAE J1128.

(B) Wiring shall be arranged in at least seven regular circuits, as follows:

- (i) Head, tail, stop (brake) and instrument panel lamps;
- (ii) Clearance and stepwell lamps (stepwell lamp shall be activated when service door is opened);
- (iii) Dome lamp;
- (iv) Ignition and emergency door signal;
- (v) Turn signal lamps;
- (vi) School Bus Safety Lights;
- (vii) Heaters and defrosters.

(C) Any of above combination circuits may be subdivided into additional independent circuits;

(D) Whenever possible, all other electrical functions (such as sanders and electric-type windshield wipers) shall be provided with independent and properly protected circuits.

(c) The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted;

(d) All wiring shall have an amperage capacity equal to or exceeding the designed load. All wiring splices are to be done at an accessible location and noted as splices on wiring schematic;

(e) Each body circuit shall be coded by number or letter on a diagram of easily readable size and be furnished with each bus body or affixed in an area convenient to the electrical accessory control panel;

(f) Body power wire is to be attached to special terminal on the chassis;

(g) All wires passing through metal openings shall be protected by a grommet;

(h) Wires not enclosed within body shall be fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equally effective connectors and shall be moisture and corrosion resistant.

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

Stat. Auth.: ORS 327.013 & 820.100 - 820.120

Stats. Implemented: ORS 327.013, 820.100, 820.105, 820.110 & 820.120

Hist.: 1EB 17-1985, f. 10-29-85, ef. 11-1-85; EB 16-1987(Temp), f. 7-30-87, ef. 9-27-87; EB 30-1987, f. & ef. 12-9-87; EB 44-1988, f. 12-16-88, cert. ef. 1-1-89; EB 21-1993, f. & cert. ef. 6-2-93; ODE 11-1999, f. & cert. ef. 2-12-99; ODE 30-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 16-2004, f. & cert. ef. 8-4-04; ODE 10-2005, f. & cert. ef. 11-15-05; ODE 26-2007, f. & cert. ef. 10-26-07; ODE 9-2009, f. & cert. ef. 6-29-09

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## Oregon Health Licensing Agency, Board of Cosmetology Chapter 817

**Rule Caption:** Increase Board of Cosmetology fees to avoid revenue shortfall.

**Adm. Order No.:** BOC 2-2009(Temp)

**Filed with Sec. of State:** 6-30-2009

**Certified to be Effective:** 7-1-09 thru 12-25-09

**Notice Publication Date:**

**Rules Amended:** 817-040-0003

**Subject:** The Board of Cosmetology is amending OAR 817-040-0003 to increase fees that were changed during the 2009 Legislative Session under SB 5525, which became effective July 1, 2009 to prevent further revenue shortfall.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

### 817-040-0003

#### Fees

(1) Applicants and authorization holders are subject to provisions of OAR 331-010-0010 and 331-010-0020 regarding payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Agency, in consultation with the Board, are as follows:

(a) Application:

(A) Practitioner certificate: \$25 per field of practice.

(B) Practitioner certificate by reciprocity: \$50 per field of practice.

(C) Independent contractor registration: \$50.

(D) Certificate of identification: \$25.

(E) Facility license: \$100.

(F) Temporary facility permit: \$50.

(G) Demonstration permit: \$25.

(b) Examination:

(A) Oregon laws & rules: \$50.

(B) Barbering: \$50.

(C) Hair design: \$50.

(D) Esthetics: \$50.

(E) Nail technology: \$50.

(F) Certificate of identification: \$25

(c) Original issuance of authorization to practice:

(A) Practitioner certificate (including by reciprocity): \$40.

(B) Independent contractor registration: \$75.

(C) Certificate of identification: \$100.

(D) Facility license: \$100.

(d) Permits:

(A) Temporary facility: \$100.

(B) Demonstration: \$50.

(e) Renewal of authorization to practice:

(A) Practitioner certificate: \$40.

(B) Practitioner certificate — on line payment: \$35.

(C) Independent contractor registration: \$100.

(D) Facility license: \$100.

(f) Other administrative fees:

(A) Delinquent (late) renewal of certificate: \$25 for the first month in expired status and \$10 for each month after, up to two years.

(B) Delinquent (late) renewal of license or registration: \$25 for the first month in expired status, and \$10 each month after while in an expired status.

(C) Replacement of certificate, license or registration, including name change: \$25.

(D) Duplicate certificate, license or registration document: \$25 per copy with maximum of three.

(E) Affidavit of licensure: \$50.

(F) An additional \$25 administrative processing fee will be assessed if a NSF or non-negotiable instrument is received for payment of fees, penalties and charges. Refer to OAR 331-010-0010.

Stat. Auth.: ORS 676.605, 676.615 & 690.235

Stats. Implemented: ORS 676.605, 676.615, 690.235 & 30.701

Hist.: BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 1-1990(Temp), f. 4-20-90 & cert. ef. 6-1-90; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 2-2001, f. 2-16-01, cert. ef. 3-1-01; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2005, f. 6-17-05, cert. ef. 7-1-05; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 2-2008, f. 9-15-08 cert. ef. 10-1-08; BOC 2-2009(Temp), f. 6-30-09, cert. ef. 7-1-09 thru 12-25-09

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## Oregon Liquor Control Commission Chapter 845

**Rule Caption:** Amendments to simplify private club regulations, eliminating requirements to track event types and guest relationships.

**Adm. Order No.:** OLCC 6-2009

**Filed with Sec. of State:** 6-22-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 4-1-2009

**Rules Adopted:** 845-005-0321

**Rules Amended:** 845-005-0320

**Rules Ren. & Amend:** 845-008-0045 to 845-006-0490

# ADMINISTRATIVE RULES

**Subject:** OAR 845-008-0045 (Service to Guests by Full On-Premises Sales Licensees) describes to whom and under what conditions private clubs may sell and serve alcoholic beverages under the privileges of their full on-premises sales license. This rule package eliminates the division 8 private club rule, and instead creates two new rules governing private clubs that follow our normal rule structure, one in division 5 setting license criteria (OAR 845-005-0321) and one in division 6 setting compliance requirements (OAR 845-006-0490). The package also amends OAR 845-005-0320 (License Refusal Reasons that Can Not be Overcome) by deleting section (5) regarding private clubs and moving the concepts of minimum membership, required nonprofit registration, and the definition of members into the new licensing rule specific to private clubs. Staff recommended a greatly simplified requirements rule for private clubs in that the new OAR 845-006-0490 eliminates both the concept of private clubs having to track all their different types of events and guest relationships, and also of requiring guest lists. Instead the new rule language focuses on the core compliance issues of when the higher Full-Commercial food service standard is required, and the requirements regarding members being present when nonmembers are in the private club together with the service of alcohol. The goal is to leave the operational details up to the private club and instead focus the Commission's compliance efforts on responsible alcohol service.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-005-0320

### License Refusal Reasons that Can Not Be Overcome

The following criteria will preclude issuing a license:

- (1) The applicant has or would have an interest in another liquor business that ORS 471.313(3), 471.394, or 471.396 prohibits.
- (2) The applicant seeks a license or sales authority that requires food service and is unable to show in writing that the applicant will comply with the food service requirements set by the rules of the Commission.
- (3) The applicant seeks a Full On-Premises Sales license as a commercial establishment as defined in ORS 471.001(2) and will not be open to the public to the extent Commission rules require.
- (4) The applicant seeks a Full On-Premises Sales license as an "other public location" as allowed by ORS 471.175(2)(d) and will not allow public access to its premises.
- (5) The applicant is a retail sales agent of the Commission with a contract for an exclusive agency or seeks to exercise the license privileges in an exclusive sales agent's premises.
- (6) The applicant fails to successfully complete an approved Alcohol Server Education Course as ORS 471.542 and the Commission rules require.
- (7) The applicant has not paid an outstanding fine to the Commission. ORS 471.313(4)(g) allows the Commission to deny a license if the applicant had a poor compliance record when previously licensed. Nonpayment of a fine is one indicator of a poor compliance record.
- (8) The applicant who is subject to the bonding requirements of ORS 471.155(1) has failed to post a tax bond or the equivalent as required.
- (9) The applicant who is subject to the liquor liability insurance requirements of OAR 845-005-0400 has failed to obtain or maintain liquor liability insurance or bond as required.
- (10) The applicant for an initial license has not completed Commission-given law orientation.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.168 & 471.313

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 12-2008, f. 10-13-08, cert. ef. 11-1-08; OLCC 6-2009, f. 6-22-09, cert. ef. 7-1-09

## 845-005-0321

### Additional License Refusal Reasons for a Full On-Premises Sales License for a Private Club

ORS 471.175 allows the Commission to issue a full on-premises sales license to a private club as described in 471.175(8). This rule sets criteria to refuse to issue or renew a Full On-Premises Sales License for a Private Club. These criteria are in addition to other refusal criteria set out in ORS Chapter 471 and OAR chapter 845 division 5.

(1) Definitions. For this rule and OAR 845-006-0490:

(a) "Auxiliary Member" means a living individual that has met the eligibility requirements as set out in the nonprofit corporation's bylaws to be an auxiliary member and has been designated as an auxiliary member with certain limited membership privileges by the nonprofit corporation.

(b) "Full Member" means a living individual that has met the eligibility requirements as set out in the nonprofit corporation's bylaws to be a

full member and has been designated as a full member by the nonprofit corporation. A full member must pay dues to the club, have full-time membership privileges equal to all other full members of the club, and be entitled to vote in all elections for directors of the nonprofit corporation licensee of the club.

(c) "Nonmember" means an individual who is not a full member or auxiliary member and who is at the club for the purpose of benefiting from the club's services or facility.

(d) "Nonprofit Corporation" means a mutual benefit corporation, a public benefit corporation, or religious corporation as defined in ORS Chapter 65.

(2) The Commission may refuse to issue or renew a Full On-Premises Sales License for a Private Club when the applicant:

(a) Is not a nonprofit corporation currently registered as such with Oregon's Office of the Secretary of State; or

(b) At the time of initial application for licensure, has not been registered as a nonprofit corporation with Oregon's Office of the Secretary of State for a minimum of one year immediately prior to the date of the application; or

(c) Does not have a minimum of 200 full members.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.175, & 471.730(1) & (5)

Stats. Implemented: ORS 471.175

Hist.: OLCC 6-2009, f. 6-22-09, cert. ef. 7-1-09

## 845-006-0490

### Requirements for a Full On-Premises Sales License for a Private Club

This rule sets requirements in addition to other requirements set out in ORS Chapter 471 and OAR chapter 845 divisions 5 and 6 for a Full On-Premises Sales License for a Private Club.

(1) Definitions. For this rule and OAR 845-005-0321:

(a) "Auxiliary Member" means a living individual that has met the eligibility requirements as set out in the nonprofit corporation's bylaws to be an auxiliary member and has been designated as an auxiliary member with certain limited membership privileges by the nonprofit corporation.

(b) "Full Member" means a living individual that has met the eligibility requirements as set out in the nonprofit corporation's bylaws to be a full member and has been designated as a full member by the nonprofit corporation. A full member must pay dues to the club, have full-time membership privileges equal to all other full members of the club, and be entitled to vote in all elections for directors of the nonprofit corporation licensee of the club.

(c) "Nonmember" means an individual who is not a full member or auxiliary member and who is at the club for the purpose of benefiting from the club's services or facility.

(d) "Nonprofit Corporation" means a mutual benefit corporation, a public benefit corporation, or religious corporation as defined in ORS Chapter 65.

(2) Food service requirements. The licensee must meet the food service requirements of OAR 845-006-0461.

(a) For the purposes of food service requirements, guests are defined as:

(A) A nonmember who has been invited by a member (full or auxiliary) or the club and a member is present with that individual at all times in areas where alcohol is sold, served, or consumed; or

(B) A nonmember attending a family-oriented event of a member (full or auxiliary) and where eating or an activity appropriate for minors is the overall predominant activity in the area where the individual is present. Examples include but are not limited to: wedding; wedding reception; wedding anniversary; birthday; family reunion; and memorial service.

(b) For the purposes of food service requirements, the general public is anyone who is not a member (full or auxiliary) or a guest. This rule in no way requires a private club to be open to the general public.

(3) Nonmembers.

(a) If one (or more) nonmember(s) is in an area where alcohol is sold, served, or consumed, at least one member (full or auxiliary) must be present in the area at all times.

(b) A violation of this section is a Category III violation.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.175, & 471.730(1) & (5)

Stats. Implemented: ORS 471.175

Hist.: LCC 22-1980, f. 7-22-80, ef. 10-1-80; Renumbered from 845-010-0770; LCC 8-1982, f. 8-27-82, ef. 10-1-82; LCC 11-1982(Temp), f. & ef. 12-3-82; LCC 1-1985, f. & ef. 2-7-85; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 8-2004, f. 6-29-04 cert. ef. 7-1-04; OLCC 9-2008, f. 6-12-08, cert. ef. 7-1-08; Renumbered from 845-008-0045 by OLCC 6-2009, f. 6-22-09, cert. ef. 7-1-09

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**Rule Caption:** Amendments allowing alcohol sales within Portland International Airport to ticketed passengers beginning at 5:00 a.m.

**Adm. Order No.:** OLCC 7-2009

**Filed with Sec. of State:** 6-22-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 4-1-2009



# ADMINISTRATIVE RULES

## Rules Amended: 845-006-0425

**Subject:** This rule sets the hours during which licensees of the Commission may sell, dispense, serve, allow consumption of, or allow removal of alcohol. The Commission accepted a petition from the Food & Beverage Concessionaires at the Portland International Airport (PDX) requesting to amend this rule by adding language which would allow both On-Premises and Off-Premises sales licensees located at PDX to sell and serve alcohol between the hours of 5:00 a.m. and 2:30 a.m. The amendments reflect an additional two hours in the morning outside of the previously allowed hours of 7:00 a.m. to 2:30 a.m.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-006-0425

### Hours of Sale

(1) Except as provided by sections (2) and (3) of this rule, and OAR 845-015-0140, alcoholic liquor may be sold, dispensed, served, consumed on, or removed from licensed premises only between the hours of 7 a.m. and 2:30 a.m.

(2) Except as provided by section (3) of this rule, alcoholic liquor may be sold, dispensed, served, consumed on, or removed from a licensed premises located within the Portland International Airport facility only between the hours of 5:00 a.m. and 2:30 a.m. However, from 5:00 a.m. to 7:00 a.m. alcoholic liquor may be sold, dispensed, or served only to a ticketed airline passenger with a valid same-day boarding pass.

(3) Licensees whose license privileges permit the sale and distribution of malt beverages, cider, and wines for resale may make deliveries of that alcohol to licensees at any time.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.030

Hist.: LCC 26, f. 5-12-60; LCC 27, f. 9-15-60; LCC 28, f. 12-19-60; LCC 29, f. 5-21-64; LCC 30, f. 1-20-66; LCC 50, f. 12-18-74, ef. 1-15-75; LCC 3-1979, f. 1-26-79, ef. 2-1-79; LCC 5-1979, f. 4-2-79, ef. 4-5-79; Renumbered from 845-010-0005; LCC 7-1981, f. 11-2-81, ef. 1-1-82; LCC 4-1986, f. 3-3-86, ef. 4-1-86; OLCC 14-1987, f. 4-6-87, ef. 5-1-87; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-006-0030; OLCC 7-2009, f. 6-22-09, cert. ef. 7-1-09

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**Rule Caption:** Amend rule to more closely match standard language in Attorney General's sample notice rule.

**Adm. Order No.:** OLCC 8-2009

**Filed with Sec. of State:** 7-13-2009

**Certified to be Effective:** 8-1-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 845-001-0005

**Subject:** This rule describes the procedure the Commission utilizes to inform interested parties of intended rulemaking. ORS 183.341(4) requires an agency to adopt such rules of procedure which provide a reasonable opportunity for interested persons to be notified of the agency's intention to adopt, amend or repeal a rule. The Attorney General's Model Rules of Procedure do not include a proposed notice rule designed to meet the statutory requirements because each agency needs to tailor its notice rule to identify its own particular constituencies, however the Attorney General does provide guidance in a sample rule. Staff proposed this amendment of our notice rule in order to more closely match the standard rule language utilized in the Attorney General's sample notice rule, while also better reflecting the Commission's specific rulemaking notice procedure.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-001-0005

### Notice of Rulemaking

Prior to adoption, amendment or repeal of any permanent rule, the Commission 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 prior to the effective date. If a hearing is scheduled after the original notice, the subsequent notice must appear in the bulletin at least 14 days before the date of the hearing;

(2) By mailing or e-mailing a copy of the notice to persons on the mailing list established pursuant to ORS 183.335 (8) at least 28 days prior to the effective date. If a hearing is scheduled after the original notice, the subsequent notice must be mailed or e-mailed at least 21 days before the date of the hearing;

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

(4) By mailing, e-mailing, or furnishing a copy of the notice to:

(a) The Associated Press; and

(b) Associations or organizations having an interest in the rule matter.

Stat. Auth.: ORS 183.341, 471.030 & 471.730(1) & (5)

Stats. Implemented: ORS 183.335 & 183.341

Hist.: LCC 19-1980, f. 6-4-80, ef. 6-5-80; OLCC 6-1994, f. & cert. ef. 11-22-94; OLCC 10-2004, f. 10-15-04 cert. ef. 11-1-04; OLCC 8-2009, f. 7-13-09, cert. ef. 8-1-09

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**Rule Caption:** Amend Special Event Winery/Grower rule to reflect maximum of five license days on application.

**Adm. Order No.:** OLCC 9-2009(Temp)

**Filed with Sec. of State:** 7-13-2009

**Certified to be Effective:** 7-15-09 thru 1-10-10

**Notice Publication Date:**

**Rules Amended:** 845-005-0415

**Subject:** This rule describes Special Events licenses that are available to current Winery or Grower Sales Privilege licensees and also describes the application process. Legislative Counsel reviewed the Commission's April 1, 2009 rule amendments related to catering, temporary sales, and special events, and on May 19, 2009 issued us a staff report. This report includes a negative determination in that they find OAR 845-005-0415 (4) exceeds the scope of the enabling statutes. Because our intent was to have consistency amongst the three special event rules in the April 1, 2009 rule amendment package, our rule states that no more than seven license days will be approved on an application. However, the enabling statutes (ORS 471.223 and ORS 471.227) limit special events for Winery and Grower Sales Privilege licensees to only five days. Because this rule is outside the scope of its enabling statutes, we need to amend this rule on a temporary basis in order to comply with the statutory language now in effect.

**Rules Coordinator:** Jennifer Huntsman—(503) 872-5004

## 845-005-0415

### Special Event Winery and Special Event Grower Sales Licenses

(1) ORS 471.223 authorizes the Commission to issue a Special Events Winery license to a Winery licensee. The special license may allow the licensee to sell wine, malt beverages and cider allowed to be sold under the annual Winery license at retail for consumption on or off the licensed premises at a location other than that designated as the winery's annually licensed premises.

(2) ORS 471.227 authorizes the Commission to issue a Special Events Grower license to a Grower Sales Privilege licensee. The special license may allow the licensee to sell wine and cider allowed to be sold under the annual Grower Sales Privilege license at retail for consumption on or off the licensed premises at a location other than that designated as the grower's annually licensed premises.

(3) Definitions. For this rule:

(a) "Bar" means a counter at which the preparation, pouring, serving, sale, or consumption of alcoholic beverages is the primary activity;

(b) "Food counter" means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale, or consumption of food;

(c) "License day" means from 7:00 am until 2:30 am on the succeeding calendar day. The license fee is \$10.00 per license day or any part of a license day.

(d) "Serious violation history" means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II, or IIa administrative violation; or

(C) Two or more crimes or offenses involving liquor laws.

(e) "Social game" means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(f) "Video lottery game" means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(4) The Commission will not approve more than five license days on a single application. The Commission may limit approval of any application to a single license day or to any number of license days fewer than five days.

# ADMINISTRATIVE RULES

(5) Applicants must apply in writing for a Special Event Winery or Special Event Grower license, using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to the event date. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceeding under ORS 183.310 to 183.550.

(6) The application for a special license under this rule shall include:

(a) A written, dated, and signed plan the Commission determines adequately manages:

- (A) The event to prevent problems and violations;
- (B) Patronage by minors as set out in subsection (7) of this rule; and
- (C) Alcohol consumption by adults.

**NOTE:** An application is not complete if this plan is not approved by the Commission. The Commission may use subsection (5) of this rule to refuse to process any application that is not complete.

(b) Identification of the individuals to be employed by the licensee to manage the event proposed in the application;

(c) Identification of the premises proposed to be licensed;

(d) Menu and proposal showing compliance with the food service standards of OAR 845-006-0465;

(e) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, type of food service to be offered, proposed hours of food service, and proposed hours of operation;

(f) The recommendation in writing of the local governing body where the licensed premises will be located; and

(g) License fees as established by ORS 471.311.

(7) A plan for managing patronage by minors under subsection (6)(a) of this rule must meet the following requirements:

(a) If the special license will be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the annual license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.

(b) If the special license will not be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises the Commission prohibits to minors.

(8) Minors are prohibited from the special licensed premises or portions of the licensed premises as follows:

(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;

(b) Minors may not be in an area where there are video lottery games, social games, or nude entertainment or where such activities are visible;

(c) Minors may not be in an area where the licensee's approved written plan designates that minors will be excluded.

(9) The Commission may deny, cancel or restrict a special license for any reason for which the Commission may deny, cancel or restrict a regular license.

(10) The Commission may deny or restrict a special license if the applicant has a serious violation history at events previously licensed with a special license within the past 36 months.

(11) The Commission shall limit the issuance of a special license to the same applicant at the same location to no more than 31 license days from January 1 to December 31 of each year.

(12) The Commission may refund the special license fee if the application is withdrawn by the applicant or denied by the Commission, or if the event does not take place because of circumstances beyond the licensee's control, or if the Commission determines the applicant does not need a license for the event proposed in the application.

(13) When the Commission approves a written plan under subsection (6)(a) of this rule, the licensee must follow that written plan. Failure to follow that written plan is a Category III violation.

(14) If the licensee fails to prevent minors from gaining access to alcoholic beverages or fails to prevent minors from gaining access to any portion of the licensed premises prohibited to minors, the Commission may immediately prohibit minors from the licensed premises or portion(s) of the premises.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (3)

Stats. Implemented: ORS 471.223 & 471.227

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; OLCC 6-2007(Temp), f. & cert. ef. 5-14-07 thru 11-10-07; OLCC 19-2007, f. 9-27-07, cert. ef. 11-11-07; OLCC 1-2009, f. 3-17-09, cert. ef. 4-1-09; OLCC 9-2009(Temp), f. 7-13-09, cert. ef. 7-15-09 thru 1-10-10

## Oregon Medical Board Chapter 847

**Rule Caption:** Supervising physician provides eight hours on-site supervision every month or as approved by the Board.

**Adm. Order No.:** BME 12-2009(Temp)

**Filed with Sec. of State:** 7-14-2009

**Certified to be Effective:** 7-14-09 thru 12-14-09

**Notice Publication Date:**

**Rules Amended:** 847-050-0037

**Subject:** The proposed rules changes on-site supervision of the physician assistant by the supervision physician from meeting every two weeks to on-site supervision once a month, or as approved by the Board.

**Rules Coordinator:** Malar Ratnathicam—(971) 673-2713

### 847-050-0037

#### Supervision

(1) The supervising physician is responsible for the direction and regular review of the medical services provided by the physician assistant.

(2) The type of supervision and maintenance of supervision provided for each physician assistant shall be described in the practice description and approved by the Board. The supervising physician shall provide for maintenance of verbal communication with the physician assistant at all times, whether the supervising physician and physician assistant practice in the same practice location or a practice location separate from each other, as described in the following:

(a) The practice is listed in the practice description of the physician assistant and is pre-approved by the Board.

(b) Practice locations, other than primary or secondary practice locations, such as schools, sporting events, health fairs and long term care facilities, are not required to be listed in the practice description of the physician assistant if the duties are the same as those listed in the practice description. The medical records for the patients seen at these additional practice locations will be held either at the supervising physician's primary practice location or the additional practice locations. The supervision of the physician assistant at locations other than the primary or secondary practice location shall be the same as for the primary or secondary practice location.

(c) In any instance where the supervising physician or designated agent is not providing direct or personal supervision of the physician assistant as defined in OAR 847-050-0010(8)(a) and (c), the supervising physician or designated agent shall provide for the maintenance of direct, verbal communication by telephone, radio, radio telephone, television or similar means but is not required to be physically present at the practice site.

(d) The supervising physician or designated agent will provide a minimum of eight (8) hours of on-site supervision every month, or as approved by the Board.

(e) The supervising physician or designated agent will provide chart review of a number or a percentage of the patients the physician assistant has seen during each month as stated in the practice description as approved by the Board.

(3) The degree of independent judgment that the physician assistant may exercise shall be in accordance with the Board approved practice description and supervision. The supervising physician may limit the degree of independent judgment that the physician assistant uses but may not extend it beyond the limits of the practice description.

(4) A physician who has restrictions upon or actions against their license may be subject to Board investigation prior to approval or may be denied approval as a supervising physician.

(5) The Board may defer taking action upon a request for approval as a supervising physician pending the outcome of the investigation of the physician for violations of ORS 677.010-677.990.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.515

Hist.: ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982; f. & ef. 1-28-82; ME 8-1985, f. & ef. 8-5-85; ME 2-1990, f. & cert. ef. 1-29-90; BME 1-1998, f. & cert. ef. 1-30-98; BME 9-1999, f. & cert. ef. 4-22-99; BME 2-2000, f. & cert. ef. 2-7-00; BME 4-2002, f. & cert. ef. 4-23-02; BME 4-2005, f. & cert. ef. 4-21-05; BME 20-2008, f. & cert. ef. 7-21-08; BME 12-2009(Temp), f. & cert. ef. 7-14-09 thru 12-14-09

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## Oregon Patient Safety Commission Chapter 325

**Rule Caption:** Establishes the Patient Safety Commission's 2009-2011 biennial budget by amending OAR 325-005-0015.

**Adm. Order No.:** PSC 1-2009

**Filed with Sec. of State:** 6-26-2009

**Certified to be Effective:** 6-26-09

**Notice Publication Date:** 6-1-2009

# ADMINISTRATIVE RULES

## Rules Amended: 325-005-0015

**Subject:** In accordance with the rules governing semi-independent state agencies, this action establishes the Patient Safety Commission's 2009–2011 biennial budget of \$993,281 by amending OAR 325-005-0015.

**Rules Coordinator:** Jim Dameron—(503) 224-9226

## 325-005-0015

### Biennial Budget

The Commission hereby adopts by reference the Oregon Patient Commission's 2009–2011 Biennial Budget of \$993,281 covering the period July 1, 2009 through June 30, 2011. The Commission's Administrator will amend budgeted accounts as necessary, within the approved budget of \$993,281 for the effective operation of the Commission. The Commission will not exceed the approved 2009–2011 Biennium Budget without amending this rule, notifying interested parties, and holding a public hearing as required by ORS Chapter 182.462. Copies of the budget are available from the Commission's office and are posted on the Commission's website.

Stat. Auth.: ORS 442.820 & Sec. 9 Ch. 686 OL 2003

Stats. Implemented: ORS 183.453(1), 183.453(2)

Hist.: PSC 1-2006, f. & cert. ef. 2-6-06; PSC 4-2007, f. & cert. ef. 7-2-07; PSC 1-2009, f. & cert. ef. 6-26-09

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**Oregon State Marine Board**  
**Chapter 250**

**Rule Caption:** Amend and clarify rule language for the Mandatory Boating Safety Education Program.

**Adm. Order No.:** OSMB 2-2009

**Filed with Sec. of State:** 6-25-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 250-018-0060, 250-018-0090, 250-018-0110

**Subject:** These rules amend regulations governing the Mandatory Boater Safety Education Program.

**Rules Coordinator:** June LeTarte—(503) 378-2617

## 250-018-0060

### Dockside Checklist

(1) Beginning May 1, 2002 any person who provides a motorboat for rent in Oregon must require that the renter or operator of the rental motorboat show proof of possession of a boater education card before renting the person a motorboat.

(2) If the renter or operator of the rented motorboat does not possess a boater education card, the rental agent must provide the renter or operator of the craft with a dockside checklist provided by the Marine Board.

(3) The renter or operator of a rental motorboat must review and mark the dockside checklist in the presence of the rental agent before they may operate the rental motorboat.

(4) The renter or operator of the rental motorboat must retain the dockside checklist on board when operating the boat.

(5) It is not required that every person who will operate the rented motorboat complete the checklist. A person age 16 and older may operate the rented motorboat if they are accompanied and directly supervised by a person age 16 and older (18 for personal watercraft) who is carrying a boater education card or proof of completing the dockside safety checklist.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.082 - 830.096

Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 3-2003, f. & cert. ef. 3-31-03; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07; OSMB 2-2007, f. & cert. ef. 3-21-07; OSMB 2-2009, f. 6-25-09, cert. ef. 7-1-09

## 250-018-0090

### Fees

(1) The Boater Education Card fee is \$10.

(2) The Replacement Card fee is \$8. The fee is waived if replacement is necessary because of a Marine Board error. The same number will be assigned on any replacement card as was assigned on the original.

(3) Fees paid to the Marine Board for a boater education card or replacement card are not refundable.

(4) Active duty marine officers will not have to pay the \$10 fee for the boater education card. Non-active marine officers will have to pay the \$10 fee.

(5) An approved course provider acting under the authority of the Marine Board may charge a reasonable fee to recover costs associated with providing a boating safety course or equivalency exam.

(6) The Agency of the State Marine Board may charge a reasonable fee to recover the cost of providing educational materials used in safe boating courses. The fee schedule for materials shall be approved by the five

members of the Marine Board who have been appointed by the Governor of the State of Oregon.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.082 - 830.096

Hist.: OSMB 6-2000, f. & cert. ef. 10-30-00; OSMB 10-2001, f. & cert. ef. 10-29-01; OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07; OSMB 2-2007, f. & cert. ef. 3-21-07; OSMB 2-2009, f. 6-25-09, cert. ef. 7-1-09

## 250-018-0110

### Approved Internet Course Providers

(1) The Marine Board has the authority to regulate, approve, and limit the number of Internet Boating Safety Courses provided for use by the boating public.

(2) Individuals and organizations who would like to provide an approved boating safety Internet course must apply to the Marine Board to become an approved Internet course provider. To apply, each Internet course provider must, in the following order:

(a) Obtain NASBLA approval prior to Oregon state approval;

(b) Complete and submit, for Marine Board review and approval, the Marine Board Internet Course provider application and boating safety course.

(3) To meet the Marine Board's Internet standards, Internet course providers must:

(a) Be approved by NASBLA and have a signed Course Provider Contract with NASBLA;

(b) Meet the Oregon Internet Approval Standards provided by the Marine Board;

(c) Write state-specific information consistent with NASBLA Standard #8. A link to the Marine Board website will not be accepted;

(d) Provide 45 state-specific questions in accordance with NASBLA Testing Standards #1, #2, #3 and #4.

(4) An Internet course provider who offers boaters the option to obtain the Boater Education Card online must:

(a) Provide the Marine Board compatible electronic data files, as specified by the Marine Board, containing data of individuals who are eligible for their boater education card. Files will be transmitted once weekly on a day to be determined by the Marine Board. The files must contain specified information: name, date of birth, address, phone number, hair color, eye color, and gender;

(b) Provide the Marine Board weekly deposits, with deposit day and account number to be determined by the Marine Board;

(c) Provide the Marine Board accounting section weekly reports indicating the cost of the card for each application and the total amount to be paid to the Marine Board;

(d) Provide the students information regarding security measures that are in place for financial transactions before personal information is exchanged online. All transactions must follow industry security standards.

(5) All promotion materials and products to be used by the Internet course provider to promote their website must be approved by the Marine Board before publishing and distribution to the public.

(6) An Internet course provider may charge a testing fee. The fee amount is at the discretion of the Internet course provider. However, the testing fee must be clearly communicated to the test-taker prior to testing on the Internet course provider's website.

(7) The Marine Board may, upon evidence, place any approved Internet course provider on probation for a period for up to 24 months or remove an approved Internet course from the Marine Board website for any of the following reasons:

(a) Making false statements, misusing, or misrepresenting the Marine Board, its staff, or policies and procedures;

(b) Misinforming boaters in advertising, marketing, or publishing efforts;

(c) Generating and providing their own Boater Education Cards for the State of Oregon.

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.082 - ORS 830.096

Hist.: OSMB 1-2007(Temp), f. & cert. ef. 1-9-07 thru 6-30-07; OSMB 2-2007, f. & cert. ef. 3-21-07; OSMB 2-2009, f. 6-25-09, cert. ef. 7-1-09

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

**Rule Caption:** Setting fees and charges at Oregon State University for fiscal year 2009–2010.

**Adm. Order No.:** OSU 2-2009

**Filed with Sec. of State:** 6-16-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 576-010-0000



# ADMINISTRATIVE RULES

**Subject:** The proposed amendment will set fees and charges for designated services at Oregon State University for fiscal year 2009–2010. The rule states: “The University hereby adopts by reference a list of fees and charges for fiscal year 2009–2010. The list of fees and charges is available at the Oregon State University Office of Budget and Fiscal Planning and the Oregon State University Valley Library, and is hereby incorporated by reference in the rule.”

**Rules Coordinator:** Barbara Melton—(541) 737-6262

## 576-010-0000

### Fees and Charges

The University hereby adopts by reference a list of fees and charges for fiscal year 2009–2010. This List of Fees and Charges is available at the Oregon State University Office of Budget and Fiscal Planning and the Oregon State University Valley Library, and is hereby incorporated by reference in the rule.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070, 352.360 & 580.040-0010

Stats. Implemented: ORS 351.070 & 352.360

Hist.: OSU 3-1980, f. & ef. 10-31-80; OSU 1-1982, f. & ef. 8-27-82; OSU 1-1983(Temp), f. & ef. 9-26-83; OSU 1-1986, f. & ef. 6-4-86; OSU 2-1987, f. 6-11-87, ef. 7-1-87; OSU 2-1988, f. 6-15-88, cert. ef. 7-1-88; OSU 4-1989, f. 6-13-89, cert. ef. 7-1-89; OSU 1-1990, f. 6-15-90, cert. ef. 7-1-90; OSU 6-1991, f. 6-3-91, cert. ef. 7-1-91; OSU 2-1992, f. 6-5-92, cert. ef. 7-1-92; OSU 5-1993, f. 6-9-93, cert. ef. 7-1-93; OSU 1-1994, f. 6-8-94, cert. ef. 7-1-94; OSU 2-1995, f. 6-20-95, cert. ef. 7-1-95; OSU 6-1996, f. & cert. ef. 7-1-96; OSU 5-1997, f. 6-16-97, cert. ef. 7-1-97; OSU 7-1998, f. 6-30-98, cert. ef. 7-1-98; OSU 3-1999, f. 6-17-99, cert. ef. 7-1-99; OSU 1-2000, f. 6-21-00, cert. ef. 7-1-00; OSU 5-2001, f. 6-18-01, cert. ef. 7-1-01; OSU 6-2002, f. 6-5-02, cert. ef. 7-1-02; OSU 1-2003, f. 6-19-03, cert. ef. 7-1-03; OSU 1-2004, f. 6-23-04, cert. ef. 7-1-04; OSU 1-2005, f. 6-13-05, cert. ef. 7-1-05; OSU 1-2006, f. 6-23-06, cert. ef. 7-1-06; OSU 1-2007, f. 6-18-07, cert. ef. 7-1-07; OSU 3-2008, f. 6-27-08, cert. ef. 7-1-08; OSU 2-2009, f. 6-16-09, cert. ef. 7-1-09

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**Rule Caption:** Regulations Governing the Use of Motor vehicles-clarifying rule, adding permits, suspending color parking code.

**Adm. Order No.:** OSU 3-2009

**Filed with Sec. of State:** 6-16-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 576-030-0015, 576-030-0020, 576-030-0025, 576-030-0035, 576-030-0040, 576-030-0045, 576-030-0050, 576-030-0055, 576-030-0060, 576-030-0070, 576-030-0090

**Rules Repealed:** 576-030-0030

**Subject:** The proposed revisions to the regulations Governing the Use of Motor Vehicles provide administrative flexibility by removing the color parking code from the former regulations and by allowing OSU to offer a term parking permit to students and employees. Without these revisions, students and employees must purchase an annual permit and seek a refund for any term during which the permit was not used. The proposed revisions also lend clarity to the former regulations by further defining terms and eliminating ambiguities.

**Rules Coordinator:** Barbara Melton—(541) 737-6262

## 576-030-0015

### Definitions

For the purpose of these rules:

(1) “Parked” means that a Vehicle is stopped regardless of the period of time the Vehicle is stopped or whether a driver is present in the Vehicle when it is stopped, unless the Vehicle is stopped for reasons beyond the driver’s reasonable control.

(2) “Vehicle” means any type of motor-powered or alternative-powered conveyance including, but not limited to, automobiles, trucks, motorcycles, and motor scooters.

(3) “Signage” means signs placed by OSU’s Transit and Parking Services (“TAPS”) on campus to designate parking rights. Signage may be posted or painted on pavement.

(4) “Compact Vehicle,” as used on Signage means a small Vehicle that does not exceed 5’6” by 15’6”.

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 6-1999, f. & cert. ef. 6-17-99; OSU 3-2009, f. 6-16-09, cert. ef. 7-1-09

## 576-030-0020

### Parking Permits

(1) OSU offers a variety of Parking Permits, specified below, for parking in designated parking areas or specific parking places on Campus. Unless otherwise specified by Signage, Parking Permits are required for parking on Campus. Parking Permits and informational parking brochures

may be obtained through TAPS. Permits must be clearly and appropriately displayed in Vehicles as specified in the applicable parking brochure in order to park in the areas or spaces for which the Parking Permits are valid. Use of parking areas on Campus without a properly-displayed, current Parking Permit in areas or spaces where it is required on Signage may result in a citation and a fine as established in OSU’s List of Fees and Charges, pursuant to OAR 576-010-0000.

(2) Parking Permits available for purchase and their applicable fees are specified in OSU’s List of Fees and Charges, pursuant to OAR 576-010-0000. Permits will not be issued to persons who have an outstanding balance on their TAPS account.

(3) Unless otherwise specified on the Parking Permit, Parking Permits will expire on September 30th. Term Permits, however, expire at the conclusion of the term for which they were issued.

(4) Parking Permits are personal to the persons to whom they are issued and may not be used or transferred to other persons for parking on campus unless such use or transfer is to members of a carpool with which that person is affiliated and the use or transfer facilitated the carpool activities.

(5) Faculty/Staff Parking Permits may be purchased by all non-Student-status, full or part-time employees of OSU or businesses or agencies with which OSU has contracted to locate full or part-time employees on OSU’s campus. Annual Faculty/Staff Parking Permits expire on September 30, unless otherwise specified. Term Faculty/Staff Parking Permits expire on the last day of the academic term for which they were issued.

(6) Student Parking Permits may be purchased by any OSU Student. Annual Student Parking Permits expire on September 30, unless otherwise specified. Term Student Parking Permits expire on the last day of the academic term for which they were issued.

(7) Emeritus Parking Permits may be purchased by emeritus and retired OSU employees. Annual Emeritus Parking Permits expire on September 30, unless otherwise specified. Term Emeritus Parking Permits expire on the last day of the academic term for which they were issued.

(8) Motorcycle and Motor Scooter Permits may be purchased by Faculty, Staff, Students, Emeritus Faculty, and Vendors for use in accordance with OAR 576-030-0060.

(9) Vendor Parking Permits may be purchased by persons, businesses, or agencies desiring to park on Campus to facilitate provision of services to be provided to OSU.

(10) Temporary Parking Permits may be purchased by OSU employees, students or Visitors, for use in lots as designated by the Parking Permit.

(11) Visitor Parking Permits may be purchased by Visitors from pay and display stations located on Campus. Applicable rules, instructions, and charges are subject to change and displayed on the machines at pay and display stations.

(12) Guest Parking Permits may be purchased by persons attending qualifying conferences, workshops, and meetings.

(13) Complimentary Courtesy Parking Permits may be issued to OSU administrative personnel who are required to utilize their personal Vehicle in the performance of official duties. A valid Faculty/Staff Parking Permit must be displayed along with the Complimentary Courtesy Parking Permit. The Complimentary Courtesy Parking Permit is valid in each space for up to three (3) hours in designated Service Vehicle or Vendor parking areas.

(14) Parking on the Campus in parking spaces designated by Signage as Disability Parking requires one of the above current, valid OSU Parking Permits in addition to a valid Americans with Disabilities Act (“ADA”) parking placard issued by Department of Motor Vehicles (DMV). Both Parking Permits must be properly displayed at all times. Requests for reserved disabled parking spaces should be submitted to the OSU Office of Affirmative Action and Equal Opportunity for approval.

(15) Lost or stolen Parking Permits should be reported to TAPS. A replacement for a lost or stolen Parking Permit will be issued after payment of the fee set in OSU’s List of Fees and Charges, pursuant to OAR 576-010-0000.

(16) Reserved parking spaces designated for exclusive use by any College, School, Department, or other approved organizations such as businesses or agencies required to park on campus to facilitate provision of services to be provided to OSU will be assessed an annual fee set forth in OSU’s List of Fees and Charges, pursuant to OAR 576-010-0000. Purchase of these reserved parking spaces must be renewed annually. Valid reserved Parking Permit issued to the College, School, Department, or other approved organizations must be properly displayed in Vehicles. OSU Faculty, Staff, Emeritus, or Students must display a valid OSU Parking Permit in addition to the reserved space Parking Permit when utilizing reserved spaces.

(17) Motor Pool Vehicles and other Vehicles owned by OSU that are to be parked on campus for one month or longer shall be subject to an annual parking fee equal to the fee for an Annual Faculty/Staff Parking Permit

# ADMINISTRATIVE RULES

or a Term Faculty/Staff Parking Permit as specified in OSU's List of Fees and Charges, pursuant to OAR 576-010-0000.

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 7-1991, f. 6-3-91, cert. ef. 10-1-91; OSU 3-1992, f. 6-5-92, cert. ef. 10-1-92; OSU 6-1993, f. 6-9-93, cert. ef. 10-1-93; 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

## 576-030-0025

### Driver Responsibility

(1) All persons operating Vehicles on campus are responsible for knowing and adhering to the regulations stated herein. The regulations are enforced at all times.

(2) The responsibility for locating a legal parking space rests with the operator of the Vehicle. Lack of space is not a valid excuse for violating any OSU parking regulation.

(3) In the event of conflict between Signage and these or other regulations, the Signage shall control and must be followed.

(4) Only Vehicles with valid ADA permits or placards, approved campus service Vehicles, emergency-response Vehicles, U.S. Postal Service Vehicles, freight trucks, OSU Campus Shuttle busses, public transit buses and bicycles may enter or park in the area designated "Campus Core" by Signage.

(5) OSU is not responsible for any Vehicle or its contents parked on OSU property or environs. Individuals assume all risk of accident and property loss, personal injury, and property damage.

(6) OSU may issue citations to and enforce fines against both the person in possession or control of the Vehicle at the time a violation of these regulations or Signage occurs and the person identified as the Registered Owner of the Vehicle.

Stat. Auth.: ORS 351.070 & 352.360  
Stats. Implemented: ORS 351.070 & 352.360  
Hist.: OSU 1-1978, f. & ef. 10-16-78; 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 6-1999, f. & cert. ef. 6-17-99; OSU 3-2009, f. 6-16-09, cert. ef. 7-1-09

## 576-030-0035

### Refunds

TAPS may issue refunds for fees paid for Parking Permits pursuant to a Parking Permit refund schedule published by TAPS. Refunds are available only upon return of the Parking Permit for which the refund is sought to TAPS. A refund will not be issued to a person who has an outstanding balance on his or her TAPS account, but the refund will be applied to his or her outstanding TAPS account balance. Any such refund amount that exceeds the TAPS account balance, after the balance is satisfied, will then be issued.

Stat. Auth.: ORS 351.070 & 352.360  
Stats. Implemented: ORS 351.070 & 352.360  
Hist.: OSU 1-1978, f. & ef. 10-16-78; OSU 3-1992, f. 6-5-92, cert. ef. 10-1-92; OSU 6-1993, f. 6-9-93, cert. ef. 10-1-93; 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

## 576-030-0040

### Driving and Parking Regulations on Campus

(1) Anyone operating a Vehicle on campus shall observe Signage, speed limits, barricades, bicycle lanes, crosswalks, stop signs, and all other traffic signs and regulations and shall drive in a safe and prudent manner. The speed limit on campus is 15 MPH unless Signage directs otherwise. Driving or parking Vehicles on sidewalks, lawns, and other areas not designated for driving or parking is prohibited.

(2) Campus traffic boundaries and parking areas are indicated on the campus parking map published by TAPS.

(3) Most parking areas on campus are reserved for Vehicles with specific Parking Permits, as indicated by Signage in the parking areas.

(4) Vehicles shall park headed into the parking stall where the end of the stall is a curb, building, fence, shrubbery or other obstruction, or parallel facing in the direction of traffic flow within indicated boundaries.

(5) On the OSU campus any area not specifically designated for parking is a "No Parking Zone."

(6) No Vehicle may be parked in more than one parking space or stall.

(7) Vehicles may not be parked in loading zones at any time for any purpose other than loading and unloading. The maximum time limit is ten minutes or as otherwise required by Signage.

(8) All persons operating Vehicles parked on OSU property are required to observe Signage.

(9) Abandoned or immobilized Vehicles left on OSU property more than 72 hours may be removed at the Registered Owner's expense unless an extension has been granted by TAPS or by the OSU Department of Public Safety. Unlicensed Vehicles and Vehicles without OSU Parking Permits parked more than 24 consecutive hours on OSU property Monday through Friday may be considered abandoned and subject to removal at the Registered Owner's expense.

(10) All Vehicles driven on OSU property shall be operated by a legally licensed driver. The license must be displayed upon request of Department of Public Safety Officers or Campus Patrol Officers.

(11) Government Vehicles not assigned a permanent parking space may be parked for a period of 24 hours in Faculty/Staff or Student parking spaces unless Signage directs otherwise.

(12) All reserved spaces allocated for specific Vehicles are reserved at all times.

(13) Persons are prohibited from living in Vehicles of any kind on University property. Streets, lots and other areas are not to be used as living areas for cars, trailers, campers, motor homes, trucks, buses or other like Vehicles. Violators may be cited for improper parking or the Vehicle may be booted or towed.

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 3-1992, f. 6-5-92, cert. ef. 10-1-92; OSU 6-1993, f. 6-9-93, cert. ef. 10-1-93; OSU 3-1995, f. & cert. ef. 6-20-95; OSU 2-2004, f. 6-23-04, cert. ef. 7-1-04; OSU 3-2009, f. 6-16-09, cert. ef. 7-1-09

## 576-030-0045

### Parking Committee and Appeal Review Committee

(1) The Vice President for Finance and Administration appoints the members of the Parking Committee to represent faculty, staff, and students on parking matters. Requests for hearings and/or suggestions for enforcement, modification, or amplification of parking regulations should be presented in person or in writing to the Parking Committee.

(2) Any appropriate matter presented to the Parking Committee will be considered by the committee or referred to the Appeal Review Committee or the Student Appeal Court to determine what action, if any, is required.

(3) The Appeal Review Committee is composed of two Parking Committee members, appointed by the Chair of the Parking Committee to review parking citation appeals filed by affected persons, other than Students, and appeals from Student Appeal Court decisions filed by Students.

(4) The Student Appeal Court is composed of at least two Students. At least one member of the Student Appeal Court must be a Parking Committee member appointed by the Vice President for Finance and Administration. The Student Appeal Court reviews parking citation appeals filed by Students.

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 3-1992, f. 6-5-92, cert. ef. 10-1-92; 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 6-1999, f. & cert. ef. 6-17-99; OSU 3-2009, f. 6-16-09, cert. ef. 7-1-09

## 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.

(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 or if it impedes University operations.

(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

# ADMINISTRATIVE RULES

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

## 576-030-0055

### Enforcement and Appeals

(1) All penalties prescribed in OAR 576-030-0050, other than violations referred to appropriate courts of law as provided in 576-030-0050(2), will be administratively enforced by OSU. For all administratively enforced violations, a parking citation or notice of offense, including the scheduled fine, will be issued to the person charged with the violation who is in possession or control of the Vehicle or Parking Permit in use, or it will be attached to the Vehicle.

(2) Fines for cited violations must be paid to TAPS, on or before the date indicated on the citation. Citations not paid within thirty days may be forwarded to OSU Business Affairs for collection.

(3) A person charged with a violation may appeal the citation by paying the scheduled fine and filing a request for a hearing within ten days of the date of issuance of the citation. The appeal must be submitted to TAPS on an Appeal Request Form that is available from TAPS.

(4) After the appeal is filed, the case will be scheduled for review by the appropriate Appeal Review Committee as described in 576-030-0045. Student Appeal Court findings may be appealed by the student to the Appeal Review Committee. All judgments rendered by the Appeal Review Committee are final and not subject to further appeal.

(5) A person who fails to pay and appeal a violation on or before the date specified in the citation forfeits his or her right of appeal.

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 7-1991, f. 6-3-91, cert. ef. 10-1-91; OSU 3-1992, f. 6-5-92, cert. ef. 10-1-92; 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 3-2009, f. 6-16-09, cert. ef. 7-1-09

## 576-030-0060

### Motorcycle and Motor Scooter Operation

(1) Parking areas for motorcycles and motor scooters are specifically designated by Signage.

(2) Motorcycles and motor scooters may not park in any areas prohibited for other motorized Vehicles including sidewalks, bicycle parking areas, bicycle lanes, or pedestrian areas.

(3) Motorcycles and motor scooters are prohibited from entering or parking in the area designated "Campus Core" by Signage, unless otherwise authorized by TAPS or OSU Department of Public Safety.

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 7-1991, f. 6-3-91, cert. ef. 10-1-91; OSU 6-1993, f. 6-9-93, cert. ef. 10-1-93; OSU 3-2009, f. 6-16-09, cert. ef. 7-1-09

## 576-030-0070

### Skateboard and Skate Regulations

(1) Skateboard and skate use is prohibited on property owned or controlled by Oregon State University except use as specified in these regulations.

(2) Skateboards and skates may be operated in the area in McAlexander Field House designated for their use. All other use of skateboards and skates is prohibited in University buildings.

(3) Skateboards and skates may be operated on the University paved roadways that are designed for vehicular travel.

(4) Skates may be operated on paths, walkways, and sidewalks at no more than walk speed.

(5) Skateboard and skate users shall yield the right-of-way to pedestrians, Vehicles and bicycles while in the roadway, and emergency Vehicles.

(6) Skateboard users shall obey all stop and yield signs.

(7) Skateboards shall not be used on that portion of Jefferson Street commonly known as Library Hill (immediately south of Valley Library).

(8) Skateboard and skate users shall not perform acrobatics or other stunts when using skateboards or while wearing skates.

(9) All persons using skateboards or skates as authorized by this rule shall use them in a reasonable and prudent manner, having due regard to traffic, pedestrians' rights, surface of the roadway, the hazard at intersections, and any other condition then existing.

(10) Any person who violates this rule is subject to:

(a) Issuance of a University Citation and a fine of \$50.00;

(b) Institutional disciplinary proceedings, if a student or employee;

(c) An order to leave the immediate premises or property owned or controlled by the University by a person in charge of University property.

(11) Persons failing to comply with an order by a person in charge to leave or to remain off the immediate premises or property owned or controlled by the University are subject to arrest for criminal trespass.

(12) Parents and guardians of minors and adult operators, including students, staff and faculty, are responsible for damage to University buildings or property by their skateboards or skates and for payment of any fines.

(13) The Vice President for Finance and Administration, the Vice Provost for Student Affairs, Department of Public Safety Manager, Manager of Environmental Health and Safety, Director of Facilities Services, Director of University Housing and Dining Services, Director of Conferences and Special Events, the Director of the Memorial Union and Educational Activities, and their designees are included among those "persons in charge" of University property for purposes of ORS 164.205(5) and this rule.

Stat. Auth.: ORS 164.205(5), 351.070 & 352.360  
Stats. Implemented: ORS 164.205(5), 351.070 & 352.360  
Hist.: OSU 1-1987, f. & ef. 4-21-87; OSU 5-1990, f. 9-7-90, cert. ef. 9-15-90; OSU 3-1993, f. & cert. ef. 5-7-93; OSU 2-1994, f. & cert. ef. 6-8-94; OSU 2-1999(Temp), f. & cert. ef. 4-14-99 thru 9-30-99; OSU 7-1999, f. & cert. ef. 9-9-99; OSU 3-2009, f. 6-16-09, cert. ef. 7-1-09

## 576-030-0090

### Bicycle Regulations

(1) Bicycles must be operated in a safe manner and be equipped in accordance with applicable state laws and city ordinances. Bicyclists shall maintain a safe speed and shall obey all applicable Signage and state, city, and campus laws and regulations regarding bicycle use.

(2) Bicycles must be equipped with a brake that enables the operator to make the braked wheels skid on dry, level, clean pavement.

(3) A bicycle or its rider must be equipped with lighting equipment that must be used during hours of darkness and during limited visibility conditions. The lighting equipment required includes:

(a) A white light attached to the front of the bicycle, visible from a distance of at least 500 feet; and

(b) A red reflector or lighting device or material attached to the rear of the bicycle, visible from a distance of at least 600 feet.

(4) Bicycles must not be operated on sidewalks or other walkways unless Signage indicates otherwise.

(5) Bicyclists involved in collisions shall call the Department of Public Safety for assistance. All involved individuals shall remain at the collision site until released by the attending officer. When a collision results in an injury, a written accident report must be submitted to OSU's Department of Public Safety by the individuals involved.

(6) Bicycles may be parked, stored, or left on campus only in areas so designated by bicycle racks, Signage or storage. All bicycles, regardless of owner, must be maintained in working order while parked on campus. Bicycles parked at bicycle racks at or near academic or research buildings longer than five days will be considered abandoned and will be impounded.

(7) Bicycles users may be cited for:

(a) Improper or unsafe operation of a bicycle including failing to obey a traffic control device, having more persons on a bicycle than it is designed to hold, riding encumbered, and riding faster than the posted speed limit;

(b) Use of improper or inadequate equipment including no bicycle headlight, no rear reflector or lighting device, and no bicycle helmet for riders under 16 years of age;

(c) Being parked in a way that creates a hazard including blocking the bicycle or traffic lane, blocking access to any stairway, ramp or doorway, and blocking access to any handrail or other device used to aid entry to a building or structure;

(d) Being parked in a way that hinders the use of a bicycle parking device by other bicyclists;

(e) Being parked in buildings except in designated bike rooms;

(f) Any other violations of these regulations or applicable state law and city ordinances.

(8) The fine for any such citation is set out in OSU's List of Fees and Charges, pursuant to OAR 576-010-0000. Campus citations may be appealed by written statement to the appropriate forum.

(9) Bicycles may be impounded by OSU's Department of Public Safety if they are left in a place that creates a safety hazard or if they appear to be non functional or abandoned. A notice of impoundment will be sent to the registered bike owner, if known, within 24 hours. Bicycles may be claimed from OSU's Department of Public Safety by identifying the bicycle and paying the citation fine and impoundment fee to TAPS. OSU's Department of Public Safety will not be liable for the cost of repair or replacement of a securing device damaged when removing and impounding a bicycle.

(10) All bicycles that are operated, parked, or stored on campus by students, staff, or faculty may be registered with OSU's Department of Public Safety.

(11) Registrants and owners are responsible for parking violations involving their bicycles on campus.



# ADMINISTRATIVE RULES

(12) Bike lockers are available for rent on an annual or term basis at fees established in OSU's List of Fees and Charges, pursuant to OAR 576-010-0000

Stat. Auth.: ORS 351.070 & 352.360  
Stats. Implemented: ORS 351.070 & 352.360  
Hist.: OSU 4-1987, f. & ef. 6-11-87; OSU 3-1992, f. 6-5-92, cert. ef. 10-1-92; OSU 2-1994, f. & cert. ef. 6-8-94; OSU 3-1995, f. & cert. ef. 6-20-95; OSU 3-2009, f. 6-16-09, cert. ef. 7-1-09

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**Rule Caption:** Alcoholic Beverage Policy.

**Adm. Order No.:** OSU 4-2009

**Filed with Sec. of State:** 6-16-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 576-060-0031

**Subject:** This amendment to the Alcoholic Beverage Policy rules repeals the requirement that vendors licensed to dispense alcoholic beverages in the skyboxes at Reser Stadium provide proof of insurance to Oregon State University's Office of Risk Management, while retaining the requirement that such vendors have insurance in satisfaction of the rule.

**Rules Coordinator:** Barbara Melton—(541) 737-6262

**576-060-0031**

**Use of Alcoholic Beverages in the Stadium Complex**

(1) Alcoholic beverages, limited to beer and wine, may be served and consumed at the Stadium if served with food and non-alcoholic beverages by the Insured Licensed Vendor that has an exclusive catering contract with the University for catering at the Stadium. The vendor shall provide, on a monthly basis, prior notice of events at which it will be serving alcoholic beverages to Business Services through the Office of Risk Management. Service by any provider other than the exclusive caterer under contract to the University requires prior approval following the process and requirements described in OAR 576-060-0035

(2) Alcoholic beverages may be served in the Stadium skyboxes and suites only in connection with varsity football games. Food and non-alcoholic beverages must be provided. The individual skybox lessee serving the alcoholic beverages must carry host liquor liability insurance coverage, or equivalent insurance coverage, with limits satisfactory to Business Services.

Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 351.070  
Hist.: OSU 7-2008, f. 6-27-08, cert. ef. 7-1-08; OSU 4-2009, f. 6-16-09, cert. ef. 7-1-09

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## Oregon University System, Portland State University Chapter 577

**Rule Caption:** Amends Portland State University's Schedule of Fines and Fees for General Services and other charges.

**Adm. Order No.:** PSU 2-2009

**Filed with Sec. of State:** 7-15-2009

**Certified to be Effective:** 8-1-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 577-060-0020

**Subject:** This amendment establishes updated fees, charges, fines, and deposits for General Service for the 2009–2010 Fiscal year. It is in the interest of the general public for the State of Oregon that certain university services are self-sustaining. The amendment to this rule will permit the University to recover in fees the cost of providing various administrative and academic services.

**Rules Coordinator:** Julie Osborn—(503) 725-3701

**577-060-0020**

**Schedule of Fines and Fees for General Services and Other Charges**

The Schedule of Fines and Fees for General Services and Other Charges for the 2009–2010 Fiscal Year are hereby adopted by reference by Portland State University.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 351.070  
Stats. Implemented: ORS 352.360

Hist.: PSU 16(Temp), f. 8-24-77, ef. 9-1-77; PSU 18, f. & ef. 10-4-77; PSU 19(Temp), f. & ef. 10-11-77; PSU 20, f. & ef. 11-18-77; PSU 3-1978(Temp), f. 6-19-78, ef. 7-1-78; PSU 7-1978, f. & ef. 9-5-78; PSU 1-1979, f. & ef. 9-17-79; PSU 3-1980, f. & ef. 9-4-80; PSU 2-1981, f. & ef. 9-10-81; PSU 3-1982, f. & ef. 9-3-82; PSU 1-1983, f. & ef. 2-8-83; PSU 2-1983, f. 6-22-83, ef. 7-1-83; PSU 1-1984, f. 6-8-84, ef. 7-1-84; PSU 1-1985, f. 6-26-85, f. 7-1-85; PSU 1-1986, f. 6-25-86, ef. 7-1-86; PSU 1-1987, f. 6-19-87, ef. 7-1-87; PSU 3-1987(Temp), f. & ef. 8-11-87; PSU 5-1987, f. & ef. 10-27-87; PSU 5-1988, f. & cert. ef. 7-18-88; PSU 7-1988(Temp), f. & cert. ef. 11-29-88; PSU 3-1989, f. & cert. ef. 7-26-89; PSU 5-1990, f. & cert. ef. 7-5-90; PSU 2-1991(Temp), f. & cert. ef. 6-28-91; PSU 3-1991, f. & cert. ef. 8-

7-91; PSU 4-1991(Temp), f. & cert. ef. 12-4-91; PSU 1-1992, f. & cert. ef. 1-17-92; PSU 2-1992, f. & cert. ef. 6-16-92 (and corrected 6-19-92); PSU 1-1993, f. & cert. ef. 6-11-93; PSU 2-1993(Temp), f. & cert. ef. 7-13-93; PSU 3-1993(Temp), f. & cert. ef. 7-30-93; PSU 4-1994, f. & cert. ef. 11-3-94; PSU 1-1995, f. & cert. ef. 8-9-95; PSU 1-1996(Temp), f. 1-18-96, cert. ef. 3-1-96; PSU 3-1996, f. & cert. ef. 6-27-96; PSU 1-1997, f. & cert. ef. 8-1-97; PSU 4-1998, f. & cert. ef. 9-17-98; PSU 4-1999, f. & cert. ef. 8-11-99; PSU 2-2000, f. & cert. ef. 8-1-00; PSU 1-2001, f. & cert. ef. 8-14-01; PSU 2-2003, f. 6-27-03, cert. ef. 7-1-03; PSU 4-2003(Temp), f. & cert. ef. 11-18-03 thru 5-14-04; PSU 1-2004, f. & cert. ef. 8-20-04; PSU 1-2005(Temp), f. & cert. ef. 7-15-05 thru 12-28-05; PSU 3-2005, f. & cert. ef. 12-13-05; PSU 2-2006, f. & cert. ef. 6-30-06; PSU 5-2006(Temp), f. & cert. ef. 8-30-06 thru 1-31-07; Administrative correction, 2-16-07; PSU 3-2007, f. & cert. ef. 7-5-07; PSU 5-2008(Temp), f. 6-13-08, cert. ef. 7-1-08 thru 12-26-08; Administrative correction 1-23-09; PSU 1-2009(Temp), f. & cert. ef. 5-14-09 thru 11-10-09; PSU 2-2009, f. 7-15-09, cert. ef. 8-1-09

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## Oregon University System, University of Oregon Chapter 571

**Rule Caption:** Amend special fees, fines, penalties, and service charges.

**Adm. Order No.:** UO 2-2009

**Filed with Sec. of State:** 6-30-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 3-1-2009

**Rules Amended:** 571-060-0005

**Subject:** The University administration has determined that the adoption of the amendments to the fee list will be necessary in order to provide the basis for funding to cover the expenses of the services rendered and to maintain a current schedule of fees, fines, penalties, and service charges.

**Rules Coordinator:** Deb Donning—(541) 346-3082

**571-060-0005**

**Special Fees, Fines, Penalties, Service Charges**

The University of Oregon has adopted by reference a list of Special Fees, Fines, Penalties, Service Charges, etc., for the current fiscal year:

(1) The fees, fines, penalties and service charges listed by reference in this rule are updated annually and copies are on file in the listed departments by July 1.

(2) The amounts and conditions of these fees may change from time to time throughout the year due to administrative considerations, changing costs, changes in institutional budgets, etc. If the size and the amount of these fees are or could be of importance to users, they should verify the details prior to making a commitment, before entering into any planning activities or before actually incurring any charges.

(3) The master copy of the current list of fees is maintained in the Office of the Director of Business Affairs and is available upon request to any person during regular business hours. The Director of Business Affairs also maintains a bulletin board where fee changes made during each 30-day period are posted. Following that posted period, the changes are filed with in the master copy.

(4) University departments charging fees shall maintain a copy of at least that department's section of the list of special fees, fines, penalties and service charges including any updates made during the course of the fiscal year. The list and all current changes shall be available upon request to any person during regular departmental business hours.

(5) No department may change fees between annual amendments to this rule without first obtaining an approved statement of justification signed by the appropriate Vice-President. Prior to granting approval of any fee charged to students, the Vice-President shall consult with the Office of Student Advocacy. Changes in fees approved by the Vice-President and the justification statement shall be posted for 15 days in a public area of the departmental office. The new fee, fine, penalty or charge becomes effective at the end of the 15-day posting period after it is filed with the Director of Business Affairs along with the justification statement.

(6) However, student loan service charges, charges levied as penalties for prohibited conduct, general tuition, building fees, incidental fees, health service fees, and residence hall and housing charges, shall be adopted in accordance with the provision of ORS 183.310 to 183.500.

(7) Certain charges, fees or fee schedules may, according to ORS 351.072(b), be adopted without compliance with rulemaking provisions of ORS 183.310 to 183.500. They are: charges relating to symposiums, conferences, short courses, food, books or other retail goods, prices of admission to athletic, entertainment or cultural events or advertising rates in student or institutional publications.

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

Stat. Auth.: ORS 351.070, 351 & 352  
Stats. Implemented: ORS 351.070  
Hist.: UO 20, f. & cert. ef. 4-27-76; UO 34(Temp), f. & cert. ef. 8-8-77; UO 37, f. & cert. ef. 9-30-77; UO 3-1978, f. & cert. ef. 7-1-78; UO 1-1979(Temp), f. 6-26-79, ef. 7-1-79; UO 4-1979, f. & cert. ef. 10-3-79; UO 7-1980, f. 6-30-80, ef. 7-1-80; UO 7-1981(Temp), f. 6-16-81, ef. 7-1-81; UO 9-1981(Temp), f. & cert. ef. 6-29-81; UO 2-1982, f. & cert. ef. 4-14-82; UO 4-1982, f. & cert. ef. 6-10-82; UO 4-1983, f. & cert. ef. 6-10-83;

# ADMINISTRATIVE RULES

UOO 5-1983(Temp), f. & cert. ef. 6-15-83; UOO 2-1984, f. 6-11-84, ef. 7-1-84; UOO 3-1985, f. 6-19-85, ef. 7-1-85; UOO 1-1986, f. 6-4-86, ef. 7-1-86; UOO 4-1986(Temp), f. & cert. ef. 11-10-86; UOO 7-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 8-1986(Temp), f. 12-30-86, ef. 1-1-87; UOO 1-1987, f. & cert. ef. 1-29-87; UOO 3-1987, f. 6-17-87, ef. 7-1-87; UOO 6-1988, f. 6-29-88, cert. ef. 7-1-88; UOO 8-1988, f. & cert. ef. 8-17-88; UOO 5-1989, f. 6-20-89, cert. ef. 7-1-89; UOO 7-1990, f. 6-14-90, cert. ef. 7-1-90; UOO 9-1991, f. 6-12-91, cert. ef. 7-1-91; UOO 1-1992, f. 4-9-92, cert. ef. 7-1-92; UOO 2-1993, f. 4-19-93, cert. ef. 7-1-93; UOO 9-1993, f. & cert. ef. 6-15-93; UOO 11-1993, f. 8-29-93, cert. ef. 9-1-93; UOO 2-1994, f. 6-13-94, cert. ef. 7-1-94; UOO 3-1994, f. 6-14-94, cert. ef. 7-1-94; UOO 4-1995, f. 6-13-95, cert. ef. 7-1-95; UOO 5-1995, f. 7-31-95, cert. ef. 8-1-95; UOO 3-1996, f. 6-6-96, cert. ef. 7-1-96; UOO 6-1997, f. 6-18-97, cert. ef. 7-1-97; UOO 7-1997, f. 6-18-97, cert. ef. 7-1-97; UOO 1-1998, f. 6-17-98, cert. ef. 7-1-98; UOO 2-1998, f. 6-17-98, cert. ef. 7-1-98; UOO 2-1999, f. 6-1-99, cert. ef. 7-1-99; UOO 3-1999, f. 6-1-99, cert. ef. 7-1-99; UOO 2-2000, f. 6-15-00, cert. ef. 7-1-00; UOO 1-2001, f. 6-18-01, cert. ef. 7-1-01; UOO 2-2001, f. 6-18-01, cert. ef. 7-1-01; UOO 2-2002, f. 6-19-02, cert. ef. 7-1-02; UOO 3-2002, f. 6-19-02, cert. ef. 7-1-02; UOO 1-2003, f. 6-23-03, cert. ef. 7-1-03; UOO 2-2003, f. 6-23-03, cert. ef. 7-1-03; UOO 2-2004, f. 5-11-04, cert. ef. 7-1-04; UOO 3-2004, f. 6-30-04, cert. ef. 7-1-04; UOO 6-2007, f. & cert. ef. 2-22-07; UOO 8-2007, f. & cert. ef. 3-12-07; UOO 9-2007, f. 5-10-07, cert. ef. 6-29-07; UOO 11-2007, f. 6-19-07, cert. ef. 6-29-07; UOO 2-2008, f. 5-6-08, cert. ef. 7-1-08; UOO 4-2008, f. 6-27-08, cert. ef. 7-1-08; UOO 1-2009, f. 4-24-09, cert. ef. 7-1-09; UOO 2-2009, f. 6-30-09, cert. ef. 7-1-09

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**Parks and Recreation Department**  
**Chapter 736**

**Rule Caption:** Amend existing ATV rules to allow beach access permit for Class I all-terrain vehicles (ATV) used by individual with disabilities.

**Adm. Order No.:** PRD 10-2009

**Filed with Sec. of State:** 6-18-2009

**Certified to be Effective:** 6-18-09

**Notice Publication Date:** 10-1-2008

**Rules Amended:** 736-004-0062

**Subject:** Amend the existing rule to allow Class I all-terrain vehicle (ATV) access with a permit for access needs of individuals with disabilities including those sections normally closed to motorized vehicles.

This document replaces Certificate and Order filed 12-15 for the same purpose. Legislative Counsel advised on 5-14-09 the Certificate and Order had to be re-filed as it was not received within the time requirements. There are no changes to the rule from the original 12-15-08 permanent adoption filing of the Certificate and Order.

**Rules Coordinator:** Joyce Merritt—(503) 986-0756

**736-004-0062**

**Ocean Shores ATV Operating Permit (Permit to operate a Class I ATV on the Ocean Shore)**

(1) A person may not operate a Class I all-terrain vehicle on the ocean shore unless the person obtains an Ocean Shores ATV Operating Permit from OPRD.

(2) The operator must have, in addition to the Ocean Shores ATV Operating Permit, a current ATV Safety Education Card issued under ORS 390.570 and the vehicle must have a current operating permit (ATV decal affixed to the vehicle) issued under 390.580.

(3) The Ocean Shores ATV Operating Permit is to be used only to meet the access needs of:

(a) Persons with disabilities, as defined by ORS 174.107; or who have proof of motor vehicle disabled placard, or both;

(b) Emergency response or emergency aid workers during the course of their work; or

(c) Biologists, wildlife monitors, or other natural resources workers during the course of their work.

(4) Ocean Shores ATV Operating Permits issued under subsection (3)(a) will allow use in those areas open to motorized vehicle use. However, upon request from an individual with a disability, OPRD may issue such a permit for sections closed to motorized use if the Director or his designee determines that such use:

(a) Is a reasonable accommodation of the individual's access needs; and

(b) Does not significantly impact environmentally or culturally sensitive areas or create a safety hazard to the public.

(5) Permits issued under this section shall specify length of time, area of operation and access points.

(6) Class I ATV's shall not be operated in a careless manner on the Ocean Shore Recreation Area.

(7) Unless otherwise posted Class I ATV's shall not be operated on the Ocean Shore in excess of 25 mph in open sections and 10 mph in closed sections.

Stat. Auth.: ORS 390.180 & 390.585

Stats. Implemented: ORS 390.729

Hist.: PRD 4-2007, f. & cert. ef. 4-13-07; PRD 8-2008, f. & cert. ef. 10-15-08; PRD 10-2008, f. & cert. ef. 12-15-08; PRD 10-2009, f. & cert. ef. 6-18-09

**Rule Caption:** Amend to make minor changes to General Park Area Rules re: metal detecting, found property, hunting at Wapato Access (Willamette River Greenway), and management title changes.

**Adm. Order No.:** PRD 11-2009

**Filed with Sec. of State:** 6-18-2009

**Certified to be Effective:** 6-18-09

**Notice Publication Date:** 6-1-2008

**Rules Amended:** 736-010-0040, 736-010-0055

**Subject:** Amend to clarify use of metal detectors on park property.

Amend to increase the limit of found property from \$20 to \$100 in accordance with ORS 98.005.

Amend to clarify that hunting is allowed rather than permitted with an actual permit, and to extend hunting exclusion for Wapato Access to full river miles length of the access.

Amend to update management titles to align with new management organizational structure.

**Rules Coordinator:** Joyce Merritt—(503) 986-0756

**736-010-0040**

**Visitor Conduct**

(1) Fires in park areas shall be confined to:

(a) Park camp stoves or fireplaces provided for such purpose;

(b) Portions of beach areas designated as permissible for fires; or

(c) Portable stoves used in established campsites, picnic areas, or beach areas where fires are allowed.

(2) Every fire shall be extinguished before its users leave the park area. No fire shall be allowed to cause personal injury or damage to private property or park resources.

(3) The park manager may restrict or prohibit fires due to high fire hazard conditions.

(4) A person may not mutilate, deface, damage, or remove any property, structure or facility of any kind in a park area, except as provided in OAR 736-010-0055.

(5) A person shall leave garbage, recyclables, sewage or waste in a park area only in the designated containers provided.

(6) A person may not dispose of garbage, recyclables, sewage, or waste generated by activities conducted outside a park area in a park area, with the exception of recreational vehicle sewage and gray water holding tank contents to be disposed of in designated dump stations.

(7) A person may not remove items from containers designated for recyclables, garbage, sewage or waste without authorization of the park manager.

(8) A person may not engage in the following activities in park areas:

(a) Use or operation of any noise producing machine, vehicle, device or instrument in a manner that may disturb other park area visitors;

(b) Use of a public address system or similar device without written permission of the park manager;

(c) Possessing, discharging, or causing to be discharged, any firecracker, explosives, torpedoes, rockets, fireworks or other substances without the written permission of the park manager;

(d) Use of a metal detector or similar device without a written permit from the department in any property not listed on the "Detecting Allowed" list, published on the OPRD website;

(e) Obstructing, harassing or interfering with a park employee or peace officer in the performance of their duties;

(f) Entering or occupying any building, facility or portion of a park area that has been closed to public access;

(g) Blocking, obstructing or interfering with vehicular or pedestrian traffic on any road, parking area, trail, walkway, pathway or common area;

(h) Occupying or interfering with access to any structure, office, lavatory or other facility in a manner which interferes with the intended use of such a structure or facility;

(i) Fighting; or promoting, instigating or encouraging fighting or similar violent conduct which would threaten the physical well being of any person in the park area;

(j) Smoking in any areas where the Oregon Indoor Clean Air Act, ORS 433.835 to 433.875; prohibits smoking;

(k) Activities or conduct which constitutes a public nuisance or hazard;

(l) Public indecency as defined in ORS 163.465;

(m) Base-jumping, hang gliding, paragliding or similar activities are not allowed in park areas without a written permit from the park manager. The use of hang gliders is allowed at Cape Kiwanda State Natural Area;

(n) Discharging any firearm, bow and arrow, slingshot, pellet gun, or other weapon capable of injuring humans or wildlife or damaging proper-

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ty, except in those park area locations and for those purposes specified in OAR 736-010-0055(7);

(o) Placing a sign, marker or inscription of any kind, except in designated areas within a park area, without written permission from the park manager;

(9) A person may not distribute circulars, notices, leaflets, pamphlets or written or printed information of any kind within a park area unless they have first obtained permission from the park manager and reported their name, address and number of leaflets to be distributed.

(10) A person may not operate a concession, solicit, sell or offer for sale, peddle, hawk or vend any goods, wares, merchandise, food, liquids or services in a park area without prior written authorization from the park manager.

(11) All money or goods, having a value of \$100 or more and found by the public in park areas, must be turned over to the park manager. All found money or goods will be disposed of according to department policy adopted in accordance with ORS 98.005.

(12) The director or designee may close rock formations and cliffs within a park area to descending, scaling or technical rock climbing.

(13) The director or designee may close lakes, streams or waterfalls to kayaking, boating, diving or swimming when the park manager has determined the activity to be a danger to participants.

(14) A person using a park area shall pay rates as established in OAR chapter 736, division 15 for use of selected facilities or the purchase of services or products.

Stat. Auth.: OAR 390.124

Stats. Implemented: ORS 390.111, 163.465, 433.835 - 433.875 & 498.006

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 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 5-1983, f. & ef. 3-30-83; PR 3-1984, f. & ef. 3-5-84; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 8-1993, f. & cert. ef. 5-11-93; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 7-1996, f. 8-14-96, cert. ef. 8-15-96; PRD 4-2000, f. & cert. ef. 4-5-00; Renumbered from 736-010-0045, 736-010-0070, 736-010-0125, 736-015-0045 & 736-015-0067, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 8-2007, f. & cert. ef. 8-28-07; PRD 11-2008, f. & cert. ef. 12-15-08; PRD 11-2009, f. & cert. ef. 6-18-09

## 736-010-0055

### Cultural, Historic, Natural and Wildlife Resources

(1) A person may not disturb or remove any archaeological, cultural, or historical material from a park area, unless authorized by the director as defined in ORS 390.235.

(2) A person may not, except with the written permission of the park director or park manager:

(a) Dig up, or remove any soil, rock, or fossil materials;

(b) Roll any stones, logs or other objects that may endanger a person or damage park resources; or

(c) Pick, cut, mutilate or remove plants or natural resources of any type from any park area, except as allowed by sections (3) to (5) and (7) of this rule.

(3) A person may collect limited-souvenirs of agate and gem stone rock materials within the boundaries of Succor Creek State Recreation Area away from the developed public use areas and roadways of the park under the following conditions:

(a) No commercial digging, quarrying, or removal of rock is allowed;

(b) No excavating or rock collecting is allowed within a distance of 500 feet from any developed public use picnic area or campground, or 200 feet from an improved highway or park road within the park area; or within the area of an archeological site;

(c) Excavation is restricted to standard hand tools including a hand pick, shovel, or hammer;

(d) The use of mechanical excavators including, but not limited to bulldozers, backhoes, scoops, tractors, or the use of other power tools to excavate or remove materials is prohibited;

(e) Excavation of rock or soil materials around the root zone of trees and shrubs is prohibited.

(4) Notwithstanding section (2) or (3), a person must comply with existing state and federal rules and regulations concerning mining or the protection of public archeological features or artifacts on the state and federal lands of this area.

(5) A person may gather for personal consumption berries, fruits, mushrooms, or similar edibles. A person may not uproot living plants, and roots, tubers, flowers, and stems may not be collected except with a written permit and only for scientific collection or research purposes, or by a Native American for personal consumption as part of their traditional cultural heritage. Driftwood may be taken in small amounts in accordance with OAR 736-026-0010.

(6) A person may not give or offer food items to any wildlife within a park area except when authorized by the park manager.

(7) A person may not hunt, pursue, trap, kill, injure, or molest any wildlife or disturb their habitats within a park area, except under the following provisions:

(a) In those park areas where hunting and trapping is allowed, a person must comply with the rules and regulations of the Oregon Department of Fish and Wildlife.

(b) In those park areas where hunting is allowed, dogs being used for hunting game birds or unprotected wildlife or being trained for hunting or tracking shall be in the handler's control at all times.

(c) Seasonal hunting of waterfowl is allowed in the following park areas:

(A) Bowers Rock State Park;

(B) That portion of Elijah Bristow State Park located north of the main channel of the Middle Fork of the Willamette River;

(C) Portions of Fort Stevens State Park adjacent to Trestle Bay as posted;

(D) That portion of La Pine State Park located on the northeast boundary, beginning 4,135 feet down river from the Deschutes River Home Sites #6 bridge (survey point at N43 46.989, W121 31.015) to a point 950 feet up river of the Fall River confluence (survey point at N43 47.204, W121 30.705);

(E) That portion of Willamette Mission State Park located on Grand Island in Yamhill County;

(F) That portion of Government Island State Recreation Area including the perimeter of both Government and Lemon Islands, not above the mean high water mark as posted;

(G) That portion of Rooster Rock State Park which includes Sand Island as well as the bank which runs parallel to the south of the island. Hunting will not be allowed during the special waterfowl hunting season which starts in September as posted;

(H) That portion of Benson State Recreation Area at Dalton Point, north of I-84, starting 300' east of the boat ramp running to the eastern most tip of the property at river mile 134 as posted;

(I) That portion of Starvation Creek State Park, north of I-84, river mile 159.6 to 160.2 as posted;

(J) That portion of Mayer State Park including the entire Salisbury Slough area and the pond 800' Northwest of the boat ramp as posted.

(d) Seasonal hunting of game wildlife is allowed within Deschutes River State Recreational Area south of the stream gauge cable crossing line and parallel extensions of the cable crossing line to the east and west park boundaries.

(e) Seasonal hunting of deer is allowed in portions of La Pine State Recreation Area north of the east-west power line road, approximately one mile north of the campground booth.

(f) Seasonal hunting of upland game birds is allowed in Succor Creek State Park, except within 500 feet of camping areas located near the Succor Creek Bridge and posted Safety Zones.

(g) Trapping is allowed only by permit from the department in Bowers Rock State Park, Deschutes State Recreation Area, Elijah Bristow State Park, and Willamette Mission State Park.

(h) Hunting is allowed with shotguns or bows and arrows only, during authorized seasons in all Willamette River Greenway Corridor parcels, except in those parcels described below, where all hunting is prohibited:

(A) Wapato Access (Virginia Lake), River Mile 17.0-18.0, Multnomah Channel, Right bank when facing downstream;

(B) Crown Zellerbach, River Mile 21.3, Main Channel, Left Bank when facing downstream;

(C) Merrell (Mary S. Young State Park), River Mile 23.6, Main Channel, Left Bank when facing downstream;

(D) Willamette Shores, Inc. (Mary S. Young State Park), Main Channel, River Mile 24.0, Main Channel, Left Bank when facing downstream;

(E) Meldrum Bar Park (City of Gladstone) River Mile 24.2-24.4, Main Channel, Right Bank when facing downstream;

(F) Hattan-Fisher, River Mile 24.3, Main Channel, Left Bank when facing downstream;

(G) Dahl Park (City of Gladstone) River Mile 24.7, Main Channel, Right Bank when facing downstream;

(H) Coalca Landing, River Mile 30.7, Main Channel, Right Bank when facing downstream;

(I) Lang, River Mile 30.7, Main Channel, Left Bank when facing downstream;

(J) Pete's Mountain Landing, River Mile 30.8, Main Channel, Left Bank when facing downstream;

(K) Peach Cove Landing, River Mile 31.5, Main Channel, Left Bank when facing downstream;

(L) Brandborg, River Mile 32.0, Main Channel, Left Bank when facing downstream;

(M) Asche, River Mile 34.1, Main Channel, Left Bank when facing downstream;

(N) Molalla River State Park, River mile 34.6-36.1, Main Channel, Right Bank when facing downstream;



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- (O) Willamette Meridian Landing, River Mile 37, Main Channel, Left Bank when facing downstream;
- (P) French Prairie Access, River Mile 41.0, Main Channel, Right Bank when facing downstream;
- (Q) Parrett Mountain Access, River Mile 45.5–46.0, Main Channel, Left Bank when facing downstream;
- (R) Hess Creek Landing, River Mile 53, Main Channel, Left Bank when facing downstream;
- (S) San Salvador Access, River Mile 56.7, Main Channel, Right Bank when facing downstream;
- (T) Lincoln Access, River Mile 76.2–77.0, Main Channel, Left Bank when facing downstream;
- (U) Lincoln Access (Doak's Ferry) River Mile 77.6, Main Channel, Left Bank when facing downstream;
- (V) Darrow Rocks Access, River Mile 78.1, Main Channel, Left Bank when facing downstream;
- (W) Ross Island Sand & Gravel (Salem Waterfront), River Mile 82.8, Main Channel, Right Bank when facing downstream;
- (X) Hall's Ferry Access, River Mile 91.3, Main Channel, Right Bank when facing downstream;
- (Y) Springfill Access, River Mile 113.8, Main Channel, Left Bank when facing downstream;
- (Z) Takenah Landing (City of Albany), River Mile 118.5, Main Channel, Left Bank when facing downstream (Closed only for 500 feet west of parking area);
- (AA) Jasper Bridge, River Mile 195.2, Middle Fork, Right Bank when facing downstream;
- (BB) Minshall, Eller, River Mile 119.9, Main Channel, Left Bank when facing downstream;
- (CC) Jones, Lanham, River Mile 120.1, Main Channel, Left Bank when facing downstream;
- (DD) F. Schmidt, P. Schmidt, River Mile 120.3, Main Channel, Left Bank when facing downstream;
- (EE) Truax Island Access, River Mile 168.7, Main Channel, Left Bank when facing downstream (closed only for 500 feet west of parking area);
- (FF) Marshall Island Access (Banton), River Mile 168.7, Main Channel, Left Bank when facing downstream;
- (GG) Log Jam Access, River Mile 194.4–194.8, Middle Fork, Left Bank when facing downstream;
- (HH) Pengra Access, River Mile 195.2, Middle Fork, Right Bank when facing downstream;
- (II) Cougar Mountain Access, River Mile 15.5, Coast Fork, Right Bank when facing downstream; and
- (JJ) Lynx Hollow Access, River Mile 17.2, Coast Fork, Left Bank when facing downstream (Closed except for 100 foot strip along riverbank);

(i) Trapping is allowed only with written authorization from the department in the Willamette River Greenway Corridor parcels closed to hunting, as listed above. Trapping is allowed in all other Willamette River Greenway Corridor parcels.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 498.002 & 498.006

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 10-1991, f. & cert. ef. 6-18-91; Renumbered from 736-015-0065, 736-015-0072, 736-015-0080, 736-015-0090, 736-015-0095, 736-015-0100, 736-015-0130, 736-015-0135, 736-015-0150 & 736-015-0160, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 11-2008, f. & cert. ef. 12-15-08; PRD 11-2009, f. & cert. ef. 6-18-09

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**Public Utility Commission**  
**Chapter 860**

**Rule Caption:** In the Matter of a Rulemaking to Implement SB 838 Relating to Renewable Portfolio Standard. (Phase II).

**Adm. Order No.:** PUC 7-2009

**Filed with Sec. of State:** 6-25-2009

**Certified to be Effective:** 6-25-09

**Notice Publication Date:** 12-1-2008

**Rules Adopted:** 860-083-0005, 860-083-0050

**Rules Amended:** 860-038-0220, 860-038-0300

**Subject:** The adopted new rules in this Phase II of docket AR 518 establish guidelines for Renewable Energy Certificates that electric utilities and electricity service suppliers may use to meet their Renewable Portfolio Standards under ORS 469A (the Act). The rule amendments adopted in this Phase II of docket AR 518, align the timelines for reporting on environmental claims and portfolio options with the reporting requirements of the Act.

**Rules Coordinator:** Diane Davis—(503) 378-4372

## 860-038-0220

### Portfolio Options

(1) An electric company must provide each residential consumer who is connected to its distribution system with a portfolio of product and pricing options. An eligible customer may enroll in or exit renewable resource options at any time, subject to any switching fees approved by the Commission under subsection (8)(e) of this rule. The minimum term for customers enrolling in a market-based option is 12 months. Portfolio options will not be offered to large nonresidential consumers.

(2) Sections (3) through (8) of this rule apply to residential portfolio product and pricing options.

(3) By July 1 of each year, the Portfolio Options Committee will recommend portfolio options to the Commission that will be effective January 1 of the following year. Each recommended portfolio option shall specify a service period from 12 months to 36 months. The Commission is not bound by the recommendations of the Portfolio Options Committee.

(4) The portfolio must include at least one product and rate that reflects renewable energy resources and one market-based rate. The Portfolio Options Committee will recommend the resource content of each renewable energy resource product. At least one renewable energy resource product will contain "significant new" resources. The Portfolio Options Committee will recommend a definition of "significant" based on an evaluation of resource availability, resource cost, and other factors. The portfolio options may include options for the collection of funds for future renewable resource purchases or collection of funds for energy related environmental mitigation measures such as salmon recovery.

(5) Each electric company is responsible for administering the options, including but not limited to marketing and billing.

(6) Each electric company must acquire the renewable supply resources necessary to provide the renewable energy resources product through a Commission-approved bidding process or other Commission-approved means. Each electric company may acquire the resources necessary to provide the other product and pricing options at its discretion.

(7) Four months prior to the implementation of the portfolio product and pricing options an electric company must file tariffs for its portfolio options.

(8) This section applies to residential and small nonresidential product and pricing options. An electric company must develop portfolio rates as follows:

(a) The portfolio rates must be based on the unbundled costs identified through the application of OAR 860-038-0200;

(b) The portfolio rates for any class of customer must be based on the unbundled costs to serve that class;

(c) The portfolio rates must include any additional electric company costs that are incurred when a consumer chooses to be served under the portfolio rate option;

(d) The portfolio rates must exclude electric company costs that are avoided when a consumer chooses to be served under the portfolio rate option;

(e) An electric company may impose nonrecurring charges to recover the administrative costs of changing suppliers or rate options; and

(f) Rates must be established so that costs associated with the development or offering of rate options are assigned to the retail electricity consumers eligible to choose such rate options.

(9) This section applies to small nonresidential portfolio product and pricing options. The Portfolio Options Committee will recommend portfolio product and pricing options, if any, to the Commission for approval. The electric company must implement small nonresidential portfolio product and pricing options adopted by the Commission.

(10) By March 31 for the prior calendar year, an electric company must acquire or issue renewable energy certificates in an amount at least equal to the electric company's sales of renewable energy certificates to residential and small nonresidential consumers for each renewable resource option.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 21-2001(Temp), f. & cert. ef. 9-11-01 thru 3-10-02; PUC 11-2002, f. & cert. ef. 3-8-02; PUC 13-2004, f. & cert. ef. 8-31-04; PUC 7-2009, f. & cert. ef. 6-25-09

## 860-038-0300

### Electric Company and Electricity Service Suppliers Labeling Requirements

(1) The purpose of this rule is to establish requirements for electric companies and electricity service suppliers to provide price, power source, and environmental impact information necessary for consumers to exercise informed choice.

(2) For each service or product it offers, an electric company must provide price, power source, and environmental impact information to all residential consumers at least quarterly. The information must be based on the available service options. The information must be supplied using a for-

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mat prescribed by the Commission. An electric company must also include on every bill a URL address, if available, for a world-wide web site where this information is displayed. The electric company must report price information for each service or product for residential consumers as the average monthly bill and price per kilowatt-hour for monthly usage levels of 250, 500, 1,000 and 2,000 kilowatt-hours, for the available service options.

(3) An electric company and an electricity service supplier must provide price, power source and environmental impact information on or with bills to nonresidential consumers using a format prescribed by the Commission. The electric company or electricity service supplier must provide a URL address, if available, for a world-wide web site that displays the power source and environmental impact information for the products sold to consumers. An electric company and an electricity service supplier must report price information for nonresidential consumers on each bill as follows:

(a) The price and amount due for each service or product that a non-residential consumer is purchasing;

(b) The rates and amount of state and local taxes or fees, if any, imposed on the nonresidential consumer;

(c) The amount of any public purpose charge; and

(d) The amount of any transition charge or credit.

(4) For power supplied through its own generating resources, the electric company must report power source and environmental impact information based on the company's own generating resources, not the net system power mix. An electric company's own resources include company-owned resources and wholesale purchases from specific generating units, less wholesale sales from specific generating units. An electric company's own resources do not include the non-energy attributes associated with purchases under the provisions of a net metering tariff or other power production tariff unless the electric company has separately contracted for the purchase of the Tradable Renewable Certificates. For net market purchases, the electric company must report power source and environmental impact information based on the net system power mix. The electric company must report power source and environmental impact information for standard offer sales based on the net system power mix.

(5) For purposes of power source and environmental impact reporting, an ESS should use the net system power mix for the current calendar year unless the ESS is able to demonstrate a different power source and environmental impact. An ESS demonstration of a different mix must be based on projections of the mix to be supplied during the current calendar year. Power source must be reported as the percentages of the total product supply including the following:

(a) Coal;

(b) Hydroelectricity;

(c) Natural gas;

(d) Nuclear; and

(e) Other fuels including but not limited to new renewable resources, if over 1.5 percent of the total fuel mix.

(6) Environmental impact must be reported for all retail electric consumers using the annual emission factors for the most recent available calendar year applied to the expected production level for each source of supply included in the electricity product. Environment impacts reported must include at least:

(a) Carbon dioxide, measured in lbs./kWh of CO<sub>2</sub> emissions;

(b) Sulfur dioxide, measured in lbs./kWh of SO<sub>2</sub> emissions;

(c) Nitrogen oxides, measured in lbs./kWh of NO<sub>x</sub> emissions; and

(d) Spent nuclear fuel measured in mg/kWh of spent fuel.

(7) Every bill to a direct access consumer must contain the ESS's and the electric company's toll-free number for inquiries and instructions as to those services and safety issues for which the consumer should directly contact the electric company.

(8) The ESS must provide price, power source, and environmental impact in all contracts and marketing information.

(9) The electric company must provide price, power source, and environmental impact in all standard offer marketing information.

(10) By June 1 for the prior calendar year, each electric company, and each ESS making any claim other than net system power mix, must file a reconciliation report on forms prescribed by the Commission. The report must provide a comparison of the fuel mix and emissions of all of the seller's certificates, purchase or generation with the claimed fuel mix and emissions of all of the seller's products and sales.

(11) Each ESS and electric company owning or operating generation facilities shall keep and report such operating data about its generation of electricity as may be specified by order of the Commission.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040 & 757.600 - 757.667

Hist.: PUC 17-2000, f. & cert. ef. 9-29-00; PUC 7-2005, f. & cert. ef. 11-30-05; PUC 7-2009, f. & cert. ef. 6-25-09

## 860-083-0005

### Scope and Applicability of Renewable Portfolio Standards Rules

(1) OAR 860-083-0005 through 860-083-0050 (the "Renewable Portfolio Standards rules") establish rules governing implementation of Renewable Portfolio Standards for electric companies and electricity service suppliers provided under ORS 469A.005 through 469A.210.

(2) For good cause shown, a person may request the Commission waive any of the Renewable Portfolio Standards rules.

(3) As used in OAR 860-083-0050:

(a) "Electric company" has the meaning given that term in ORS 757.600.

(b) "Electricity service supplier" has the meaning given that term in ORS 757.600.

(c) "Renewable energy certificate" has the meaning given that term in OAR 330 160-0015(8) (effective September 3, 2008).

Stat. Auth.: ORS 756.040, 757.659, 469A.065

Stats. Implemented: 469A.065

Hist.: PUC 7-2009, f. & cert. ef. 6-25-09

## 860-083-0050

### Renewable Energy Certificates Eligible for Compliance With a Renewable Portfolio Standard

An electric company or an electricity service supplier may use a renewable energy certificate to comply with a renewable portfolio standard contained in ORS 469A.052, 469A.055, or 469A.065 in a calendar year as follows:

(1) The electric company or electricity service supplier has not previously used, sold or otherwise transferred the renewable energy certificate;

(2) The electric company has not previously used the renewable energy certificate to comply with requirements set forth in its own tariff that is in effect in Oregon or in another state, that are not related to an ORS 469A renewable portfolio standard or similar standard in another state;

(3) A renewable energy certificate that has been traded, sold or otherwise transferred is not eligible to become a banked renewable energy certificate; and

(4) The renewable energy certificate complies with OAR 330-160-0005 through OAR 330-160-0030 (effective September 3, 2008).

Stat. Auth.: ORS 756.040, 757.659, 469A.065, 469A.150, 469A.170

Stats. Implemented: ORS 469A.005, 469A.050 - 469A.055, 469A.065 - 469A.070, 469A.130 - 469A.170

Hist.: PUC 7-2009, f. & cert. ef. 6-25-09

## Public Utility Commission, Board of Maritime Pilots Chapter 856

**Rule Caption:** Amends physical requirements for trainee and apprentice applicants, and original and renewal pilot license applicants.

**Adm. Order No.:** BMP 2-2009

**Filed with Sec. of State:** 6-19-2009

**Certified to be Effective:** 6-23-09

**Notice Publication Date:** 6-1-2009

**Rules Adopted:** 856-010-0008

**Rules Amended:** 856-010-0010

**Subject:** Revises physical requirements for original and renewal pilot license applicants to mirror the federal model, and imposes similar new physical requirements on pilot trainee and apprentice applicants.

**Rules Coordinator:** Susan Johnson—(971) 673-1530

## 856-010-0008

### Trainee and Apprentice Application Requirements

(1) An applicant for selection as an apprentice pursuant to OAR 856-010-0014(1) through (5), or an applicant for selection as a trainee pursuant to 856-010-0014(12) through (14), 856-010-0018, or 856-010-0026, shall provide the following when making application to the Board:

(a) A photocopy of the applicant's most recent U.S. Coast Guard physical examination report form, completed and signed by a physician licensed in the United States, verifying that the applicant meets the physical, medical and mental criteria required to qualify for the federal mariner's license held by the applicant.

(b) One of the following:

(A) Proof the applicant has been a participant in maritime employer's random drug testing program during the 90 days preceding the date of application; or

(B) Negative results of a test performed within the preceding 30 days for the presence in the applicant of cocaine, opiates, marijuana (THC or its metabolites), amphetamines and PCP (phencyclidine). Testing must be in accordance with the U.S. Coast Guard, Department of Homeland Security

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guidelines outlined in the Code of Federal Regulations. A positive drug test must be reported to the Board.

(c) A report prepared by the applicant that identifies the following:

(A) Any positive results within the preceding 60 months of any tests for the presence in the applicant of cocaine, opiates, marijuana (THC or its metabolites), amphetamines or PCP (phencyclidine).

(B) Any conviction within the preceding 60 months for any alcohol-related motor vehicle infraction.

(C) A description of any maritime incidents occurring while the applicant was master, operator or otherwise directing the movement of a vessel, that resulted in either a disciplinary proceeding against the applicant's federal license or a civil penalty proceeding by the U.S. Coast Guard, and the final disposition of any such proceedings.

(2) During the selection process, and upon request by the Board, but before commencement of any training, applicants must again submit those items described in subsection (1)(a), (b)(B) and (c) of this section."

Stat. Auth.: ORS 776

Stas. Implemented: ORS 776.115 & 776.345

Hist.: BMP 2-2009, f. 6-19-09, cert. ef. 6-23-09

## 856-010-0010

### Original Licensing Requirements

In addition to the qualifications required for licensing of pilots under ORS 776, the applicant shall:

(1) Present an application in writing to the administrator of the board on the form provided by the board for the pilotage ground for which the applicant intends to become licensed. The application shall be filed not less than 30 days prior to appearance before the board for a written examination and may be supplemented at any time until the examination is taken. The board shall consider the application and upon approval, the written examination will be scheduled. The examination shall be proctored by the board's administrator. The examination for each pilotage ground shall be prepared by the board with the assistance of the board's licensed training organization for that pilotage ground. The examination will test for skill and knowledge of those factors identified in ORS 776.035(2) and 776.325(1)(b). The examination will be graded by the board member from the pilotage ground for which the applicant is seeking a license. If requested by the training course monitor, up to two additional pilots selected by the training course monitor and approved by the board may participate with the board member in grading the exam. The examination will be pass/fail.

(2) Accompany the application with a photocopy of a U.S. Coast Guard physical examination report and signed by an Oregon or Washington licensed physician verifying that the applicant meets the physical, medical and mental criteria required to qualify for a federal pilot's license.

(a) If the examining physician determines that the applicant is not competent to perform the duties of a pilot, the applicant is not then medically eligible to receive a license from the board.

(b) If the examining physician determines that the applicant is competent to perform the duties of a pilot, or if the examining physician determines that the applicant's physical, medical or mental condition is in need of further review, then the applicant is then considered medically eligible to receive a license from the board, subject to any later review and conclusion by the U.S. Coast Guard that the applicant is not competent for continued federal licensure as a pilot

(c) If the U.S. Coast Guard undertakes further medical review of an applicant's physical, medical or mental competency, either upon recommendation by the examining physician or otherwise, then the applicant shall report to the board at least every 30 days regarding the status of such further review. If, at the conclusion of such review process, the U.S. Coast Guard declines to approve the applicant for continued federal licensure as a pilot, the applicant shall immediately notify the board and the board will treat the decision as a suspension of the applicant's federal license. Any license issued by the board shall be automatically suspended as of the date the board receives notice of the U.S. Coast Guard's decision, notwithstanding any appeal that may be taken from such decision. If the Coast Guard concludes its review by issuing a waiver to the applicant, the terms of the waiver shall be immediately reported to the board, and the license issued by the board shall become subject to the terms of the waiver issued by the Coast Guard.

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

Stat. Auth.: ORS 776

Stas. Implemented: ORS 776.115, 776.345

Hist.: PC 1, f. 10-29-57, ef. 7-1-57; PC 7, f. 6-13-73, ef. 7-15-73; MP 2-1984, f. & ef. 10-4-84; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 3-1995, f. & cert. ef. 3-16-95; MP 1-1996, f. & cert. ef. 5-9-96; BMP 2-1999, f. & cert. ef. 6-24-99; BMP 3-2001, f. & cert. ef. 10-30-01; BMP 1-2003, f. & cert. ef. 2-26-03; BMP 3-2006, f. 9-29-06, cert. ef. 10-1-06; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07; BMP 2-2007, f. & cert. ef. 5-22-07; BMP 4-2008, f. & cert. ef. 1-24-08; BMP 2-2009, f. 6-19-09, cert. ef. 6-23-09

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**Rule Caption:** Updates and codifies investigation policies and procedures.

**Adm. Order No.:** BMP 3-2009

**Filed with Sec. of State:** 6-19-2009

**Certified to be Effective:** 6-19-09

**Notice Publication Date:** 5-1-2009

**Rules Adopted:** 856-010-0022

**Subject:** Adopts updated incident investigation procedures; defines categories of incidents; provides for independent investigator assistance.

**Rules Coordinator:** Susan Johnson—(971) 673-1530

## 856-010-0022

### Incident Investigation Procedures

(1) Upon receiving notice that an incident has occurred, the Board member who is a licensee for the pilotage ground where the incident occurred will commence a preliminary investigation as soon as practicable. If the incident involves that Board member, or if that Board member is not available to commence a timely preliminary investigation, then the Board Chair will appoint another Board member to commence the preliminary investigation, in which case the Board Chair will also seek a volunteer from among those who are or have been licensees for the pilotage ground where the incident occurred, to serve as an advisor to the Board member conducting the preliminary investigation.

(2) The Board member conducting the preliminary investigation will, as soon as possible after receiving notice that an incident has occurred, gather sufficient information to form an opinion regarding whether the incident is likely to be a Category I or Category II incident, according to the following criteria:

(a) Category I Incident:

(A) Property damage exceeding \$150,000; or

(B) loss of life or serious personal injury (requiring hospitalization);

or

(C) allision with a bridge; or

(D) release of more than 50 gallons of oil or other hazardous substance into the water; or

(E) a pilot may have been acting under the influence of drugs or alcohol or there is evidence of gross negligence or willful misconduct; or

(F) any factor that results in substantial, widespread public interest in the incident.

(b) Category II Incident: Any incident reportable under Board regulations that does not satisfy any of the criteria in OAR 856-010-0022(2)(a).

(3) As soon as possible after completing the preliminary investigation, the investigating Board member will contact the Board's Chair to make a preliminary report and recommendation regarding classification of the incident as Category I or Category II. Based on the preliminary report, the investigating Board member's recommendation, and such other factors as the Board Chair deems appropriate under the circumstances, the Board Chair will, in his or her discretion, determine whether to classify the incident as Category I or Category II.

(4) Upon the Chair's classification of an incident as Category I, an investigating team will be promptly appointed by the Chair. The investigating team will include:

(a) The Chair or other public member of the Board, to serve as the team leader; and

(b) a shipping industry or port representative member of the Board; and

(c) the pilot member of the Board from the pilotage ground where the incident occurred, unless the incident involves that pilot, in which case the Chair will appoint another pilot member of the Board. If the pilot Board member appointed to the investigating team is not a licensee on the pilotage ground where the incident occurred, then the Board will request a volunteer from among those who are or have been licensees for the pilotage ground where the incident occurred, to serve as an advisor to the investigating team.

(5) Upon the Chair's classification of an incident as Category II, the Board member who conducted the preliminary investigation shall proceed with completion of the investigation. The Chair may, at any time during the course of the investigation, upon receipt of new information, elect to reclassify the incident as a Category I incident requiring the appointment of an investigating team.

(6) The services of a qualified independent investigator, or an expert in a discipline that is relevant and necessary for determining the cause of an incident, should be obtained in the following circumstances:

(a) In any Category I incident, upon request of the Chair, or of two or more members of the investigating team.

(b) In any Category II incident, upon agreement of the Chair and the Board member conducting the investigation.

(7) In order to qualify as an expert for purposes of OAR 856-010-0022(6), a person must have a postgraduate degree, professional training or



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substantial practical experience in a discipline or subject matter that the Board investigators determine is relevant and necessary for determining the cause of an incident.

(8) The Board will keep and periodically update a list of qualified independent investigators who may be available to provide services. In order to qualify as an independent investigator for the Board, a person must:

(a) Have had at least four years previous experience investigating maritime casualties; or

(b) have served at least two years as pilot or master of vessels greater than 1600 GRT, and had formal training in investigations procedures or extensive actual experience investigating maritime casualties.

(9) The role of an independent investigator is that of an advisor to the investigating team in a Class I incident, or to the investigating Board member in a Class II incident. An independent investigator is to serve as a fact gatherer at the direction of the Board investigators, delivering information to the Board members investigating the incident. Information gathered by an independent investigator may be used by the investigating Board members for their analysis and for use in their preparation of a written report with their recommendations to the Board as a whole.

(10) When the investigation is complete, the investigating Board member or members will prepare a written report for consideration by the Board. The report shall describe the scope of the investigation, the information gathered, and include an assessment of the probable causes of the incident, and recommendations for any further Board action that should be considered. The written report shall also make a recommendation concerning the scope of distribution of the report.

Stat. Auth.: ORS 670 & 776  
Stats. Implemented: ORS 670.310 & 776.115  
Hist.: BMP 3-2009, f. & cert. ef. 6-19-09

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**Secretary of State,  
Archives Division  
Chapter 166**

**Rule Caption:** Adds a records series to the Cities General Records Retention Schedule.

**Adm. Order No.:** OSA 2-2009

**Filed with Sec. of State:** 6-24-2009

**Certified to be Effective:** 6-24-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 166-200-0010

**Subject:** This amendment to OAR 166-200-0010 adds a records series to the rule which clarifies, consolidates and establishes clear retention for security records.

**Rules Coordinator:** Julie Yamaka—(503) 378-5199

## 166-200-0010

### Administrative Records

(1) **Activity and Room Scheduling and Reservation Records** Records document scheduling and reservations related to public participation in and use of various city activities, events, classes, and meeting rooms. Includes schedules, logs, lists, requests, and similar records. SEE ALSO Participant Registration and Attendance Records and Park and Facility Use Permits in the Parks and Recreation section for records documenting public use of services or facilities for which formal registrations or permits are required. (Minimum retention: 1 year).

(2) **Activity Reports**, General Daily, weekly, monthly, or similar reports other than annual reports documenting the activities of city employees. Useful for compiling annual reports, planning and budgeting, monitoring work progress and other purposes. Usually tracks type of activity, employees and/or volunteers involved, time spent on activity, work completed, and related information in narrative or statistical form. SEE ALSO Grant Records in the Financial-General section for reports documenting activities directly related to projects funded by grants. (Minimum retention: 2 years).

(3) **Annual Reports** Reports document the program or primary functional activities and accomplishments of the office for the previous year. These are often compiled from monthly, quarterly, or other subsidiary activity reports. Usually includes statistics, narratives, graphs, diagrams, and similar information. SEE ALSO Activity Reports, General in this section for reports documenting shorter periods of time. (Minimum retention: Permanent).

(4) **Cemetery Records\*** Records document the administration and management of city-owned cemeteries. Records may include lists of names and maps of grave locations, deeds, information on purchasing lots and burials, death certificates, State Mortuary and Cemetery Board licensing and reporting documentation, and related correspondence. Some records may have historic value. (Minimum retention: Permanent).

(5) **Correspondence Records** that: 1. document communications created or received by an agency AND 2. directly relate to an agency program or agency administration AND 3. are not otherwise specified in the City General Records Retention Schedule (OAR 166-200) or in ORS 192.170. Records may include but are not limited to letters, memoranda, notes and electronic messages that communicate formal approvals, directions for action, and information about contracts, purchases, grants, personnel and particular projects or programs. (Disposition: File with the associated program or administrative records. Retentions for city records are found in City General Records Retention Schedule. Communications not meeting the above criteria do not need to be filed and may be retained as needed).

(6) **Desk Calendars and Notes Records** documenting and facilitating routine planning, scheduling, and similar actions related to meetings, appointments, trips, visits, and other activities. Includes calendars, appointment books, notes, telephone messages, diaries, and similar records. Depending on content, some telephone messages and similar records may merit inclusion in related program or project files. This applies to records that contain significant information, which is not summarized or otherwise included in reports or similar documents. (Minimum retention: 1 year).

(7) **Emergency and Disaster Incident Records\*** Records document the extent of impact and actions taken by the city in response to disasters, emergencies, and civil disorder. Incidents may be natural or manmade such as earthquakes, wild land fires, severe storms, floods, drought, airplane crashes, utility failures, hazardous materials incidents, riots, and similar events affecting the people, property, or government of the city. Records may include logs, diaries, damage assessment reports, response reports, situation and resource status reports, incident action plans, resource ordering and tracking records, financial documentation, messages, photographs, sign-in sheets, and any other incident related documentation. SEE ALSO the Emergency Management section, the Fire and Emergency Medical Services section, the Police section, the Public Works section, and the Risk Management section for related records. (Minimum retention: Permanent).

(8) **Fax Reports** Reports document the facsimile transactions of the city. Reports may also be used for billing purposes. Information includes date and time fax transmitted or received and recipient/sender fax number. (Minimum retention: (a) If used for billing, retain 3 years (b) If not used for billing, destroy).

(9) **Index/Finding Aid Records** Records created to facilitate the location and retrieval of information, files and physical objects. (Minimum retention: Until superseded or obsolete).

(10) **Internal Audit Records** Records document the examination of the city's fiscal condition, internal control, and compliance policies and procedures. Records may also document performance or other financially related audits by city or contracted auditors. Records may include audit reports, supporting documentation, comments, and correspondence. (Minimum retention: 10 years).

(11) **Key and Keycard Records\*** Records document the issuance of keys and keycards to agency staff to enable access to agency buildings and sites. Records may include but are not limited to key inventories, key issue forms, key replacement records, and key disposal records. (Minimum retention: 2 years after key is turned in).

(12) **Mailing Lists** Lists compiled to facilitate billing, community outreach, and other functions in the city. Information usually includes name of individual or group, address, name and title of contact person, phone number, comments, and similar data. (Minimum retention: Until superseded or obsolete).

(13) **Meeting Records**, Board, Commission, and Committee\* Records document the proceedings of city boards, commissions, task forces, committees, advisory councils, and other similar groups, as described in Oregon's Public Meetings Law (ORS 192.610 to 192.710). Records may include minutes, agendas, exhibits, resolutions, staff reports, indexes, petitions, audio or visual recordings, correspondence, and related documentation. (Minimum retention: (a) Minutes\* (except executive session minutes), agendas, resolutions, indexes, and exhibits (not retained permanently elsewhere in city records) permanently (b) Executive session minutes, retain 10 years (c) Audio or visual recordings 1 year after minutes prepared and approved (d) Other records and exhibits not pertinent to minutes, retain 5 years).

(14) **Meeting Records**, Governing Body\* Records document the proceedings of any regularly scheduled, special, executive session, or emergency meeting of any governing body, as described in Oregon's Public Meetings Law (ORS 192.610 to 192.710) that is under city jurisdiction. These typically consist of boards, commissions, advisory councils, task forces, and similar groups. Records may include minutes, agendas, exhibits, resolutions, staff reports, indexes, petitions, tape recordings, and related documentation and correspondence. For further description of several specific examples of meeting records, refer to the subject index. SEE ALSO Meeting Records, Staff; and Meeting Records, Board, Commission, and Committee in this section. (Minimum retention: (a) Minutes\* (except executive session minutes), agendas, resolutions, indexes, and exhibits (not

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retained permanently elsewhere in city records) permanently (b) Executive session minutes 10 years (c) Audio or visual recordings, retain 1 year after minutes prepared and approved (d) Other records and exhibits not pertinent to minutes, retain 5 years).

(15) **Meeting Records**, Staff Records document meetings within city government, which are not subject to Oregon's Public Meetings Law (ORS 192.610 to 192.710). These routine staff meetings deal with tasks and actions within existing policies and procedures. Records may include minutes, notes, reports, and related items. Some records may merit inclusion in other record series with longer minimum retention periods if the subject matter of the meeting adds significant information to that series. (Minimum retention: 2 years).

(16) **Mitigation Program Records\*** Records document the establishment and maintenance of the city mitigation program, plans, and procedures. Records may include mitigation plans and strategies, policies, procedures, seismic surveys and structural upgrade records of city facilities, project reports, hazard mitigation grant records, and related documentation which may include capital improvement records, new and revised building codes, and zoning ordinances. SEE ALSO the Risk Management section. (Minimum retention: (a) Adopted plans,\* retain permanently (b) Other records, retain for the life of the structure).

(17) **News Releases Records** document the release of prepared statements, announcements, news conference transcripts, and similar records issued to the news media by the city. Subjects include the adoption of new city programs, termination of old programs, policy shifts, changes in the status of elected officials or senior administrative personnel, and others. Also may include news releases announcing routine events or actions carried out within the scope of existing city policies. Some releases may merit inclusion in applicable related record series (e.g., Incident Case Files, Fire Investigation Records, etc.). (Minimum retention: (a) Policy and historic news releases, retain permanently (b) Routine news releases, retain 2 years).

(18) **Notary Public Log Book Records** document the notarial transactions completed by a notary public employed by the city. Cities may retain log books by agreement with the notary public after their separation from city employment. Cities retaining notary public log books without notary agreements should consult their city attorney and/or the Secretary of State, Corporation Division for retention instruction. (Minimum retention: 7 years after date of commission expiration).

(19) **Organizational Records** Records document the arrangement and administrative structure of the city government. May include charts, statements, studies, and similar records. Includes studies to determine the merit and feasibility of reorganization plans as well as other major studies related to the city's administrative hierarchy. (Minimum retention: Permanent).

(20) **Permit and License Records**, City Issued\* Records document city review, background investigations, recommendations and other actions related to permits and licenses issued for various activities within the city. Subjects may include but are not limited to business, tree removal, temporary signs, taxi cab drivers, dances, parades, rocket launching, second hand dealers, alarm system dealers, keeping livestock in the city, and solicitors. Usually includes applications, background investigation reports, permits, licenses, and related records. This record series does not apply to several types of permit records related to construction, certain public works functions, and others. SEE ALSO the Building Permits in the Building section; Explosives Storage and Use Permits in the Fire and Emergency Medical Services section; Right-of-Way Permit Records in the Public Works-Engineering section; Industrial Pretreatment Permits in the Public Works-Wastewater Treatment section; and the Financial sections. (Minimum retention: (a) Fee permits or license records, retain 3 years after expiration, revocation, or denial (b) Free permits or license records, retain 2 years after expiration, revocation, or denial).

(21) **Postal Records** Records document transactions with the U.S. Postal Service and private carriers. Includes postage meter records, receipts for registered and certified mail, insured mail, special delivery receipts and forms, loss reports, and related items. (Minimum retention: 3 years).

(22) **Professional Membership Records** Records document institutional or agency-paid individual memberships and activities in professional organizations. Minimum retention: 3 years).

(23) **Public Notice Records\*** Records document compliance with laws requiring public notice of city government activities. Subjects include assessments, elections, land use changes, public meetings and hearings, sale of property, and others. Records include public or legal notices, certificates, affidavits of publication, and similar documents. SEE ALSO Competitive Bid Records in the Financial – General section for public notices related to bid openings and awards. (Minimum retention: 3 years).

(24) **Publications Records** document the published records produced by or for the city or any of its departments or programs and made available to the public. Includes newsletters, pamphlets, brochures, leaflets, reports, studies, proposals, and similar published records. Does not include publi-

cations received from federal, state, private or other sources -- these publications and extra copies of city-produced publications should be retained as needed. (Minimum retention: (a) Brochures, pamphlets, and leaflets, retain until superseded or obsolete (b) One copy of all others, retain permanently).

(25) **Requests and Complaints Records** document complaints or requests concerning a variety of city responsibilities. Information often includes name, phone number, and address of person making request or complaint, narration of request or complaint, name of person responding to request or complaint, dates of related activities, and other data. SEE ALSO Equal Employment Opportunity Complaint Records, and Grievance and Complaint Records in the Personnel section; Water Quality Complaint Records in the Public Works – Water Treatment section; and Incident Case Files, which contain law enforcement complaints, in the Police section. SEE ALSO Correspondence, General in this section for routine requests for information or publications, and Liability Claims Records in the Risk Management section. (Minimum retention: 2 years after last action).

(26) **Routing and Job Control Records** Records used to control the routine flow of documents and other items and actions in and between offices in the city. Includes routing slips, job control records, status cards, receipts for records charged-out, batch slips, and similar records. (Minimum retention: 1 year).

(27) **Scrapbooks Books** document a chronological, historical event or similar record of the city. May contain photographs, newspaper or magazine clippings, commentaries, and other items pertaining to the activities, actions, and reactions of the city officials, personnel, and citizens. Scrapbooks vary greatly in their content and value. Some may have historic value. For appraisal assistance, contact the Oregon State Archives. (Minimum retention: Retain as needed).

(28) **Security Records Records** document security provided for agency buildings and grounds. Records include surveillance records, security logs, sign-in sheets, security reports, incident reports, and related records. Minimum retention: 2 years

(29) **Seminar and Conference Records**, City-Sponsored Records document the design and implementation of city-sponsored seminars, conferences, workshops, conventions, and similar gatherings. Often includes class descriptions, instructional materials, course outlines, enrollment and attendance records, reports, speeches, planning documentation, and related records. For records documenting registration billings and related fiscal actions, see the Financial – General section. (Minimum retention: (a) Significant program and fee records, retain 3 years (b) Class enrollment and attendance records, retain 2 years (c) Other records, retain 1 year).

(30) **Seminar and Conference Records**, Non-City Sponsored Records document activities, seminars, conferences, workshops, conventions, and similar gatherings not sponsored by the city but attended by city officials or personnel. May include staff reports, instructional materials, recommendations, related correspondence and memoranda, and similar records. (Minimum retention: 2 years).

(31) **Special Event and Celebration Records** Records document city-sponsored celebrations of special and historic occasions such as pioneer days, centennials, and similar events. Provides a record of planning and promotional efforts, public attendance and response, major speeches and dedications, and other aspects of the celebration. These records may include studies, publications, photographs, attendance summaries, final reports, and other documents. Records may also include routine documentation related to implementing the promotion and organization of the event. These often include lists, rosters, correspondence, volunteer information, and related records. SEE ALSO Special Event Records, Traffic in the Public Works – Traffic Engineering section for related records. (Minimum retention: (a) Records documenting significant aspects of the event, retain permanently (b) Other records, retain 2 years after event).

(32) **Surveys, Polls, and Questionnaires Records** document the measurement of public opinion by or for the city related to various issues, actions, and concerns. May include surveys, polls, questionnaires, summaries, abstracts and related records. Examples of summaries include studies which incorporate the significant results of public opinion surveys, abstracts of questionnaires designed to determine the skills and interests of citizens volunteering for city service, and other records which distill survey data into summary form. (Minimum retention: (a) Summary reports and abstracts, retain 3 years (b) All other records, retain until summary report is completed or 3 years, whichever is sooner).

(33) **Technical Manuals, Specifications, and Warranties\*** Owners manuals and warranties for city-owned vehicles and equipment. Manuals often include specifications, operating instructions, and safety information. Warranties include terms of coverage for repair or replacement of equipment. (Minimum retention: (a) Manuals, retain until disposition of vehicle or equipment (b) Warranties, retain until expiration).

(34) **Work Orders Records** document requests and authorizations for needed services and repairs to city property and equipment. May include copy center work orders, printing orders, telephone service and

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installation requests, repair authorizations, and similar records. (Minimum retention: (a) Work completed by city personnel, retain 1 year (b) Work completed by outside vendors, retain 3 years).

(35) **Work Schedules and Assignments Records** document the scheduling and assigning of shifts, tasks, projects, or other work to city employees. Useful for budget and personnel planning, review and other purposes. May include calendars, schedules, lists, charts, rosters, employee time surveys, and related records. Also includes rosters and similar records documenting vacation schedules. SEE ALSO the Personnel section for related records. (Minimum retention: 2 years).

(36) **Vehicle Maintenance and Repair Records** document the maintenance and repair history of all city-owned vehicles. Records may include reports, summaries, and similar records usually compiled from daily work records on a monthly or quarterly basis. Information often includes a description of work completed, parts and supplies used, date of service, date purchased, price, vehicle number, make and model, and other data. SEE ALSO Contracts and Agreements in Recorder — General section for contract records related to private companies maintaining and repairing city-owned vehicles. SEE ALSO Daily Work Records in the Public Works — Operations and Maintenance section, and Work Orders in this section. (Minimum retention: 2 years after disposition of vehicle).

(37) **Visitor Logs Records** used to track visitors to city buildings. Records may include visitors' names, visitor badges issued, and entrance and exit times. (Minimum retention: 1 year).

(38) **Year 2000 (Y2K) Planning Records** document the planning and development of city Y2K Contingency Plans. Records may include but are not limited to meeting minutes, correspondence, draft plans, work notes, plan test results, and final plan. Information includes type of systems vulnerable to Y2K, level of priority, and party responsible for system solution or troubleshooting. (Minimum retention: Destroy).

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192.005-192.170 & 357.805-357.895

Hist.: OSA 1-1998, f. & cert. ef. 1-7-98; OSA 3-2002, f. & cert. ef. 7-2-02; OSA 2-2005, f. & cert. ef. 5-10-05; OSA 3-2008, f. & cert. ef. 12-10-08; OSA 2-2009, f. & cert. ef. 6-24-09

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**Rule Caption:** Revises a retention period in the Educational Services Districts, School Districts and Schools Records Retention Schedule.

**Adm. Order No.:** OSA 3-2009

**Filed with Sec. of State:** 6-24-2009

**Certified to be Effective:** 6-24-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 166-400-0060

**Subject:** This amendment to OAR 166-400-0060 updates and clarifies the existing relating to educational Services Districts, School District and Schools. The revision amends out dated descriptive narrative and revises retention periods to match retention periods within OAR 166-400.

**Rules Coordinator:** Julie Yamaka—(503) 378-5199

## 166-400-0060

### Student Education Records

**Note:** Inclusion of a records series in this schedule does not require the series be created. If a record is created electronically, it can be retained in electronic format only if the retention period is 99 years or less.

(1) **Alternative School Referral Records** document referrals sent to alternative schools seeking placement of students whose public school attendance and/or disciplinary record has been unsatisfactory. Referral form indicates acceptance or non-acceptance of student in private alternative program; funding source; signatures of referring school principal and alternative program director; student name, age, date of birth, student number; and parent's name and address. Minimum retention: 3 years after school year in which records were created

(2) **Student Athletic Activity Records** document student eligibility and participation in interscholastic competitive sports and athletic activities, athletic event and team publicity, and athletic events scheduling. Records may include but are not limited to parental consent forms; Oregon School Activities Association eligibility forms and reports; and related documentation and correspondence. Minimum retention: 5 years after school year in which records were created

(3) **Attendance Records** document the attendance of students in school. Records may include but are not limited to teacher or school attendance register; classroom daily attendance sheet; weekly attendance and truancy records; excused and unexcused absence records; tardiness records; notes from parents/guardians; and related documentation. The attendance recorded on the Oregon Student Record is a summary of this information. SEE ALSO Oregon Student Record in this section. Minimum retention: 3 years after school year in which records were created

(4) **Behavioral Records, Major (Class/Group A) Records** document major student behavioral infractions which result in the identification of students for suspensions or expulsions. Records may include but are not limited to psychological tests; personality tests; group or individual intelligence tests; individual education programs; physician statements; state or local government agency reports; and related correspondence and documentation. Minimum retention: Until student turns 21

(5) **Behavioral Records, Minor (Class/Group B) Records** document minor student behavioral infractions which do not result in the identification of a student for suspension, expulsion, or special education services. Records may include but are not limited to minor behavioral referrals; records of conversations; parent notes regarding student behavior; written behavioral agreements; detention records; bus citations; functional behavior assessments; and related correspondence and documentation. Minimum retention: Until end of school year

(6) **Child Abuse Reports Records** document suspected child abuse reported by school staff or faculty. Records may include but are not limited to notes and observations of the child, record of contact with the State Office for Services to Children and Families or law enforcement agency, and related documentation. Minimum retention: 3 years after school year in which records were created

(7) **Child Care Facility Residency Records** document students who live or have lived in childcare facilities, which are licensed to provide care for five or more children. Records may include but are not limited to reports filed semi-annually with the Oregon Department of Education. Minimum retention: 3 years after school year in which records were created

(8) **Certificate of Advanced Mastery (CAM) Records** document student progress to fulfilling the State requirements for awarding of a CAM certification. Records may include but are not limited to planning records, test results, work samples, and the CAM award. Minimum retention: Until student reaches age 21 or graduates, which ever is longer

(9) **Certificate of Initial Mastery (CIM) Records** document student progress to fulfilling the State requirements for awarding of a CIM certification. Records may include but are not limited to planning records, test results, and the CIM award. Minimum retention: Until student reaches age 21 or graduates, which ever is longer

(10) **Compensatory Education Programs Student Records** document the placement and participation of students in compensatory educational programs, which provide a variety of supplemental education services to children. Programs may or may not be all or partially funded from federal sources. Compensatory programs may include but are not limited to Children Living in Poverty, Migratory Children, Neglected and Delinquent Children, Bilingual Education, Native Children, Parent Involvement, and Civil Rights. Records may include but are not limited to background information, grade placement, instructional and cumulative service, student profile forms, placement evaluation forms, withdrawal records and related correspondence and documentation. Minimum retention: (a) Retain records that show compliance with all federal program requirements: 5 years after school year in which records were created (b) Retain all other records: 3 years after school year in which records were created

(11) **Compulsory Attendance Excuse Records** document the formal excuse of a student under sixteen years of age from compulsory school attendance. Records may include but are not limited to names and addresses of student and parent or guardian; reason for request; academic information; recommendations and approval of school district; and related correspondence and documentation. Minimum retention: Until student reaches age 21 or graduates, whichever is longer

(12) **Educational Programs Student Records** document the placement and participation of students in educational programs which provide a variety of education services to children. Programs may or may not be all or partially funded from federal sources. Educational programs may include but are not limited to Talented and Gifted, Alternative Learning, Early Childhood, Professional Technical Education, School-to-Work, Cooperative Work Experience, and Distance Learning. Records may include but are not limited to background information, grade placement, instructional and cumulative service, student profile forms, placement evaluation forms, and related correspondence and documentation. Minimum retention: (a) Records that show compliance with all federal program requirements: 5 years after school year in which records were created (b) Other records: 3 years after school year in which records were created

(13) **Grade Records** document student progress and grades awarded by teachers, and serve as the basis for the student's official academic record. Records may include test, assignment, paper, and homework scores; and final grades for students. Records may include but are not limited to teacher grade books; grade confirmation reports; grade change records; final grade rosters; and related documentation. SEE ALSO Report Cards in this section. Minimum retention: 6 years after school year in which records were created



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(14) **Grade Reports, Administrative Records** document grades received by students in a variety of reports organized by school, class, special program, or other grouping which are used by staff and faculty. Records may include but are not limited to administrative reports, counselors' reports, teachers' reports, grade point average reports, failure reports, honor roll reports, supplemental grade reports, class lists, and other manual or computer produced reports. Minimum retention: 3 years after school year in which records were created

(15) **Grievance Records** Records document grievances or complaints brought forward by students against the school, district, or ESD concerning student conduct and violations of student rights and responsibilities. Records may include but are not limited to notices of grievance; written description of the complaint; informal discussion notes; formal hearing notes (including audio tapes); summary of interviews with witnesses; final summary statements; resolution of grievance; appeals documentation; and related documentation and correspondence. Minimum retention: 3 years after resolution

(16) **Education Counseling Records** Records document the advice, assistance, evaluation, and educational planning provided for individual students by school guidance counselors. Records may include but are not limited to school performance and attitude; educational planning records; post-high school plans and career goals; college and scholarship applications records; letters of recommendation; list of honors and activities; information necessary for referral to social service agencies; correspondence; and related documentation. Minimum retention: 3 years after school year in which records were created

(17) **High School Dual Program Student Records** Records document student participation in programs between community colleges and high schools which offer professional, technical, and other college courses to high school students for college credit. Records may include but are not limited to program approval records; application forms; course descriptions; examinations; competency evaluations and profiles; transmittal forms; registration forms; and related documentation and correspondence. Minimum retention: 3 years after school year in which records were created

(18) **Home Schooling Records** Records document the basic educational career of a student being educated in a home school program. Records may include but are not limited to notification form or letter of intent to educate student at home; testing information; test results; census reports to the Oregon Department of Education; non-compliance notices; and related correspondence and documentation. SEE ALSO Oregon Student Record in this section. Minimum retention: 3 years after school year in which records were created

(19) **Inter-District Transfer Agreement Records** Records document the application process for allowing a non-resident student to attend school out of district through an inter-district transfer agreement. Records may include but are not limited to procedures, administrative guidelines, inter-district transfer agreements, certificates of residency, and related correspondence and documentation. Minimum retention: 6 years after expiration

(20) **Intervention Programs Student Records** Records document the assessment of students considered for referral to district-approved supplemental intervention programs and to determine appropriate follow-up actions. Programs may or may not be all or partially funded from federal sources. Programs may include but are not limited to Teen Parent, Alcohol and Drug Prevention, and Violence Prevention and Intervention. Records may include but are not limited to referrals, reports by assessment providers, consent forms, treatment and other reports, program class and support group attendance records, behavioral/discipline records, and related documentation and correspondence. Minimum retention: (a) Retain records that show compliance with all federal program requirements: 5 years after school year in which records were created (b) Retain all other records: 3 years after school year in which records were created

(21) **Non-Resident Student Records** Records document attendance of non-resident students attending district-financed programs; non-resident dependent children; and other non-resident students for whom the district does not pay tuition. Records are used to report attendance to the Oregon Department of Education and to document reimbursement claims from the Oregon Basic School Support Fund. Records may include but are not limited to attendance reports; basic school support fund reports; and related documentation. Minimum retention: 3 years after school year in which records were created

(22) **Parent-Teacher Conference Records** Records document a teacher's report to parents or guardians of student's progress prior to end of grading period and may indicate problem areas or areas in which student is excelling. Minimum retention: 3 years after school year in which records were created

(23) **Parental/Custodial Delegation Records** Records document who has parental or custodial responsibility for a student. Records may include but are not limited to specification of rights or abridgment of rights for non-custodial parents; restraining orders and other court documents;

informal documents signed by natural parent(s); and related correspondence and documentation. Minimum retention: Until student reaches age 21 or graduates, whichever is longer

(24) **Personal/Locker Search Records** Records document searches of a student or student's locker. Records include student name, what was searched, when, what was found, and what report was made. Minimum retention: 3 years after school year in which records were created

(25) **Psychological Guidance and Counseling Records** Records document student psychological health care responsibilities and activities performed by school or district health professionals or non-health staff. Records that are made or maintained separately and solely by a licensed health care professional who is not employed by the educational agency or institution, and are not used for education purposes of planning, are excluded from educational record provisions. See Oregon Department of Education student health record policies for further clarification. Minimum retention: Until student turns 21 or 5 years after last action

(26) **Registration Records** Records document registration or enrollment of students in elementary, middle, and high school. Records may include but are not limited to enrollment applications registration forms completed annually by the parent or guardian for each student at the time of admittance to school. Information contained in the records generally include student name, address, date and place of birth; parent or guardian name and address; student demographic information such as race and language spoken at home; authorization for school to act in behalf of parent or guardian in case of emergency; class scheduling data; student assignments, such as lockers, counselors, and buses; and related correspondence and documentation. Registration information may be used to create student transcripts, attendance records, and to verify or determine residency status. Minimum retention: (a) Retain completed registrations 3 years after school year in which records were created (b) Retain incomplete/withdrawn registration records 3 years after school year in which records were created

(27) **Report Cards Records** document the periodic report by a school about a student's social, emotional, and physical progress. Information includes but is not limited to full legal name of student; teacher's name; name and address of school; indication of attendance during reporting period; grades; and other related information. This information must be recorded on the Oregon Student Record by the beginning of the next school year. SEE ALSO Grade Records and Oregon Student Record in this section. Minimum retention: (a) If information has been recorded on Oregon Student Record: 6 years after school year in which records were created (b) If information has not been recorded on Oregon Student Record: 75 years

(28) **Special Education Student Records** Records document students participating in special education programs and early intervention special education services. Records may include speech/hearing, academic, motor, occupational and/or physical therapy, vision/hearing, interdisciplinary team, and classroom observation reports; records relating to student behavior including psychological and social work reports; assessments obtained through other agencies; contact sheets; severity rating scales; test result records; physician's statements; parental consent records; educational program meeting records; request for hearing records; eligibility statements; individualized education plans (IEP); individualized family service plans (IFSP); and related correspondence and documentation. Minimum retention: (a) Records documenting speech pathology and physical therapy services: Until student reaches age 21 or 5 years after last seen, whichever is longer (b) ESD copies, if program at district level: Transfer records to home district after end of student participation (c) Readable photocopies of records necessary to document compliance with State and Federal audits retained by the former educational agency or institution when a student transfers out of district: 5 years after end of school year in which original record was created

(29) **Student Health Records** Records document student health care responsibilities and activities performed by school or district health professionals or non-health staff. These records are maintained by the school nurse or another individual designated by the district to maintain confidential health information. Records may include but are not limited to medication administration records; records of nursing assessment and nursing care given in the school setting; School Health Management Plans prepared by the nurse for students with special health needs, medical records from outside health care providers and health care agencies; and psychological diagnostic test reports. Health information provided to Special Education for determining eligibility and IEP activity is maintained in the Special Education record and forwarded upon transfer of the student record. School nurse records are medical records subject to issues of confidentiality and exemption from disclosure per ORS 192.496. Health record information is protected and should be treated as other student records. Records that are made or maintained separately and solely by a licensed health care professional who is not employed by the educational agency or institution, and are not used for education purposes of planning, are excluded from educational record provisions. See Oregon Department of Education student health

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record policies for further clarification. SEE ALSO Student Health Screening Records and Student Immunization Records in this section. Minimum retention: Until student reaches age 21 or graduates, whichever is longer

(30) **Student Health Screening Records** Records document the health screening status of students and mandated certifications of health. Required health screening records include vision and hearing screening results; Certificate of Immunization Status; and Tuberculosis (TB) Clearance Certificate (if required by law according to the student's birth country). Records may also include but are not limited to communications related to health and safety and directed to the school from the parent/guardian or health care provider regarding the student's attendance, participation, or activities; communications which are directed to the school by health care providers; and documentation of first aid given, and instructions sent to parents/guardians regarding these screening and first aid events. These records are part of the Student Education Record and are transferred if the student transfers to a new district. See Oregon Department of Education student health record policies for further clarification. SEE ALSO Student Health Records and Student Immunization Records in this section. Minimum retention: Until student reaches age 21 or graduates, whichever is longer

(31) **Student Immunization Records** Records document the immunization status of an individual student. Records include but are not limited to the Certificate of Immunization Status (CIS), which includes student identification information, vaccine history, and medical and religious exemptions, and records tracking susceptible for those students not yet completely immunized. Records must be retained as part of the Student Health Screening Record and are transferred if the student transfers to a new district. SEE ALSO Student Health Screening Records and Student Health Records in this section, and Immunization Records, Administrative in the Administrative Records section. Minimum retention: (a) Retain certificate of Immunization Status (CIS): Until student reaches age 21 or graduates whichever is longer (b) Retain immunization Status Records – Susceptible (Tracking Cards): Until student attendance ends

(32) **Oregon Student Record** Records document a core set of information about an individual student (including a home-schooled student) and his/her educational career, birth through age 21. Records include name and address of the educational agency or institution; full legal name of the student; student's birth date and place of birth; name of parents/guardians; date of entry into the school; name of school previously attended; subjects taken; marks received; credits earned; attendance; date of withdrawal from school; social security number (as provided on a voluntary basis by parent or eligible student); and such additional information as the educational agency or institution may prescribe. Minimum retention: (a) Retain original: 75 years (b) Retain readable photocopy retained by the former educational agency or institution when a student transfers out of district: 1 year

(33) **Transfer Application Records** Records document the authorization for transfer of students between schools within the district. Records may include but are not limited to applications for transfer which generally contain name and grade of student; reasons for transfer request; name of present school; name of school to which transfer is requested; authorizing signatures; and related correspondence and documentation. Minimum retention: 3 years after school year in which records were created

(34) **Truancy Records** Records document non-attendance or truancy of students in elementary, middle, or high schools. Records may include but are not limited to notices of non-attendance or truancy; staff reports; investigations; hearing records; suspension notifications; and related correspondence and documentation. Minimum retention: 3 years after school year in which records were created.

(35) **Tutoring Records** Records document tutoring services provided to students. Records may include but are not limited to registration records, tutor training records, tutor personnel records, tutor class records, tutorial hours, and related documentation. Minimum retention: 3 years after school year in which records were created

(36) **Withdrawal Records** Records document withdrawal from school by students between the ages of sixteen and eighteen by the mutual consent of parent or guardian and the school administration. Records may include but are not limited to withdrawal agreements which generally contain name and address of student and family; reason for request; student agreement not to loiter on school premises; agreement by staff to assist student with educational planning; and related correspondence and documentation. Records may also include withdrawal slips which assess student status at time of withdrawal and may include assessment of fees paid or refunded; status of textbooks, library materials, locks, and other materials used by the student; grades; attendance; and related documentation. Minimum retention: 3 years after school year in which records were created

Stat. Auth.: ORS 192 & 357, Other Auth. Code of Federal Regulations Title 34  
Stats. Implemented: ORS 192 & 357  
Hist.: ORS 6-1997, f. & cert. ef. 4-22-97; Renumbered from 166-414-0010, OSA 1-2006, f. & cert. ef. 4-17-06; OSA 2-2006, f. & cert. ef. 7-26-06; OSA 3-2009, f. & cert. ef. 6-24-09

**Rule Caption:** Revisions to clarify and update Oregon university System General records Retention Schedule.

**Adm. Order No.:** OSA 4-2009

**Filed with Sec. of State:** 6-29-2009

**Certified to be Effective:** 6-29-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 166-475-0010, 166-475-0015, 166-475-0020, 166-475-0025, 166-475-0030, 166-475-0035, 166-475-0040, 166-475-0045, 166-475-0050, 166-475-0055, 166-475-0060, 166-475-0065, 166-475-0070, 166-475-0075, 166-475-0080, 166-475-0085, 166-475-0090, 166-475-0095, 166-475-0100, 166-475-0105, 166-475-0110

**Subject:** Changes to the division, OAR 166-475, update and revise existing rules relation to the retention of records generated by the Oregon University System.

**Rules Coordinator:** Julie Yamaka—(503) 378-5199

## 166-475-0010

### Administrative Records

(1) **Administrative Reports Records** document the annual activity of the institution and its subdivisions. This disposition includes reports prepared for OUS by the president of the institution. Final annual reports may be printed and bound or they may be less formal unpublished documents prepared for limited distribution. Report sections may include but are not limited to administrative activities; goals and objectives achieved; fiscal status; project work performed; personnel activity and accomplishments; facility changes; and related sections. This series may include but is not limited to periodic statistical reports; summarized statistical reports; copies of reports from other units; other working papers; final annual reports; and related documentation and correspondence. **(Retention:** (a) Permanent for final annual reports and periodic and summary statistical reports not reflected in the final annual report (b) Until superseded or obsolete for all other records, destroy)

(2) **Administrative Rules Records** Records document reviews of and changes to the institution's Administrative Rules and the annual preparation and authorization of the institution's administrative fees. Records may include but are not limited to notices of rule making with hearing notices which are published in the Oregon Bulletin; documentation of rule change hearings which may include notes, transcriptions, summaries, and tapes; reports to initiators of changes regarding outcome; final rules; Reports of Action to the State Administrative Rule Section including Certificates and Orders for Filing Permanent Administrative Rules with the Secretary of State; Notices of Proposed Adoption including statements on statutory authority, need/principle, documents relied upon, and statement of fiscal impact; lists of proposed fee schedules; reviewers' comments; administrative review reports; meeting notes from the Secretary of State Legislative Council about OAR review meetings; check-off lists; text of old rule with strike outs and changes; indices to OAR revisions; Dept. of Justice memos; and related correspondence. The Oregon Secretary of State holds statewide record copy. **(Retention:** 10 years after repeal of the rule, destroy)

(3) **Advisory Board Records** Records document the activities of boards and councils that function in an advisory capacity. Boards and councils may have as their charge highly specific or broad areas of concern and include members from outside the institution. This series may include but is not limited to meeting minutes; agendas; reports; notes; working papers; audio recordings; transcriptions; and related documentation and correspondence. **(Retention:** (a) Permanent for minutes, agendas, reports, and correspondence (b) 3 years for all other records, destroy)

(4) **Agency Relations Records** Records document the institutional interactions with local, state, national, and international government agencies, educational institutions, businesses and groups to gain their assistance with the development and coordination of institution research and instructional programs. This series may include but is not limited to reports; copies of publications; minutes; background information; and related documentation and correspondence. **(Retention:** 6 years, destroy)

(5) **Association and Organization Advisory Records** Records document the relationship and participation of institution units in professional and educational associations and other organizations. The unit's role may be one of membership on the advisory or administrative board, participation in a task force or subcommittee, or one of membership in consortia. This series may include but is not limited to: promotional information; rules and regulations; reports; proposals and planning records; workshop and conference records; surveys and questionnaires; minutes; and related documentation and correspondence. This series does not include individual faculty or staff membership information. **(Retention:** 3 years, destroy)

(6) **Attorney General Opinions Records** document responses of the State Attorney General's Office to legal questions posed by the institution's

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legal advisor and administrative officers which may have an impact on the institution's operations and policy. This series may include but is not limited to opinions and related documentation and correspondence. The State of Oregon Department of Justice (DOJ) holds statewide record copy. **(Retention:** 10 years, destroy)

(7) **Audit Records** Records document the unit's response to internal OUS and independent management, operations, and fiscal audits. This series may include but is not limited to audit reports; written responses showing how recommended changes will be implemented; and related documentation and correspondence. **(Retention:** (a) audit reports for 20 years, destroy (b) 7 years for work papers, drafts, and all other records, destroy)

(8) **Awards Records** Records document the process of selecting institutional faculty, staff, students and alumni to receive awards, and fellowships based on merit or achievement. The series may include but is not limited to applications; nomination letters; eligibility terms and selection criteria; recommendations; transcripts; letters of award notification or denial; letters accepting or declining awards; summary lists of winners; biographies; demonstration of need documentation; newspaper clippings and press releases; award history and information on funding sources; and related documentation and correspondence. **(Retention:** (a) Permanent for eligibility terms and selection criteria, award history and information on funding sources, award notifications, summary lists of winners, biographies of winners, and press releases (b) 1 year for all other records, destroy)

(9) **Committee Records** Records document the activities of standing and ad hoc committees and councils made up of members from a variety of units. The committees are charged with formulating and recommending institutional policies and procedures, establishing standards and requirements, performing an advisory function, or reviewing petitions, appeals, and deviations from policy. Types of committees include administrative committees (those appointed by an administrator) and faculty senate committees (those created by the faculty senate's executive committee). They may function as steering committees, activities committees, standards committees, planning committees, academic committees, awards committees, councils, etc. Committees may be chaired by the director of a specific unit or rotate to different chairs on a regular basis. This series may include but is not limited to agendas; meeting minutes; reports; notes; working papers; and related documentation and correspondence. **(Retention:** (a) Permanent for agendas, minutes, reports, and correspondence (b) 10 years for all other records of Faculty Senate Committees, destroy (c) 2 years for all other records of other committees, destroy)

(10) **Cooperative Program Records** Records document the institution's participation in cooperative and shared educational or research programs. Such programs may share research facilities and resources or instructional programs such as programs permitting student matriculation at member institutions. This series may include but is not limited to information on requirements and application procedures; applications and eligibility certificates; committee minutes; meeting agendas; working papers; memos of interpretation and understanding; fiscal records; and related documentation and correspondence. **(Retention:** (a) Permanent for information on requirements and application procedures, committee minutes, meeting agendas, and memos of interpretation and understanding (b) 6 years after expiration for all other records, destroy)

(11) **Correspondence Records** that: (1) document communications created or received and filed in the course of public business; AND (2) directly relate to agency programs or administration. Records may include but are not limited to letters, memoranda, notes and electronic messages that communicate formal approvals, directions for action, information about contracts, purchases, grants, personnel, and particular projects or programs. Disposition: File with the associated program or administrative records. Retentions for program and administrative records are found either in the Oregon University System General Records Retention Schedule (OAR 166-475) or in the institution special schedules authorized by the State Archivist. Communications not meeting the above criteria do not need to be filed and should be retained as needed.

(12) **Crisis or Disaster Records** Records document the events and damages to institutional property due to storms, riots, fires, droughts, floods, and other events affecting citizens and facilities within the jurisdiction of the institution. This series may include but is not limited to diaries; logs; reports; photographs; notes which indicate or document what happened, when, and where; and related documentation and correspondence. **(Retention:** Permanent)

(13) **Daily Broadcast Logs Records** document daily broadcast activities of the institutional radio station or television channel. Records include log sheets showing time signed on and off; any delays in broadcasting; engineer's name; announcer's name; technical difficulties; and digital broadcast records. **(Retention:** 2 years, destroy)

(14) **Daily Logs Records** document the day-to-day activities of the office. This series may include but is not limited to staff member's daily schedules; daily work logs; appointment information; and desk calendars. **(Retention:** 1 year, destroy)

(15) **Data Input Forms Records** document paper forms that are used to create the same record in electronic form. This series may include service requests, such as work orders and mailing orders; surveys; instructor evaluations; tests; and other forms. This series does not include accounting system input documents and listings. **(Retention:** Until input and verified, destroy)

(16) **Election Records** Records document elections held by various faculty and staff organizations. This series may include but is not limited to ballots; tabulations; and related documentation. **(Retention:** 1 year, destroy)

(17) **Emergency Board Request Records** Records document requests made to the Legislative Emergency Board for additional funds or authority to spend funds between legislative sessions. Records may include but are not limited to requests, schedules and agendas, exhibits, organizational charts, testimony summaries, fiscal analysis, legislative progress reports, revenue projections, reclassification plans, presentation drafts, performance measures, and correspondence. The Emergency Board maintains the official copy of this information. **(Retention:** 5 years, destroy)

(18) **Faculty Senate Records** Records document the proceedings and actions of an institution's faculty senate. Discussions and actions of the faculty senate deal with such areas as curriculum, program development, promotion and tenure, and legislative relations. This series may include but is not limited to meeting notes/minutes; studies; recommendations; resolutions and enactments; reports; agendas; working papers; and related documentation and correspondence. **(Retention:** Permanent)

(19) **Freedom of Information Act (FOIA)/Public Records** Disclosure Request Records document public requests for information. Records include written correspondence inquiries from the public received by the university; written and dated responses issued by the university; notes and memoranda made in drafting responses to these inquiries; and initials of officials approving release of the information. **(Retention:** (a) approved requests 5 years, destroy. (b) denied requests 5 years after last action, destroy)

(20) **Gifts Records** Records document potential or realized private, corporate, or public agency funding to the institution, including endowments and trusts. This series may include but is not limited to award guidelines; letters and agreements of gifts; copies of bequest instruments and wills from individuals or estates; financial statements and reports, including records of fund disbursements; and related documentation and correspondence. **(Retention:** (a) Permanent for letters and agreements of gift, copies of bequest instruments and wills from individuals or estates, and related documentation and correspondence (b) 5 years for all other records, destroy)

(21) **Grievance Records** Records document grievances brought forward by faculty and staff against the institution and which are resolved without litigation. (Records of grievances that are litigated become part of the legal case file.) Grievances are brought forward through the faculty grievance procedure or collective bargaining agreement Records may include but are not limited to notices of grievance; informal discussion notes; grievance responses; formal hearing notes (including audio files); final summary statements; appeals documentation; and related documentation and correspondence. **(Retention:** 3 years after resolution, destroy)

(22) **Institutional Accreditation Records** Records document the accreditation process for the institution by the Northwest Association of Schools and Colleges (NASC). The series provides a record of materials compiled for inclusion in a packet report sent to NASC and provided to the on-site evaluators. This series may include but is not limited to self-evaluation reports; final reports sent to accreditation organization; statistical data; working papers; NASC evaluation report; and related documentation and correspondence. **(Retention:** Permanent)

(23) **Institutional Addresses and Statements Records** Records document speeches and statements written and delivered by institutional faculty and staff in connection with institutional business. This series may include but is not limited to final copies; audio or video recordings of the speech presentation; drafts; source materials; and working papers. **(Retention:** (a) 5 years for drafts, source material, and working papers, destroy (b) Permanent for all other records)

(24) **Institutional Cooperation and Relations Records** Records document the coordination and interaction between units for the cooperative administration of programs within the institution. This series is used for monitoring, planning, and coordinating research, instructional, or administrative programs of common concern to two or more institutional units. This series may include but is not limited to copies of budget reports; activity reports; proposals; planning documents; agreements and memoranda of understanding; publicity and newspaper clippings; policy statements; working papers; and related documentation and correspondence. **(Retention:** (a) Permanent for proposals, planning documents, activity reports, policy statements, and publicity (b) 6 years after expiration for all other records, destroy)



## ADMINISTRATIVE RULES

(25) **Institutional Planning Records** Records document the college or unit's role in the development of short-term or long-term plans for the institution. This series may include but is not limited to instructions from the president; provosts; and/or vice provosts explaining the nature and purpose of the requested strategic planning effort; internal planning committee materials; statements of objectives and goals as developed by college or unit chairs and administrators; proposals; strategic planning reports; surveys; activity reports; informational materials; working papers; and related documentation and correspondence. **(Retention:** (a) Permanent for final planning reports, proposals, goal and objective statements, and instructions and explanations of process (b) 20 years for internal planning committee materials, surveys, activity reports, working papers, informational materials, and correspondence, destroy)

(26) **Institutional Survey and Reporting Records** (HEGIS and IPEDS) Records document compliance with U.S. Department of Education reporting requirements by verifying figures on financial, student, institutional, and faculty salary data as reported to OUS by individual OUS institutions and reporting those findings to the U.S. Department of Education. The series may also be used to provide information to the administrators and legislators, and to create other statistical reports. Records may include HEGIS (Higher Education General Information Survey) and IPEDS (Integrated Post-Secondary Education Data System) completed forms for Salary, Tenure, and Fringe-Benefit of Full Time Instructional Faculty, Financial Statistics of Institutions of Higher Education (IPEDS-F-1), Finance FY (G50-14P-F), Salaries of Full Time Instructional Faculty (G50-14P-SA), IPEDS Total Institutional Activity (G50-14P-EA), Institutional Characteristics Form (G50-14P-IC), Enrollment in Occupationally Specific Programs (G50-14P-IF), Completions for the Year reports (program ICR), AAUP (MEA-22), Degrees and Other Formal Awards Conferred (NC form 2300-2.1A), Fall Enrollment in Institutions of Higher Education (NC form 2300-2.3A), OCCD Degrees Granted in Post-Secondary Institutions in Oregon reports, Degrees Awarded by Oregon's Degree Granting Colleges and Universities reports, AAUP summary reports, and related working papers and correspondence. **(Retention:** (a) Permanent, final reports including the HEGIS/IPEDS survey forms (b) 10 years, all other records, destroy)

(27) **Intramural Sports Program Records** Records document the planning, implementation and operation of intramural sports programs for students, faculty and staff within the institutions. Records include but are not limited to rosters, applications; enrollment records; activity records; and related correspondence **(Retention:** (a) 5 years after superseded for program records, destroy (b) 2 years for individual student records, destroy)

(28) **Lectures and Lecture Series Records** Records document the development and history of special lectures and continuing lectureships devoted to a variety of topics and disciplines sponsored by the institution. This series may include but is not limited to lecture committee notes; memoranda and planning materials; information on funding; financial support and honoraria records; patron information; programs and announcements; information on catering arrangements; news releases; recordings and transcripts; photographs; video recordings; and related documentation and correspondence. **(Retention:** (a) Permanent for lecture committee notes, memoranda and planning materials, programs and announcements, news releases, transcripts, video recordings, and photographs (b) 10 years for all other records, destroy)

(29) **Legal Case Records** Records document litigation brought against the institution. Series contains case files pertaining to Affirmative Action conflicts; salary disputes; and differences in interpretation of contract language. **(Retention:** (a) Permanent for records of cases resulting in major policy modification, pleadings, final decisions, copies of records of the courts of cases considered historical, and summary statements (b) 6 years after final decision for all other records, destroy)

(30) **Legislative Relations Records** Records document efforts to review and plan institutional positions on impacting legislative actions. This series may include but is not limited to: OUS Bill Review and Tracking forms; bill tracking reports; notes; copies of pending or approved legislation; working papers; and related documentation and correspondence. **(Retention:** 2 years, destroy)

(31) **Lobbyist Records** Records document the activities of OUS employees who engage in lobbying the state government. Records may include: Lobbyist Registration Statement forms; Lobbyist Termination forms; Lobbyist Expenditure Report forms; the Oregon Government Standards & Practices Commission's Guide to Lobbying in Oregon; lobbyist listings and salary information and related documentation. The OUS Chancellor's Office maintains the system-wide record copy. **(Retention:** 5 years after last activity, destroy)

(32) **Notary Public Records** Records documenting notary transactions completed by a notary public employed by OUS. OUS may retain log books by agreement with the notary public after their separation from OUS employment. OUS institutions retaining notary public log books without notary agreements should consult their attorney and/or the Secretary of

State, Corporation Division for Retention instruction. **(Retention:** 7 years after date of commission expiration, destroy)

(33) **OUS and OSBHE Relations Records** Records document the coordination and interaction between institutional administrative units and OUS and the OSBHE which have ultimate authority over both academic and fiscal programs. This series may include but is not limited to minutes; agendas; budget reports; dockets; notes; activity reports; proposals; fee booklets; newsletters; memos; and related documentation and correspondence. **(Retention:** (a) Permanent for minutes and agendas; (b) 1 year for notes, memos, and correspondence, destroy (c) Until superseded or obsolete for all other records, destroy)

(34) **Policies and Procedures Records** Records document internal or external instructions, rules, and guidelines for current agency policies and procedures. This series may include but is not limited to: mission and policy statements; planning documents outlining responsibilities and goals; organizational charts; publications preparation guidelines; emergency procedures; job descriptions; guides for office procedures which often include completed samples of all forms; handbooks; desk manuals; and related documentation and correspondence. **(Retention:** (a) Retain final policy and/or procedure permanently (b) Retain all other records 1 year after policy and/or procedure adopted, destroy)

(35) **Professional Accreditation Records** Records document the accreditation process for the colleges, units, and related programs. The series provides a record of materials compiled for inclusion in a report packet sent to the appropriate professional accreditation board for the specific program or service and usually includes statements on mission, finance, educational programs and departments/divisions make up. Most accreditation organizations produce an evaluation report based on the packet and on-site inspection which is used to determine accreditation for the units and their programs. This series may include but is not limited to self-evaluation reports; final reports sent to accreditation organization; statistical data; working papers; accreditation organization evaluation report; and related documentation and correspondence. **(Retention:** (a) Permanent for self-evaluation reports, final accreditation reports, and accreditation organization evaluation reports (b) 2 accreditation cycles for statistical reports, working papers, correspondence, and all other records, destroy)

(36) **Professional Membership Records** Records document institutional-paid individual memberships and activities in professional organizations. These records may include but are not limited to applications for membership; certification of membership; documentation of activities; and related correspondence. **(Retention:** 6 years, destroy)

(37) **Radio and Television License Records** Records document licensing of OUS campus radio stations and television channels (including distance education) with the Federal Communications Commission. Records may include FCC applications; licenses and contracts; and related correspondence. Federal regulations state that TV and radio licenses will ordinarily be renewed for 8 years unless the public interest, convenience and necessity will be served by an initial license or a renewal for a lesser term. **(Retention:** 10 years after expiration of license, destroy)

(38) **Signature Authorizations Records** document the certification of the institution's employees who are authorized to sign fiscal and contractual documents. These documents serve as an aid for management control over expenditures. This series may include but is not limited to authorization date; name; sample signature; position data; remarks; and conditions. **(Retention:** 6 years after authorization expires, destroy)

(39) **Special Activity Records** Records document the activities of an office which are performed in addition to its regular or main functions. Examples may include the completion of surveys and questionnaires, compilation of special studies for professional or academic associations, and special mailings. This series may include but is not limited to: arrangements documentation; working papers; questionnaires; survey forms; study designs; reports; and related documentation and correspondence. **(Retention:** (a) Permanent for final reports and study designs (b) 3 years for all other records, destroy)

(40) **Special Event Records** Records document the efforts of a college or unit to provide informative sessions, short-courses, workshops, training programs, excursions, and celebratory events for members of the institution and the communities it serves. This series may include but is not limited to: materials on planning and arrangements; reports; promotional and publicity materials; press releases and news clippings; photographs; video recordings; presentation materials and handouts; schedules of speakers and activities; registration and attendance lists; participant evaluations; and related documentation and correspondence. **(Retention:** (a) Permanent for planning materials, reports, promotional and publicity materials, press releases, photographs, and schedules of speakers and activities (b) 2 years for all other records, destroy)

(41) **Staff Meeting Records** Records document the meetings of the faculty and/or staff of a college, department, or office which sets policy and procedures for the unit. Participants at meetings may be composed exclusively of a mixture of faculty, staff, administrators, and managers; special-

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ized and task oriented sub-committees composed of unit personnel are also documented as part of this record series. These meetings may concern routine matters of procedure and topics such as program development, planning, administrative and personnel management, and assessments of future needs. This series may include but is not limited to meeting notes/minutes; reports; working papers; agendas; and related documentation and correspondence. **(Retention:** (a) Permanent for meeting notes/ minutes, agendas, and reports (b) 4 years for all other records, destroy)

(42) **Vehicle Use Authorization and Request Records** Records document permission for employees to use their private automobiles for official use and authorization of non-employees and students to use state-owned cars. Records may include but are not limited to private vehicle safety certification forms; private vehicle certificate lists; driver authorizations for students and non-employees; and related documentation and correspondence. **(Retention:** 1 year after superseded or obsolete, destroy)

(43) **Visiting Scholar Program Records** Records document a program which allows one or more visiting scholars to assume residence on campus for an academic year or a shorter duration. This series may include but is not limited to advertisements; applicant data; arrangements and schedules; publicity and news clippings; presentation transcripts or published works; scholars activities documentation including audio recordings; and related documentation and correspondence. **(Retention:** (a) Permanent for applicant data, publicity, presentation transcripts, and scholars activities documentation (b) 4 years for all other records, destroy)

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

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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0015

### Budget Records

(1) **Annual Budget Records** Records document the annual institutional budget provided to OUS, its planning, implementation, allocation and changes. This series includes but is not limited to: Operating Budget Expense by Categories and Functions Report; Estimated Gifts, Grants, Contracts and Clearing Account Summary Report; Student Fee Income and Application of Funds Report; Statewide Public Service Source and Application of Funds; other reports specified in yearly instructions from the Chancellor's Office; institutional budget preparation instructions; budget requests; budget status reports; budget change requests, registers and logs; budget detail reports; working papers including spread sheets, expenditure projections, salary and budget worksheets; allotment, capital outlay and equipment need reports; unit budget preparation instructions; working papers; memoranda; final summary reports and spread sheets; Budget Change Request Forms; budget change suspense records; budget change registers; authorization for budget change forms; copies of revised unit initial budgets; fund transfer notices; spread sheets; expenditure and obligation reports; allotment reports; and related documentation and correspondence. **(Retention:** (a) Permanent for Adopted Budget (b) 10 years for year end activity reports (c) 10 years for planning and preparation records (d) 4 years for change records (e) 1 year for all other activity reports, destroy)

(2) **Budget Report Records** Records used to monitor funding distribution within the university system and individual institutions. **(Retention:** (a) Permanent for OUS final adopted budget (b) 10 years for annual report "orange book", destroy (c) 4 years for summaries, destroy)

(3) **Cooperative Federal Program Budget Preparation, Projection and Allocation Records** This series is used to Records document develop, estimate, propose, and plan preliminary budget requests for cooperative federal/state programs and reflect the process by which the annual budget allotment is to be distributed to the department and its programs. This series may include but is not limited to: budget expenditure statements; General Ledger Statements of Accounts; salary work sheets; budget exhibits; project detail sheets; budget requests; OUS-Institutional Use Code budget forms (CO-119); budget change sheets; Federal Agency Annual Reports (Computerized Research Information System (CRIS) Form Ad-419); Federal Agency Status of Fund Reports; Governor's Suggestion Reports; Journal Vouchers; spread sheets; expenditure projection work papers; preliminary section budget proposals; budget development schedules; allotment reports; decision packages; spending plans; compensation plan proposals; contingency/deviation plans; various federal publications; reports; forms; and related documentation and correspondence. **(Retention:** 10 years, destroy)

(4) **Self-Sustaining Program Budget Projection and Allocation Records** Records document projecting annual budgets for units which operate on self-sustaining funds and to determine fees and fee-charging policies. This series may include but is not limited to: charts of accounts; reports of receipts and disbursements; fee schedules; financial statements; photocopies of vouchers; purchase orders; spread sheets; expenditure projection work papers; budget development schedules; decision packages; spending plans; compensation plan proposals; contingency/deviation plans;

current expenditure reports; average expenditure reports; and related documentation and correspondence. **(Retention:** 10 years, destroy)

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

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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0020

### Contracts Records

(1) **Author's and Artist's Contracts and Agreements Records** Records document the duly executed and binding contractual agreements between the institution and authors and artists concerning subjects such as royalties, pricing agreements, and copyright. Information in individual contracts or agreements may include but is not limited to terms and conditions; provisions; amendments; exhibits and addenda; and authorizing signatures. **(Retention:** (a) Permanent for authors' contracts and agreements with university presses and artists agreements (b) 6 years after expiration for all other authors' contracts and agreements, destroy)

(2) **Competitive Bid Records** Records document the evaluation and award of bids to vendors and/or agencies and provides evidence of accepted and rejected bids. Records may include but are not limited to requests for proposals, bids, and information; bid and quote lists; notices of bid opening and award; comparison summaries; spreadsheets; tabulation worksheets; bid advertising records; tally sheets; bid specifications; and vendor correspondence. **(Retention:** Retain successful bids 6 years after bid awarded or canceled, destroy (b) Retain unsuccessful bids 3 years after bid awarded, destroy)

(3) **Contracts and Agreements Records** Records document the negotiation, execution, completion, and termination of legal agreements between an agency and other parties. Records may include but are not limited to the official contract, lease, or agreement, amendments, exhibits, addenda, legal records, contract review records, and related documentation and correspondence. Records do not include property records. Note: Agencies that enter into contracts with the federal government must ensure that their contracts and agreements meet federal requirements specified in the Code of Federal Regulations. **(Retention:** (a) Retain contracts or agreements documenting building construction, alterations, or repair: 10 years after substantial completion [as defined by ORS 12.135 (3)], destroy; (b) Retain all other contracts and agreements: 6 years after expiration, destroy). **AGREEMENTS/CONTRACTS/LEASES INVOLVING EQUIPMENT ARE COVERED UNDER THE EQUIPMENT AND SUPPLIES POSITION OF THE SCHEDULES.**

(4) **Defense Base Act (DBA) Records** Records document insurance coverage for institutional employees in foreign countries who are not covered by the State Accident Insurance Fund (SAIF). These records include one year contracts with a mandated insurance carrier. This series may include but is not limited to: liability claims against the institution that are both open and completed; legal files with affidavits; accident reports; estimates for repairs; police reports; suit status reports; disbursement records; settlements; and related correspondence. **(Retention:** 10 years after all claims are settled, destroy)

(5) **Hold Harmless, Liability Waiver, and Release Records** Records document the release of the institution or administrative unit from liability related to various activities involving students, faculty, or staff. Activities may include events such as sponsored field trips and physical education classes. Records include but are not limited to hold harmless, waiver, and release forms, related documentation, and correspondence. Information includes a statement from the participant that he/she assumes personal responsibility and holds the institution or administrative unit blameless for any accident or injury that may occur while participating, information about college insurance, description of the activity, and signatures of the participant. **(Retention:** 6 years after the end of the event or activity for which the waiver was signed, destroy)

(6) **Insurance Fund Claims Records** document requests for payment of insurance claims from the Oregon Department of Administrative Services Risk Management Division. Records may include: Auto/Liability/Property Claim Reports; estimates of repairs; accident reports; police reports; and correspondence. (Department of Administrative Services Risk Management Division maintains statewide record copy). **(Retention:** 5 years after claim paid or denied, destroy)

(7) **Insurance Policy Records** Records document insurance policies written to cover all state property, automobiles, liability, and special events. Records may include but are not limited to copies of insurance policies, riders, and endorsements; records of payment; and related documentation and correspondence. **(Retention:** (a) 10 years after policy expiration for liability, motor vehicle, special event and employee group insurance policies, destroy (b) 5 years after policy expiration for state motor vehicle insurance, non-employee medical, and bonds policies, destroy (c) 2 years after policy expiration for fire, theft, or extended coverage policies, destroy (d) 1 year



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after final claim payment for any policy with an outstanding claim against it when the Retention period expires, destroy)

(8) **Intramural Sports Waivers Records** document the legally and medically informed status of students, faculty, and staff participating in intramural sports activities. This form affirms that participants have been informed that they are not covered by the institution for injury or other medical situations and have been advised to seek private insurance. **(Retention:** 3 years after the conclusion of the intramural sports season, destroy)

(9) **Real Property Records** Records document the real property acquired and sold by the institution. This series does not include leases. This series may include but is not limited to: purchase agreements; title abstracts; easement details; public hearing notices and minutes; county recorder's plat descriptions; memoranda of understanding; earnest money receipts; sales agreements; property deeds; working papers; and related documentation and correspondence. **(Retention:** 6 years after property is sold, destroy)

(10) **Student Housing Contracts Appeals Records** Records document the disposition of appeals made by residents who have been assessed the standard penalties for failing to follow the terms of their housing/food service contracts. These records consist of: students' appeals stating their reasons for seeking modification of contract terms; decisions from the director of housing, including instructions for further appeal if students have additional relevant information and desire to proceed; and related documentation and correspondence. **(Retention:** 2 years after resolution, destroy)

(11) **Student Housing Contracts Records** Records document occupancy in all institution-administered housing — residence halls, family housing, and cooperative housing. This series may include but is not limited to residence hall/cooperative house/student family housing applications and contracts; proof of admission records; and related documentation and correspondence. **(Retention:** 6 years after expiration of contract, destroy)

(12) **Trademarks Licensing Records** Records document the legal authority for non-system agencies to use the logos and other symbols constituting the registered trademarks of the institution, such as "Benny the Beaver," "Donald Duck" and the institutional seals/logos. The records consist of folders for each vendor or individual seeking legal use of institutional trademarks for any reason. This series may include but is not limited to: names and addresses of approved licensees; their annual gross dollar sales of Institutionally trademarked items; invoices showing royalties paid to the institution for use of the trademarks; licensing agreements; samples of the requesting licensees' art work; and related documentation and correspondence. **(Retention:** 6 years after expiration of licensing agreement, destroy)

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

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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0025

### Curriculum and Instruction Records

(1) **Academic Program Administrative Records** Records document the daily and routine administration of academic programs of the department or college. This series may include but is not limited to: registration reports; add-drop analyses and reports; course enrollment summaries by class; graduation summaries; majors by class level; international activities; cooperative ventures; summer term classes and enrollment reports; placement information; convenience copies of reports prepared by admissions, registrar's, budgets and planning, and other offices; memos; working papers; and related documentation and correspondence. **(Retention:** 2 years, destroy)

(2) **Book Order Records** Records document books ordered for courses taught in the department. This series may include but is not limited to the institution textbook request forms which includes authors, titles, publications, course numbers, and expected enrollment; course packets; other forms; and related documentation and correspondence. **(Retention:** 1 year, destroy)

(3) **Catalog/Bulletin Records** Records document institutional policies and procedures, program requirements, and course offerings and may also be used for constructing new courses or reconstructing old courses. Information in the individual catalogs and bulletins includes academic policies and procedures, program names and descriptions, course names and descriptions, alphanumeric course designations, credits offered per course, and related program and course information. This series may include but is not limited to: catalogs and bulletins including the general, graduate, and summer session catalog/bulletin; mock-ups of catalogs and bulletins; preparation and working papers; and related documentation and correspondence. **(Retention:** (a) Permanent for official copy of catalog and bulletins (b) 1 year for all other records, destroy)

(4) **Class Scheduling Records** Records document the formulation of class schedules by academic departments for inclusion in schedule of classes. This series may include but is not limited to: the final edition of the schedule of classes booklet; requests from departments for class offerings; deviation from schedule forms; course schedule maintenance forms; requests for class changes; working papers; and related documentation and correspondence. **(Retention:** (a) Permanent for official copy of schedule of classes (b) 1 year for all other records, destroy)

(5) **Continuing Higher Education and Summer Session Course Records** Records document course offerings and individual course contents as offered by Continuing Higher Education and Summer Session. These records include: syllabi; course descriptions; course outlines; course request proposals; enrollment reports; course summaries; request for undergraduate and graduate course and instructor approval forms; nominations to the undergraduate faculty; course announcements; handout materials; budget requests; budget status forms; vouchers; final and summary reports; and related documentation and correspondence. **(Retention:** (a) Permanent for final and summary reports (b) 4 years for all other records, destroy)

(6) **Course Records** Records document departmental course offerings and individual course contents. This series may include but is not limited to: syllabi; course descriptions; course outlines; course summaries; course requests and proposals; curriculum approval lists; lists of classes by term; bibliographies; reading lists; course announcements; handout materials; and related documentation and correspondence. **(Retention:** 3 years or until superseded or obsolete, destroy)

(7) **Course Schedule Maintenance Forms Records** document requests for changes to be made to the institutional catalog and schedule of classes. The forms include course numbers; course titles; locations; grading modes; course descriptions; designators; fees; and credit hours. **(Retention:** 2 years, destroy)

(8) **Media Equipment and Productions Records** Records document the purchase, receipt, and subsequent scheduling and distribution of media productions and/or equipment. This series may include but is not limited to: equipment requests; letters of permission to use copyrighted materials; distribution schedules; and related documentation and correspondence. **(Retention:** (a) 6 years after expiration for letters of permission, destroy (b) 4 years for all other records, destroy)

(9) **New Degree Program and Course Proposal Records** Records document the development of new departmental and interdepartmental degree programs, courses and related curricula that are currently under consideration for adoption. The series may also document requests to drop courses from the curriculum and/or to change the names of courses, the number of credits, or the prerequisite courses. This series may include but is not limited to curriculum committee meeting minutes; curriculum proposals; and related documentation and correspondence. **(Retention:** (a) Permanent for committee meeting minutes and curriculum proposals (b) 5 years for all other records, destroy)

(10) **Non-University Student Program Administration Records** Records document the administrative activities of special instructional and support programs directed to serve elementary through high school and non-institution students belonging to special, minority, or disadvantaged groups. Examples of programs to which this series applies are Science and Mathematics Investigative Learning Experiences (SMILE), Upward Bound, High School Equivalency, and other special non-institution student programs. This series may include but is not limited to policy and program planning and development documentation; evaluations of courses, support services, and instructors; program course outlines; tuition payment records; reports; statistical reports; working papers; and related documentation and correspondence. **(Retention:** (a) Permanent for policy, program planning, and development documentation and reports (b) 10 years for all other records, destroy)

(11) **Program Development and Review Records** Records document planning and discussions relating to the implementation of new undergraduate and advanced degree programs and any major reorganizations or changes to established programs. This series may include but is not limited to: final reports; working papers; letters of support; review agendas; faculty status reports; reviews of individual degree programs by campus and off-campus sources; and related documentation and correspondence. **(Retention:** (a) Permanent for final reports and reviews of individual degree programs by on and off-campus sources (b) 10 years for all other records, destroy)

(12) **Room Scheduling Records** Records document room assignments for classes offered during regular terms or during the summer session. This series may include but is not limited to room assignment lists and related documentation; class room technology requests. **(Retention:** 1 year, destroy)

(13) **Special Academic Programs Records** Records document the administrative activities of special academic programs serving and aiding institution students. Programs documented by this series range from special requirement and certification programs to programs aimed at assisting and



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encouraging target groups of institution students. Included are the international student program; National Student Exchange (NSE) program; English language programs; honors programs; minority scholars programs; minority student recruitment programs; disabled student programs; non-traditional student programs; educational opportunities programs; older than average student programs; Native American science programs; study abroad programs; and other special academic programs. This series may include but is not limited to policy and program planning and development documentation; explanatory materials on the program; notes; evaluations of courses, support services, and instructors; program course outlines; tuition payment records; program participation and aid selection records; activity accounting records; working papers; reports; and related documentation and correspondence. **(Retention:** (a) Permanent for policy and program planning and development documentation and reports (b) 10 years for all other records, destroy)

(14) **Student Handbooks Records** document the requirements, policies, and offerings of specific instructional units for use by current or potential students. This series contains information or policies on: fields of study; faculty; academic requirements; the evaluation process; and the research proposal process. **(Retention:** Permanent)

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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0030

### Equipment and Supplies Records

(1) **Equipment Inventory Records** Records document the acquisition, location, transfer, and disposition of state-owned property and equipment. This series may include but is not limited to: Equipment Inventory Lists; lost/stolen property reports; Damage or Loss of State Property Claim; equipment transfer forms and memos; and related documentation and correspondence. The series may also include biennial equipment list; returned departmental equipment inventory lists with annotations concerning resolution of problems associated with the accountability, physical condition, and physical location of specified pieces of equipment. **(Retention:** (a) Biennial inventory records: 4 years, destroy (b) transfer forms, 4 years, destroy (c) equipment lists until superseded or obsolete, destroy (d) all other records 4 years after superseded or obsolete, destroy)

(2) **Equipment Loan Agreements Records** Records document the institution's lending of equipment to borrowers conducting research, educational programs, and or other activities consistent with institution goals and missions. This series may include but is not limited to signed equipment loan agreements which outline the conditions under which the loan is made and the responsibility assumed by the borrower; and related documentation and correspondence. **(Retention:** 6 years after expiration of agreement, destroy)

(3) **Equipment Maintenance Records** Records document the operation, maintenance, service and repair of institutional equipment. Records may include: purchase orders; lease agreements; warranties; instructions and operating manuals; vendor statements; service contracts; charge call bills; fax activity reports; service logs; invoices for equipment repair; purchase request forms; and memoranda. **(Retention:** 1 year after disposition of equipment, destroy)

(4) **Equipment Rental and Loan Records** Records document the rental/loan and return of university property such as recreational equipment and lockers and is also used to determine usage trends as an aid to purchase and replacement decisions. Records may include rental agreements; loan forms; usage logs; and related correspondence. **(Retention:** 2 years after return of property, destroy)

(5) **Federal Property Records** Records document "agency-owned" (usually federal) properties loaned to the institution or agency-owned property purchased with (usually federal) non-institutional state funds for research contract use at the institution. Such property is carried on the state equipment inventory records for insurance and management purposes. This series may include but is not limited to Annual Equipment Inventory Lists; federal physical equipment inventory reports; copies of federal form DD 1419; institutional acquisition, transfer, and disposition forms; memoranda of understanding or agreements; and related documentation and correspondence. **(Retention:** (a) 6 years after expiration: memoranda of understanding and agreements, destroy (b) 3 years after final disposition of equipment or property: all other records, destroy)

(6) **Food and Alcohol Inventory Records** Records document the dollar value of food, alcohol, and other consumable stock at the end of each month for planning, ordering, and fiscal accounting purposes. This series may include but is not limited to in-house computer generated food inventory reports; alcohol inventory reports; summary reports; and other related documentation and correspondence. **(Retention:** 4 years, destroy)

(7) **Food Ordering and Delivery Records** Records document vendor deliveries, transfers of food and supplies from the housing office warehouse, updated pricing information, and other vendor information. This

series may include but is not limited to direct delivery vendor invoices; and requisition forms. **(Retention:** 4 years, destroy)

(8) **Issue Tickets Records** Records document the distribution of consumable supplies such as gasoline, oil, rock, gravel, and other supplies issued for authorized use. This series may include but is not limited to issue tickets; receipts; sign-out sheets or logs; journal vouchers; purchase authorizations; and other related documentation and correspondence. **(Retention:** 4 years, destroy)

(9) **Miscellaneous Closing of Books Reports Records** document fiscal year ending reports sent to the OUS Controller annually. This series includes but is not limited to reconciliation statements; reports on non-expendable property received; museum collections; vendors invoices; store-room physical inventories; and related documentation and correspondence. **(Retention:** 6 years, destroy)

(10) **Requisitions Records** Records document the purchase of supplies and services by the institution. This series may include but is not limited to purchase requests; State Purchase Request Forms; field purchase orders; inter-departmental requisitions for equipment, supplies, and services; and related documentation and correspondence. **(Retention:** 4 years, destroy)

(11) **Research and Teaching Drug Inventory Records** Records document the daily inventory of drugs and controlled substances held by units for clinical, instructional, and research uses. These records include daily shift inventory logs listing descriptions, quantities, and initials of pharmacists conducting the inventories. Complies with 21 CFR 1304.04(a). **(Retention:** 2 years, destroy)

(12) **Sale Inventory Records** Records document saleable items in colleges or unit's inventories. This series may include but is not limited to stock printouts; inventory reports; and related documentation and correspondence. **(Retention:** 4 years, destroy)

(13) **Shipping Lists and Packing Slips Records** document the receipt of equipment, supplies, other items and services from vendors. The series includes packing slips; shipping and container lists; and bills of lading. **(Retention:** 1 year, destroy)

(14) **Supplies Inventory Records** Records document the quantity and value of all supply items with a value of \$4999.99 or less. Supply Inventories are required by the institution on an annual basis and mandated by OUS every five years. This series may include but is not limited to a listing of institution-wide supplies inventories consolidated from each unit's submissions to the property administration office; departmental supplies inventory forms (OUS Form CO 340A); supply lists and ledgers; OUS Estimated Supplies Reports; and related reports, documentation, and correspondence. **(Retention:** 4 years after superseded or obsolete, destroy)

(15) **Surplus Property Records** Records document changes in state owned property; requests to declare items surplus, salvage, or scrap; removal and sale or disposal of excess equipment and other surplus items including proceeds from sales. Records may include but may not be limited to surplus property declaration and pick-up requests; pick-up request worksheets; State Property Disposition Requests (PDR forms); quarterly and other computer generated reports of sales to other departments, agencies, or private parties; journal vouchers; descriptive information; property sale flyers; surplus property sales inventory lists; bills of sale; cash receipts; vehicle odometer statements; and related documentation and correspondence. **(Retention:** 4 years, destroy)

(16) **Vehicle Records** Records document departmental administration of vehicles such as cars, vans, trucks, trailers, boats, tractors, and farm vehicles for accounting and insurance purposes. It may also document the service history, accumulated mileage, and disposition of each vehicle of institutionally owned vehicles, including routine preventative maintenance, mechanical repairs, and accident damage repairs. This series may include but is not limited to registrations; vehicle warranties; maintenance agreements; service contracts; vehicle inventories containing information regarding description, dollar value, and date of purchase; maintenance and repair logs; vehicle titles; gas slips; maintenance requests and work orders; repair notices and authorizations and related documentation and correspondence. **(Retention:** (a) 1 years for gas slips (b) 2 years after disposal of vehicle for all other records, destroy)

(17) **Vendor History Reports** Records document vendor data, selection, and updating pertaining to departmental and college operations. This series may include but is not limited to: reports containing vendor numbers, payee names, invoice numbers, amounts, warrant/voucher numbers, and message comments; copies of purchase orders; requisitions; packing slips; promotional and advertising materials; product specification sheets; and related documentation and correspondence. **(Retention:** (a) Until superseded or obsolete for advertising materials, destroy (b) 2 years after superseded or obsolete for all other records, destroy)

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

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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

# ADMINISTRATIVE RULES

166-475-0035

## Facilities and Property Records

(1) **Building Space Inventory and Valuation Records** Records document the buildings owned and leased by the various institutions within the Oregon University System both on and off campuses. Building Space Inventory reports are used to project institutional space needs; to identify deferred maintenance; and to provide cost recovery support documentation for major research universities receiving federal money, grants, or private gifts. The inventories are kept at the individual institutions with periodic updates being provided to the Board's Offices of Facilities Services. Records include but are not limited to computer generated reports with details by building (SP440-01), type of space (SP450-01), principal use (SP455-01), department (SP460-01), and area. Records may also include various summary reports such as Institution Summary by Building (SP445-01). All computerized reports are updated at least annually. OUS Facilities Services holds system-wide record copy of Space Inventory reports. Building Valuation Reports are used for State Insurance Fund (formerly State Restoration Fund) purposes and include building name, building number, location, capitalized value, and insured value. The report is prepared annually by the Controller's Division and distributed to the institutions. All updates, additions, and deletions are prepared at the institution level and reported to the Controller's Division. **(Retention: (a) Permanent for summary space inventory reports and building valuation reports (b) 10 years for all other records, destroy)**

(2) **Buildings/Grounds Repair, Maintenance, Remodeling, and Construction Records** Records document the condition, upkeep, and routine maintenance of the institution's buildings and grounds. It also documents remodeling and construction projects with a total expenditure of less than \$100,000 over six years. This series may include but is not limited to floor plans; specifications; layouts; sketches; maintenance agreements; work logs; sign-in sheets; and related documentation and correspondence. **(Retention: (a) Permanent for floor plans, layouts, sketches, and specifications (b) 6 years for all other records, destroy)**

(3) **Capital Construction Project Records** Records document the planning, administration, and implementation of current and potential capital construction projects on campus (projects with a total expenditure of at least \$100,000 over six years); to project needs for projects; and as a reference to projects once they have been completed. The series also provides a record of the funding of current capital construction projects on campus and to prepare budgets and allocations for capital construction projects. This series may include but is not limited to project descriptions and requirements; plans; plan reviews; project schedules; contract change orders; bid documentation; contracts and agreements with architects, artists, engineers, consultants, vendors, and contractors; materials and soils reports; progress reports; insurance reports; payment schedules; summary reports; memos; final acceptance statements; architectural blueprints; sketches; aerial photographs; preliminary planning drawings; as built drawings; drawings reflecting changes to the original plans; soil testing maps; any other type of graphic representation produced relating to buildings, systems, and land. The series also includes project descriptions; budget projection and allocation records; budget authorization forms; budget change orders; final acceptance statements; and related documentation and correspondence. **(Retention: (a) Permanent for plans, plan/design exceptions, soil tests (b) 10 years for all other records, destroy)**

(4) **Chemical Application Records** Records document the application of chemicals such as pesticides, herbicides, and fertilizers to institutional property. Information usually includes date used; weather conditions; application area; chemical applied; mix ratio; and coverage rate. **(Retention: 30 years, destroy)**

(5) **Classroom and Laboratory Utilization Reports** Records document the utilization of classroom and laboratory space. This series includes preliminary and final reports which contain class number, time of the class, and the number of students in the class. **(Retention: (a) 5 years for final utilization reports, destroy (b) 2 years for preliminary utilization reports, destroy)**

(6) **Faculty and Staff Reports** Records document the number of full time equivalent (FTE) positions in instruction, research, administration, public service, fellowships, and classified staff. This series consists of forms from departments showing FTE positions (including staff identification numbers) and office space required. The summaries include department total FTE for each of the principal activity categories listed above. **(Retention: (a) Permanent for summaries (b) 5 years for all other records, destroy)**

(7) **Land Inventory Records** Records document real property owned and leased by the various institutions within the Oregon University System and lists each parcel that has been acquired through ownership or under some form of lease agreement. Records include but are not limited to Land Inventory Reports, the OUS Land Inventory manual, records pertaining to permanent land and deed filings with the state, and related documentation and correspondence. Information in the Land Inventory Reports includes

from who the land was acquired, date of acquisition, use of the land, source of revenue used to acquire, acreage, capitalized value, and where the transaction is recorded in the Board minutes. OUS Facilities Services holds system-wide record copy and annual reports are provided to the institutions. **(Retention: (a) Permanent for the OUS Land Inventory Manual, records relating to deeds, correspondence, and every fifth year of Land Inventory Reports (b) Until superseded or obsolete for all other Land Inventory Reports, destroy)**

(8) **Property Tax Exemption Claim Records** Records document claims for exemptions from institutions paying property taxes in Oregon and other states due to the educational use of the property. Exemptions are typically made on an annual basis. Records may include applications for exemption and related documentation and correspondence. **(Retention: 6 years, destroy)**

(9) **Room Change Requests Forms Records** document room assignments and room remodeling done by facilities services units. Information on the change request forms may include but is not limited to the building and room; the reason for the change; who requested the change; who approved the change; date the change was requested; source of funds; special approvals needed and date approved. **(Retention: 5 years, destroy)**

(10) **Utilities Systems Operating and Maintenance Records** Records document the operations and maintenance of institutional utilities. This series may include but is not limited to equipment operations logs; mechanical readings charts; equipment maintenance histories; and related documentation and correspondence. **(Retention: (a) 4 years after equipment is no longer in service for equipment maintenance histories, destroy (b) 10 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

166-475-0040

## Fiscal — Accounts Records

(1) **Annual Fiscal Reports** Records document annual fiscal year-end status of accounts and is used to provide the office with summary information relating to its programs which may be used for planning or review. Records include Period 14 reconciliation reports; annual operating statements; schedules of rates; and related correspondence. **(Retention: 10 years, destroy)**

(2) **Building and Equipment Reserve Schedules Records** document individual account summary and to show what the balance should be, as well as the amount of current year entries needed to bring the account up to that balance. The series also serves as backup to the general ledger entries. Information may include building or equipment value, required reserve, actual balance, deficiency, and amount to transfer in the current fiscal year. **(Retention: 6 years, destroy)**

(3) **Certificates of Participation Records** document the administration of Certificates of Participation (COP's) primarily sold to finance institutional equipment, software, hardware, and consultants' time. The series may also be used to split COP debt service amongst the institutions and make entries charging them for COP related debt service. Records may include but are not limited to Certificates of Participation, COP budget development and cash draw down records, and related executive and administrative correspondence. **(Retention: (a) Permanent, executive correspondence (b) 4 years after COP maturity, all other records, destroy)**

(4) **Chart Element Reports Records** document every fiscal FOAPAL element used by the institution which include Index, Fund, Organization, Account, Program, Activity and Location Codes. Records consist of reports generated on a particular FOAPAL element which include the element; a brief descriptive title; and effective, termination, and next change dates. **(Retention: Until superseded or obsolete, destroy)**

(5) **Chart Element Justification Records** Records document fiscal chart of accounts elements and an office's request to establish a new index or FOAPAL element, change an existing element, or terminate an existing one. Records consist of request forms which include a description of the request, the proposed FOAPAL and index elements, effective date, and signatures of requesters and authorizing officials. **(Retention: Permanent)**

(6) **Closing of the Books Records** Records document the resolution and reconciliation of accounts monitored by the institution, the OUS Budget and Fiscal Policies Office, or Controller's Office at the end of the fiscal year. Records include reconciliation statements provided by each institution to OUS Budgets and Fiscal Policies or the OUS Controller's Office concerning discrepant accounts for which they are responsible and related documentation and correspondence. **(Retention: 6 years, destroy)**

(7) **Development and Endowment Management Fee Records** Records document the revenue earned quarterly on gift accounts and fees charged by the institution's development office. Information includes dates; gift account amounts and identification numbers; earnings; department or account responsible for payment; and fee amount. **(Retention: 6 years, destroy)**

# ADMINISTRATIVE RULES

(8) **General Ledger Statements Records** document a complete monthly record of the final posting of all university financial transactions, listed by account number. It is used to prepare periodic financial statements. Records contain: the program name; account number; posting date; debit and credit amounts; new balance; and related information. This is a closed series that was discontinued when the institution adopted the Banner Financial Information System (FIS). (**Retention:** (a) 15 years for List 13, destroy (b) 5 years for Lists 1-12, destroy)

(9) **Miscellaneous Accounting Reports Records** document the production of various accounting reports made by individual offices or departments on a daily, monthly, quarterly, or annual basis. These reports provide summary information relating to the department and its programs, and may be used for planning or review. Reports include operating statements, year-end projections, reconciliations, and expenditures by facilities, accumulated hours and dollars by employee, summaries of assets and liabilities, sales, cost accounting, and income. This series does not include the year-end Closing of the Books Reports. Records may include but are not limited to working papers; drafts; final reports; and related documentation and correspondence. (**Retention:** (a) 5 years for annual reports, destroy (b) 1 year for daily, monthly, and quarterly reports and working papers, destroy)

(10) **Operating and General Ledger Reconciliation Records** document monthly reconciliations with the operating ledger or general ledger. Records consist of working papers and monthly reconciliation reports. (**Retention:** 6 years, 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0045

### Fiscal — Cash Records

(1) **Bank Advice Statement Records** document discrepancies (over or short) on bank deposits made by institutional cashiers. It is also a record of discount charges and rental charges by the bank for bank card use. Records consist of bank initiated advisories received by Business Affairs for adjustments to accounts because of bank or office clerical errors. (**Retention:** 4 years, destroy)

(2) **Cash/Deposit Match Records** document the equality or inequality of cash receipts versus bank deposits on a daily basis. Records consist of weekly reports that list the account numbers managed by the office with daily entries for cash receipts in each account and corresponding bank deposits in each account. The computer program flags those accounts where daily cash receipts do not equal bank deposits for that date and labels them "Out of Balance." (**Retention:** 4 years, destroy)

(3) **Cash Receipt Records** document transactions for cash received by the agency. Records may include cash register tapes or equivalent, copies of receipts, and batch sheets. Records include cash batch records, monthly cash reports and weekly cash summary reports. (**Retention:** Retain 6 years, destroy)

(4) **Cash Records** document cash received or disbursed by an office. It also documents all money received and deposited to departmental accounts through the cashier's daily bank deposits. Records may include but are not limited to departmental deposit slips; cash receipt stubs; validation receipts; cash register tapes; bank deposit slips; check stubs; petty cash balance sheets; check registers; Cash by Account Number reports; check images; credit card receipts; and cash register reports (**Retention:** 5 years, destroy)

(5) **Cashier's Daily Summary Records** document and summarize tellers' daily activity. Information includes amounts processed for payments; amount of checks; activity to and from the vault; beginning and ending daily cash; deposits made by other units; and cash over/short amounts. (**Retention:** 4 years, destroy)

(6) **Credit Voucher Requisition Records** document funds released to students by the cashier division of Business Affairs as authorized by other units. Records include recipient signed receipts acknowledging receipt of funds from the Cashier; check stubs; and other documents. (**Retention:** 5 years, destroy)

(7) **Log Out Records** document checks processed by the office and given to another party. The record is generated for cashier's window reference purposes. Records include photocopies of checks logged out to other departments; returned to sender; handed back to student; and copayee GSL/SLS checks in which the total check was used to pay charges or change given to student. (**Retention:** 4 years, destroy)

(8) **Safekeeping Records** document funds placed with Business Offices for safekeeping in trust and their disbursement to students or departments. Funds may be placed by associations, corporations, or parents on behalf of specified students or departments. Records may include disbursement instructions; copies or images of checks; and receipts. (**Retention:** 4 years, destroy)

(9) **Ticket Sales and Event Cash Reconciliation Records** document the printing, selling, distribution, and accounting of tickets for

university-sponsored athletic, performing arts, and other events where tickets are sold for admission. A portion of athletic event receipts is shared with visiting teams. Records may include ticket stock orders; ticket type reports; ticket purchase manifest forms; box office balance sheets; ticket printing and control records; season ticket sales lists; receipts and orders for mail, phone, or in-person purchase of tickets; ticket sales summary sheets and reports; free ticket sign-up sheets; lists and reports of free tickets distributed to patrons, contributors, and others; deposit receipts; and related documentation and correspondence. Records pertaining to athletic events are kept in compliance with NCAA and state requirements. (**Retention:** 5 years, 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0050

### Fiscal — Payables/Receivables Records

(1) **Accounts Aging Records** document a cumulative listing by accounts receivable number of all receivables on the Accounts Receivable master file in the Banner Student Information System. For each receivable, the amounts that are not yet due, currently due, and overdue are indicated by fiscal year. Records consist of account listings sorted numerically by customer showing balances. Listings are generated at the end of the fiscal year and at other times upon request. (**Retention:** (a) 10 years for year-end listing, destroy (b) 4 years for other listings, destroy)

(2) **Accounts Payable Records** document a department's expenditures and purchases. The series may also be used to research, evaluate, and monitor prior transactions and/or track the budget. Records may include but are not limited to departmental purchase orders; contract release orders; balance sheets; bills; invoices; invoice vouchers; journal voucher/entry forms; price quotes; State of Oregon "B" Purchase Orders; departmental requisitions; justifications of purchases; payment authorizations; reports of receipt of goods or services; and related documentation and correspondence. (**Retention:** 6 years, destroy)

(3) **Accounts Receivable Records** document a record of billings and collections for the office and units/programs which report to the office. It is also used to provide a record of customers owing monies and to reconcile the account. Records may include but are not limited to Account Edit sheets; classified advertisement forms; credit card payment forms; invoices; journal vouchers; receipts; returned checks; and related documentation and correspondence. (**Retention:** 6 years after collected or deemed uncollectable, destroy)

(4) **Accounts Receivable Subsidiary Records** document history of charges and payments recorded for each customer on the Banner Student Information System. Records consist of customer lists sorted by account number with charges and payments recorded for each customer in chronological sequence. (**Retention:** 6 years, destroy)

(5) **Accounts Receivable Write-off Records** document debts of Accounts Receivables written off with the approval of the Institution's business office. Records include accounts receivable invoices; write-off worksheets; and due diligence documents. (**Retention:** 6 years after write-off, destroy)

(6) **Canceled Checks Records** document redeemed checks written on university accounts. Information on each check may include check number, date, amount, endorsement, account number, validation data, and related documentation. (**Retention:** 6 years, destroy)

(7) **Check Conversion Records** document checks received from customers that are electronically deposited after being imaged and converted to an Automated Clearing House (ACH) transaction or Image Replacement Document (IRD) (**Retention:** (a) Retain original paper instrument 120 days, destroy (b) Retain ACH transaction or IRD 6 years, destroy).

(8) **Check Stubs Records** documents the issuance of checks for payment in exchange for goods and services including payroll. Records include check stubs. (**Retention:** 6 years, destroy)

(9) **Collection Records** document the office's efforts to collect unpaid accounts. Records include collection letters; notices; letters of transmittal; and bankruptcy records. (**Retention:** 6 years after account is paid in full or written off, destroy)

(10) **Credit Card Administration Records** document administration of credit cards issued to institutional staff and units. Records may include applications; master monthly billing statements; individual card holders' statements; billing summaries; reports including vendor analysis by code; number of charges and stores; use summaries; related correspondence. (**Retention:** (a) 6 years after card expiration for applications, destroy (b) 6 years for all other records, destroy)

(11) **Credit and Debit Receipts Records** document credit or debit card receipt documenting payment received by agency. Records include customer's name and account information (**Retention:** Retain 36 months after transaction, destroy).



# ADMINISTRATIVE RULES

(12) **Moving Expenses Records** Records document new employees' moving and travel expenses paid by the institution. Records may include but are not limited to requests for approval-travel and moving reimbursement of new employee forms; purchase orders; travel reimbursement requests; vendor invoices; and receipts. **(Retention: 6 years, destroy)**

(13) **Refund/Disbursements Request Records** Records document requests and disbursements made for overpayment and refunds. Records include accounting data for refunds from parking violation fines paid and successfully appealed; tuition and fee refunds when courses are dropped; refunds for event tickets, loan overpayments, change-of-residence, and canceled courses; a log of refunds and requests for reissue of lost checks. **(Retention: 6 years, destroy)**

(14) **Registration Fee Records** Records document the payment of registration fees, which are considered travel expenses. Records may include but are not limited to completed registration forms; journal vouchers; invoices; purchase orders; and wire transfer forms. **(Retention: 6 years, destroy)**

(15) **Revolving Charge Agreements Records** Records document a student's agreement with the provisions of the accounts receivable revolving account and his/her intent to attend the institution. Records include agreement forms signed by each student. **(Retention: 3 years after last enrollment and account paid in full, destroy)**

(16) **Travel Records** Records document requests for and approval of travel by employees of the institution or the agency; to monitor travel expenditures; for planning purposes; to document changes in dates of travel, changes in the name of the traveler, changes in itinerary, or changes in funding sources within an out-of-state travel authorization; and to document approval for vehicle rental. Records may include but are not limited to out-of-state travel authorization forms, travel itineraries, travel advance forms, travel reimbursement requests (employee and non-employee), receipts, approval memos, vehicle mileage reporting records, memos in place of itemized receipt, affidavits of lost receipt memos, authorizing signatures, airfare documentation and related documentation and correspondence. **(Retention: 6 years, 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0055

### Financial Aid Records

(1) **Athletic Scholarship and Grant-In-Aid Award Records** This series is used to provide athletic departments with information pertaining to player eligibility and receipt of financial aid in the form of scholarships including grant-in-aid scholarships, to monitor accounts, and to assist in complying with NCAA, NAIA and conference rules and regulations. These records include squad lists which furnish summary information; conference eligibility reports; team roster update sheets; scholarship count sheets showing who is on the schedule to receive aid; applications; nominee lists; eligibility questionnaires; eligibility reports which determine years of eligibility unused; credit voucher request sheets notes; and related documentation and correspondence. **(Retention: (a) 10 years for NCAA records, destroy (b) 5 years for all other records, destroy)**

(2) **Borrowers Loan Records** Records document and is a monitoring tool for all Perkins and National Direct Student Loans that have been canceled because of bankruptcy, death or disability, bad debts, write-offs, and assignments. This series consists of files for each borrower. This series may include but is not limited to repayment schedules; statements of rights and responsibilities; records of actions taken; and related documentation and correspondence. **(Retention: (a) 3 years after loan repayment or assignment to U.S. Department of Education, destroy (b) 3 years after debt cancellation or assignment to U.S. Department of Education for canceled loans, destroy)**

(3) **Credit Bureau Reports Records** document holders of student loans that have been reported to credit bureaus. This series contains reports which list each borrower's name; the amount past due; and related documentation. **(Retention: 2 years after collected or deemed uncollectable, destroy)**

(4) **Federal Title IV, Program Records**, Institutional Records document eligibility to participate and school's administration of Federal Title IV and programs. Records include Institutional Program Participation Agreement; Recertification; Education program eligibility; Accreditation reviews; and reports; State agency reports; Audits and program reviews; Other records, as specified in regulation, that pertain to factors of financial responsibility and standards of administrative capability; and Consortia Agreements between and amongst schools. **(Retention: (a) Agreements: 6 years after expiration, destroy (b) Records pertaining to borrower eligibility: 3 years after the end of the award year in which the student borrower last attended the institution, destroy (c) Fiscal Operations Report, Application to Participate and supporting documentation: 3 years after the end of the award year in which the FISAP is submitted, destroy (d)**

Records involved in any loan, claim, or expenditure questioned by a Title IV, HEA program audit or review, investigation, or other review: Until the resolution of that questioned loan, claim, or expenditure, or the end of the Retention period applicable to the record, whichever is longer, destroy)

(5) **FFELP and Direct Loan Records** Records relate to Federal Family Education Loan Program (FFELP and Direct Loan Programs including but not limited to Eligibility (student and/or parent); Application; Disbursement records; Promissory notes; and Student Status Confirmation Reports (SSCR). **(Retention: (a) Records relating to a student or parent borrower's eligibility: 3 years after the end of the award year in which the student borrower last attended the institution, destroy (b) Other records relating to the participation in FFEL or Direct Loan Program: 3 years after the end of the award year in which the records are submitted, destroy (c) Records involved in any loan, claim, or expenditure questioned by a Title IV, HEA program audit or review, investigation, or other review: Until the resolution of that questioned loan, claim, or expenditure; or the end of the Retention period applicable to the record, whichever is longer, destroy)**

(6) **Financial Aid Annual Reports Records** document cumulative loan activity of each fiscal year through a required year-end report made to the U. S. Department of Education. Records may include but are not limited to schedules and instructions; working papers; exhibits audit reports; findings; rebuttals; and related documentation and correspondence. **(Retention: (a) Audit reports, exhibits, findings, rebuttals: 20 years, destroy (b) Other records: 5 years after completion of audit, destroy)**

(7) **Financial Aid Transcripts Hold Records** Records document monitoring of students who have been delinquent in or in default of financial aid payments. Records include lists indicating: students' names and addresses; academic majors and standings; and account status. This is a closed series. **(Retention: 5 years, destroy)**

(8) **Fiscal Records and Reports Records** document Federal Title IV Aid transactions, including receipt, management and disbursement of funds. Records of all Title IV program transactions; Bank statements for all accounts continuing Title IV payments, cash disbursements, refunds, and repayments; General ledger (must be separate from school's other financial transactions) and related ledgers that identify each Title IV program transaction; Federal work-study payroll records; Annual Federal Fiscal Operations and Applications for Funds Report (FISAP). Records support data appearing on required reports: Federal Pell Grant Statements of Account; ED Payment Management system cash requests and quarterly or monthly reports; Title IV program reconciliation reports; Audit reports and school responses; State Grant and Scholarship award rosters and reports; Accrediting and licensing agency reports. **(Retention: 3 years after the end of the award year unless otherwise specified, destroy. FISAP exception: 3 years after the end of the award year in which the FISAP was submitted, destroy)**

(9) **Graduate Student Tuition Remission Records** Records document the remission of tuition for courses taken by eligible graduate students, such as research and/or teaching assistants. This series may include but is not limited to authorizations; reconciled lists; account summaries; and related documentation. **(Retention: 8 years, destroy)**

(10) **Loan Activity Records** Records document payments, adjustments, draw advances, address and status changes, cancellations, deferments, and postponements on borrower's accounts. **(Retention: 3 years after loan is paid, destroy)**

(11) **Minority Scholars Program (MSP) Records** Records document the application, selection, and progress of students belonging to various minority groups who apply for the OUS Minority Scholar Scholarship. This series may contain but is not limited to MSP applications; candidate selection information; academic and personal information about applicants; notifications of award; notifications of denial of award; applicants letters of decline; notification of transfer to another institution; and related documentation and correspondence. This is a closed series. **(Retention: 5 years after award notification, destroy)**

(12) **Pell Grant Reports Records** document summary of reports submitted to the Pell Grant Scholarship program on a routine basis. Reports are submitted on OMB 1840-0540 and summarize money awarded, received and disbursed, the balance remaining, and dates. **(Retention: 5 years after audit, destroy)**

(13) **Perkins Loan Program Records** Records relate to Perkins Student Loan, National Direct Student Loan, and Nursing Loan; and show each borrower's payment history (showing date and amount of each repayment) and amount of each repayment credited to principal, interest, collection costs, and penalty or late charges. Documentation of each contact with borrower or endorser in collection of overdue loan, including date, nature, result of the contact, and copies of all correspondence, collection agency reports, and litigation records. **(Retention: (a) Records relating to the administration of the loan: 3 years after the end of the award year for which aid was awarded and disbursed, destroy (b) Fiscal Operations Report, Application to Participate and supporting documentation: 3 years after the end of the award year in which the FISAP is submitted, destroy (c) Records**

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involved in any loan, claim, or expenditure questioned by a Title IV, HEA program audit or review, investigation, or other review: Until the resolution of that questioned loan, claim, or expenditure; or the end of the Retention period applicable to the record, whichever is longer, destroy)

(14) **Student Loan Cash Input Transaction Lists Records** document the repayment of student loans on a daily basis and is used to apply the loan payments to the individual student accounts. This series includes daily listings of loan payments received. **(Retention:** 4 years, destroy)

(15) **Student Financial Aid Records** Records document student eligibility common to all Federal Title IV Aid Programs. May include, but not limited to: Student Aid Report (SAR) or Institutional Student Information Report (ISIR) used to determine eligibility; documentation of need and eligibility for Title IV funds; Cost of attendance information; documents used to verify applicant data; required student certification statements and supporting documentation; documentation of all professional judgments decisions; financial aid history information for transfer students; documentation of student's satisfactory academic progress; documentation of amount, date, and basis of all refund and repayment calculations for a student (last dates of attendance, grade rosters); and documentation of outside resources. **(Retention:** (a) Records relating to a student or parent borrower's eligibility: 3 years after the end of the award year in which the student borrower last attended the institution, destroy (b) Other records relating to the participation in FFEL or Direct Loan Program: 3 years after the end of the award year in which the records are submitted, destroy (c) Fiscal Operations Report, Application to Participate and supporting documentation: three years after the end of the award year in which the FISAP is submitted, destroy (d) Records involved in any loan, claim, or expenditure questioned by a Title IV, HEA program audit or review, investigation, or other review: Until the resolution of that questioned loan, claim, or expenditure or the end of the Retention period applicable to the record, whichever is longer, destroy)

(16) **Student Loan Check Request Lists Records** document loan disbursements made to students. This series consists of quarterly lists of loan checks issued from either the Controllers Division or the institution Business Manager's Revolving Fund. This is a closed series. **(Retention:** 4 years, destroy)

(17) **Student Loan Payment Coupons Records** document payments made by holders of student loans. This series consists of payment coupons which accompany each quarterly or monthly payment made to the student loan office. **(Retention:** 4 years, destroy)

(18) **Student Promissory Notes Records** document promissory notes for student loans negotiated for the current academic year. The notes become part of the borrowers loan records at the end of the academic year. **(Retention:** 3 years after repayment, destroy)

(19) **Work Study Program Administrative Records** Records document the administration of the Federal Work Study program at the institution. Records include job descriptions; award letters; pay rate change notices and related correspondence. **(Retention:** 3 years, 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 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:** 5 years after completion of the project/contract, 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

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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 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

## 166-475-0065

### Health Services Records

(1) **Client Records** Records document provision of health-related services to clients on an outpatient basis by offices other than the student health center. Examples of types of services are speech therapy; hearing testing, and cholesterol screening. This series may include but is not limited to tests; goals and objectives; diagnostic reports; questionnaires; and related data. **(Retention:** 7 years after last service or until client reaches age 21, whichever is longer, destroy)

(2) **Communicable Disease Records** This series fulfills the public health requirement of reporting the discovery of communicable disease. This series may include but is not limited to laboratory test results; name and address of client or patient; date; and person making referral. Information is transferred to the county health department, but the log is maintained by the laboratory. **(Retention:** 5 years, destroy)

(3) **Counseling, Psychological, and Psychiatric Case Records** Records document all clients who are provided counseling, psychological, and psychiatric services by the institution's counseling center. Clinicians provide treatment concerning personal problems, academic concerns, and career concerns. The psychiatric consultant provides psychiatric care to some student clients. Records may include extensive notes made by providers concerning the assessment, diagnosis, treatment and contacts (written, telephone, or in person) with each client; referral letters; release of information agreements; letters to agencies or others concerning the clients; and related documentation. **(Retention:** 7 years after last contact, destroy)

(4) **Health History Forms Records** document a student's medical history. The series contains student medical history forms for students who have never visited an institutional student health center and therefore do not have a medical record on file. These forms are a prerequisite for enrollment at most institutions. **(Retention:** 7 years after last service, destroy)

(5) **Immunization Reporting Records** Records document compliance with Oregon State Health Division reporting requirements for immunizations given to patients. Records may include immunization log sheets; annual reports; ITARS (Immunization Tracking and Recall System) documentation and related correspondence. **(Retention:** (a) 25 years from last date of service for ITARS records, destroy (b) 10 years for immunization log sheets and annual reports, destroy (c) 7 years after last service for all other records, destroy)

(6) **Laboratory Inspection Records** Records document in-house inspection of laboratory equipment on a quarterly basis. This series may include but is not limited to a checklist of all equipment; calibrations; and conditions. **(Retention:** (a) For the life of the equipment for calibrations, destroy (b) 3 years for all other records, destroy)

(7) **Laboratory Test Requests Records** document physician orders for laboratory tests for students receiving services at the student health center. This series may include but is not limited to name of student; date; test(s) ordered; and physician's signature. **(Retention:** 2 years, destroy)

(8) **Licensure Records** Records document the professional and regulatory issuance of credentials to individuals and facilities providing services within the student health center. This series may include but is not limited to license applications; College of American Pathologists comparative test results for laboratory licensing; Oregon Pharmacy Board Retail Drug Outlet/Controlled Substance Registration (license) and inspection reports; individual employee professional licenses; and related correspondence. **(Retention:** Until superseded or obsolete, destroy)

(9) **Medical Records** Records document the medical services history provided for students treated by the student health center. This series may include but is not limited to appointment request slips; summary sheets; bacteriology test results; treatment record forms; diagnosis sheets; health history/screening sheets; initial evaluation/assessment sheets; referral sheets; health center billing statements; personal health history sheets; dental examination sheets and X-rays; laboratory test results; physical therapy notes; X-ray release forms; X-ray requisitions with narrative of radiologist; notes; memoranda; and related correspondence. **(Retention:** 7 years after last service or until client reaches age 21, whichever is longer, destroy)

(10) **Non-Student Medical Records** Records document medical services provided to non-students by the institution's student health center, such as allergy shot, vaccines, and blood pressure checks. Records include medical history forms; notations of services provided and dates; payment information; and related correspondence. **(Retention:** 7 years after last service or until client reaches age 21, whichever is longer, destroy)

(11) **Patient Logs Records** document patients who visit the student health center (both in-patients and out-patients). It may also be used to create annual census reports and 3-year census comparisons. Log information may include the date and time that the patient came in; the physician assigned; diagnosis; admission/discharge date; length of stay; and remarks. **(Retention:** 3 years, destroy)

(12) **Patient Satisfaction Surveys Records** document patient comments on services provided by the student health center and is used to plan for a change in services. The surveys may include but are not limited to rating of services; type of services rendered; statistics about the student; and possibly names and addresses. **(Retention:** 3 years, destroy)

(13) **Pharmacy Prescription Dispensation Records** Records document individual, daily summary, and annual summary record of initial drug dispensation and refills administered by the department as required by the Oregon State Pharmacy Board. This series may include but is not limited to prescription slips; in-house computer-generated Rx registers; controlled substance reports; and data base purge reports. **(Retention:** 3 years, destroy)

(14) **Practitioner Schedules Records** document the practitioners' work schedules which are used to clarify assigned responsibilities. This series includes dates and times of assignments; practitioner names; and responsibilities. **(Retention:** 2 years, destroy)

(15) **Radiographic Quality Assurance Records** Records document the setting of measurable standards and procedures for radiographic safety and professional quality by professionals on staff. This series may include but is not limited to reports by the radiographic staff; quality assurance committee notes; and staff reviews. **(Retention:** 3 years, destroy)

(16) **Student Health Insurance Records** Records document students' insurance coverage activity under institution insurance policies. This series may include but is not limited to benefit explanations; payment summaries; photocopies of checks; invoices; policy change sheets; ledgers; individual student correspondence relating to their coverage; and related correspondence with the insurance company. **(Retention:** 2 years after expiration of policy, destroy)



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(17) **Surgical Instrument Sterilization Records** Records document the sterilization of surgical instruments used by the student health center. This series may include but is not limited to autoclave recording charts and log sheets indicating date; load number; items sterilized; and temperature/time settings. (**Retention:** 1 year, destroy)

(18) **X-Rays** This series consists of student X-rays taken by student health center staff. X-rays are stored alphabetically in envelopes identified by year, name, and view. This series may also include but is not limited to a log of X-rays going out and coming in for professional reference and related documentation. (**Retention:** 7 years after date of last service, 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0070

### Information Management Records

(1) **Computer System Maintenance Records** Records document the maintenance of the institution's computer systems and is used to insure compliance with any warranties or service contracts, schedule regular maintenance and diagnose system or component problems, and document system backups. Records may include computer equipment inventories; hardware performance reports; component maintenance records (invoices, warranties, maintenance logs, correspondence, maintenance reports, and related records); system backup reports; and backup tape inventories. (**Retention:** (a) For life of system or component for records related to system or component repair or service, destroy (b) Until superseded or obsolete for records related to regular or vital records backups, destroy)

(2) **Computer System Program Documentation Records** Records document the addition, modification, or removal of software from an institutional, departmental or office computer system. Records usually fall into six categories — records that document operating systems; records that document the in-house creation and modification of application programs; records that document the structure and form of datasets; records that document the use of commercial software packages; records that document the structure of the system; and records that document system-to-system communication. Records may include system overviews; operations logs; job listings; operator instruction manuals; system development logs; system specifications and changes including narrative and flow chart descriptions; conversion notes; dataset logs; dataset inventories; dataset record layouts; hard copies of tables; data dictionaries; data directories; programming logs; program specifications and changes; record layouts; user views; control program table documentation; program listings; and commercial software manuals. (**Retention:** For the life of the system, destroy)

(3) **Computer System Security Records** Records document the security of an institution, department, or office computer system. Records may include but are not limited to employee access requests, passwords, access authorizations, system access logs, encryption keys, and related documentation. This series also includes "Banner Request for Access Forms" which are used to track Banner user accounts to ensure appropriate access to various databases. (**Retention:** (a) 3 years for system access logs, destroy (b) 3 years after superseded or obsolete for all other records, destroy)

(4) **Forms Development Records** Records document the development of new or revised forms within the institution and is used to provide a history of previous forms. Records may include sample forms; drafts; revisions; form logs/listing; proposals; authorizations; and illustrations. (**Retention:** Until superseded or obsolete, destroy)

(5) **Information System Planning and Development Records** Records document the planning and development of university information systems. Although these records typically document computerized information systems, they may also document manual filing systems and microfilm systems. The records are used to insure that planned systems will help an agency fulfill its missions, are cost-effective, conform to adopted information standards, and integrate with existing agency information systems. Records may vary according to the level of documentation required for each system, but may include: information technology plans; feasibility studies; cost-benefit analyses; studies and surveys; system specifications and revisions; component proposals; technical literature; vendor literature and proposals; and correspondence. (**Retention:** (a) For life of system for implemented systems, destroy (b) 3 years for unimplemented systems, destroy)

(6) **Microfilm Quality Control Records** Records document that microfilm produced by or for system institutions conforms to the specifications required by Oregon Administrative Rules 166-025-0005 to 166-025-0030. Records may include: microfilmed records lists; microfilm reel indexes; service bureau transmittals; film inspection reports; methylene blue certifications; Security Copy Depository transmittals; camera/processor/duplicator inspection reports; equipment and operator logs; and correspondence. (**Retention:** For the same Retention period as related microfilm, destroy)

(7) **Software Management Records** Records document the use of software in university information systems. The series is used to insure that university software packages are compatible, that license and copyright provisions are in compliance, and that upgrades are obtained in a timely manner. Records include software purchase records; software inventories; software licenses; site licenses; and correspondence. (**Retention:** Until software is disposed of or upgraded, destroy)

(8) **Telecommunication System Management Records** Records document the creation, modification, and disposition of university telecommunications systems. Records include: equipment records; Federal Communications Commission records; repair order forms; system planning records; telecommunications maintenance contracts and service orders; and related correspondence. (**Retention:** For life of system, 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0075

### Institutional Services Records

(1) **Authorization Code Ordering and Assignment Forms Records** document the assignment of long distance authorization codes to institution employees. This series consists of authorization code ordering and assignment forms which list an activity code; user/function name; account number; FRL code; and authorization code number for each employee assigned a code. (**Retention:** 2 years after superseded or revoked, destroy)

(2) **Automatic Call Distribution Vector Records** Records document the technical programming for each automatic call distribution (ACD) account on campus. This programming, known as vector instructions, electronically routes phone calls coming in to a given phone number account, known as a split, to available phones or message systems. This series also contains the names of staff members and extension numbers that are appropriate to each account. This series may include but is not limited to vector instructions sheets; announcement scripts; lists of supervisor extensions of each split; lists of ACD member extensions of each split; and related documentation and correspondence. (**Retention:** 2 years, destroy)

(3) **Bicycle Licenses/Permits Records** Records document the registration of bicycles on campus. This series includes registration cards completed by institution students, faculty, and staff for use of bicycles on campus. Information on the cards includes owner/user names; student or staff ID number; addresses; telephone numbers; bicycle frame serial numbers; bicycle models; and permit numbers. (**Retention:** 2 years after superseded or revoked, destroy)

(4) **Calling Card Records** Records document the assignment to and use of calling cards issued to institution employees. This series may include but is not limited to credit card order forms; account change documentation; and related documentation and correspondence. (**Retention:** 2 years after superseded or revoked, destroy)

(5) **Child and Youth Program Participant Records** Records document the participation of children and youth in programs sponsored by the institution, including 4H programs. The series may include but is not limited to applications; enrollment records; progress reports and assessments; immunization records; parental consent forms; activity records; lists of attendees; and related correspondence. (**Retention:** 3 years destroy)

(6) **Child Care Facility Client Records** Records document enrollment, admission, attendance, and activities of children at child care facilities operated by OUS institutions and documents compliance with applicable state agency requirements. Records may include but are not limited to applications for admission; emergency notification forms; attendance records including sign-in sheets; authorizations to administer medications; records documenting permission to obtain emergency medical treatment; records documenting permission to participate in field trips or other activities; immunization records; learning and motor skills assessments; and release forms. The series may also include a record of suspected or reported child abuse and accident reporting including narratives, notes, record of contact with state Child and Family Services representatives and law enforcement officials; records verifying staff training in child abuse recognition; and accident reporting forms. (**Retention:** 3 years after participant leaves program, destroy)

(7) **Child Care Facility Food/Nutrition Service Program Records** Records document the administration of child care food programs which provide meals to children at institution child care facilities operated by OUS institutions. Typically, application is made annually to the U.S. Department of Agriculture for assistance in running food service programs. Records may include but are not limited to meal production records, menus, and attendance forms; applicants income statements; enrollment rosters; operational reports; nutrition program reviews; food supply inventories; sanitation inspection reports; and related documentation and correspondence. (**Retention:** 4 years, destroy)

(8) **Child Care Facility License Records** Records document the licensing of school child care facilities by the Oregon Child Care Division

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or other licensing agencies. Records may include but are not limited to sanitation inspections, fire safety reports, fire and other emergency drill records, staff development and training records, staff criminal history checks, staff qualification forms, time sheets, staff first aid cards, staff driving records, staff orientation records, official license, Child Care Division inspection reports and certification and related correspondence. **(Retention:** (a) Staff first aid cards, licenses, certifications, and inspections, 2 years after superseded, expiration, or obsolete, destroy (b) All other records, 2 years, destroy)

(9) **Department of Motor Vehicles (DMV) Lists Records** document ticketed vehicles to owners who have not satisfied parking citations. This series contains computer reports from the Oregon Department of Motor Vehicles. Information in the reports may include but is not limited to car license plate number; name of registered owner; address of owner; and related data elements. **(Retention:** Until superseded or obsolete, destroy)

(10) **Events Administration Records** Records document facilities, services and other accommodations provided by the institution for events on campus. Records may include facilities reservation agreements; room reservation lists; customer and room occupancy lists; catering services orders; purchase and supply records; financial and billing records; customer evaluations; summary reports; and related correspondence. **(Retention:** (a) 6 years after expiration for agreements, destroy (b) 2 years for all other records, destroy)

(11) **Facsimile (Fax) Records** Records document the sending and receiving of fax messages for institution business purposes. This series may include but is not limited to logs of messages sent and received and fax cover sheets. **(Retention:** (a) 1 month for fax cover sheets, destroy (b) 1 year for logs, destroy)

(12) **Food Handlers Registration Records** Records document the registration of food handlers such as cooks, chefs, waiters, and cafeteria workers. Information contained in the records may include name, address, phone number, and signature of food handler; place of employment; current communicable diseases; result of examination; and other related data. **(Retention:** 1 year after expiration, destroy)

(13) **Identification Cards Records** Records document the issuance of identification cards to university students, staff and faculty. Records may include: signature cards; monthly detail reports; and related correspondence. **(Retention:** (a) Until not valid for signature cards, destroy (b) 5 years all other records, destroy)

(14) **Key Issuance Records** Records document key assignments and deposits (if applicable) for institutional faculty, staff, students, and others using the institution's facilities. The series may include but is not limited to key pinning sequence records; key issue approval forms; return forms; key inventories; hall directors' sign out forms; deposit books; bank statements; refund forms; key logs; and related documentation and correspondence. **(Retention:** 1 year after key is checked in, destroy)

(15) **Menus Records** document approved menus to be cycled on a monthly basis in each food service location. It is also used for cost planning and ordering of food and supplies. Information on the individual menus may include but is not limited to the foods to be served and the dates, times and locations of service. **(Retention:** 3 years, destroy)

(16) **Oregon Liquor Control Commission Records** Records document annual and temporary event licensing by the Oregon Liquor Control Commission for dispensing and serving alcoholic beverages. The series may also be used to document the training certification of employees. This series may include but is not limited to applications for licensing; applications for server permits; purchase orders for training costs; and related documentation and correspondence. **(Retention:** 4 years after termination of license and server permit, destroy)

(17) **Parking Citations Records** Records document the regulation of on-campus parking. This series may include but is not limited to citations; appeal petitions; and related documentation and correspondence. **(Retention:** 2 years after resolution, destroy)

(18) **Parking Permits Records** Records document the issuance of permits for on-campus parking. This series may include but is not limited to annual permit cards; registration cards; temporary permits; parking permit reports; and related documentation and correspondence. **(Retention:** 2 years, destroy)

(19) **Postal and Shipping Records** Records document items that are mailed by the department via UPS, U.S. Postal Service, Federal Express, or another carrier. Records may be used for billing and/or tracking. These records include printing and mailing shipping forms; parcel mailing order forms; postage forms; and related correspondence. **(Retention:** 3 years, destroy)

(20) **Quality Control Inspection Records** Records document the quality of services provided by a unit. This series may include but is not limited to narrative reports; inspection forms; and related documentation and correspondence. **(Retention:** 2 years, destroy)

(21) **Sanitation Records** Records document the inspection and tracking of sanitation standards of facilities such as swimming pools, food

courts, day-care food services, commissaries, and warehouses. Series may include inspection reports, any deficiencies, inspection score, date and time of inspection, and signatures; copies of the licenses issued; temperature logs and other related data. Series may include plan reviews. **(Retention:** 6 years, destroy)

(22) **Telephone Complaints/Fraud Records** Records document the investigation of complaints of telephone misuse, primarily regarding student telephones and long distance bills that are reportedly not legitimate charges. This series may include but is not limited to memos; notes; copies of long distance bills; and related documentation and correspondence. **(Retention:** 5 years after resolution, destroy)

(23) **Utility Locate Requests Records** document the notification of persons anticipating digging on campus property who need to know the locations of underground utility lines. Request information may include but is not limited to the date and location of the work; miscellaneous instructions; contact person; and related documentation and correspondence. **(Retention:** 2 years, destroy)

(24) **Work Orders Records** Records document requests and authorizations for needed services and/or repairs to institutional property and equipment. It may also be used as a cost reference for future jobs. This series may include but is not limited to: copy center work orders; printing orders; photographic work orders; display preparation orders; microfilming orders; telephone service/installation requests and change orders; maintenance and repair authorizations; library materials preparation authorizations; and related documentation and correspondence. **(Retention:** 4 years, 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0080

### Intercollegiate Athletics Records

(1) **Annual Fund Drive Records** Records document the plans, arrangements, and results of annual athletic fund drives. This series may include but is not limited to brochures; prize lists; pledge cards; mailing arrangements; reports; fiscal summaries; and related documentation and correspondence. **(Retention:** 10 years, destroy)

(2) **Athletic Eligibility Records** Records document verification by intercollegiate athletics of student athletes' academic progress to the NCAA or NAIA. These records include computer generated academic progress reports. **(Retention:** 10 years, destroy)

(3) **Catastrophic Injury Records** Records document on-going insurance activity on cases that qualified for catastrophic status by having claims of over \$50,000 for NCAA schools and \$25,000 for NAIA schools in the first two years of the claim. This series may include but is not limited to accident reports; annual insurance questionnaires; notes; claim forms; and related documentation and correspondence. **(Retention:** 75 years, destroy)

(4) **Claims Payment Records** Records document the verification and payment of secondary coverage insurance claims of injured student athletes. This series may include but is not limited to lists of requests for claims payment; transmittal letters (CO 163-Rev 10/91) to the Controller's Division for reimbursement of the institution; Proof of Loss (CO-164-2/92) forms; intercollegiate athletic reports from OUS Human Resources; ledgers of providers, payment amounts, and reference numbers; and related documentation and correspondence. **(Retention:** 5 years after claim is settled, destroy)

(5) **Competition Record Forms** Records document individual games and competitions and is used to comply with NCAA and NAIA reporting requirements for both revenue and non-revenue producing sports. Information on the individual forms includes sport name; opponent name; date; event location; final score; player names and positions; time played per athlete; and the signature of the head coach or athletic director. **(Retention:** 10 years, destroy)

(6) **Donor Recognition Records** Records document athletic fund donors of various levels and the recognition given. This series may include but is not limited to lists of donors by gift level; award lists; and related documentation and correspondence. **(Retention:** 5 years after discontinuation of donations, destroy)

(7) **Game Arrangement Records** Records document arrangements made for and the schedules of past games. This series may include but is not limited to team practice schedules; team position assignments/depth charts; itineraries; bus lists; notes; and related documentation and correspondence. **(Retention:** 5 years, destroy)

(8) **Game Officials' Evaluation Forms Records** document the head coach's evaluation of judging officials' performance at individual sporting events. The series is also used to comply with NCAA, NAIA and conference rules and regulations. Information on the individual forms includes team names; site; game date; judging officials' names; evaluative scores; comments; and coach's signature. **(Retention:** 1 year, destroy)

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(9) **Game Statistics Records** document the practice, playing, and attendance statistics about each game and the season for each sport by playing year. This series may include but is not limited to player academic statistics; attendance figures; player training charts; season and game player statistics; recruitment records; special teams statistics; rankings; awards information; NAIA and NCAA game statistics; media releases; all-conference nominations; spring and fall camp depth charts; numerical rosters; media guides; narrative reports on games and scrimmages; final team statistics for each game; NAIA and NCAA official scoring summaries; play-by-play written reports; and related documentation and correspondence. **(Retention: Permanent)**

(10) **Gift-In-Kind Donors Records** document donors who are available to provide services to athletic events as donations and the use of donated funds. Information in this series may include names of donors, names of businesses, type of donations, and level of giving; past gift records; and related documentation and correspondence. The series may also include contribution notices; invoices; purchase orders; and receipts. **(Retention: (a) 5 years after discontinuation of donations for donor records, destroy (b) 5 years for fiscal documentation, destroy)**

(11) **Individual Athletes Records** document the athletic history of each athlete who has competed at the institution. Frequently, this series is a continuation of the recruitment file and includes recruitment records if an athlete signs a letter of intent. Records may include and may not be limited to academic major information including performance reports, admissions verification reports, academic transcripts, and financial aid information; recruitment information documents; media articles; photographs; release of information forms; personal data questionnaires; records of awards; and related documentation and correspondence. **(Retention: (a) 5 years after separation from the institution for student records containing confidential information, destroy (b) Permanent for all other records)**

(12) **Insurance Records** document medical treatment services rendered off campus for practice or playing related injuries or illnesses which are eligible for partial payment by intercollegiate athletic insurance. This series may include but is not limited to copies of policies; accident reports; annual insurance questionnaires; notes; claim forms; negotiations correspondence; payment of insurance records; and related documentation and correspondence. **(Retention: 10 years, destroy)**

(13) **Play Books Records** document the strategies, practice time and game plays for each game and the season. This series may include but is not limited to practice plans; game plans; and game results **(Retention: 5 years, destroy)**

(14) **Positive Drug Test Records** document the positive results of drug testing done on student athletes. These records include lab reports; interpretations; and related documentation and correspondence. **(Retention: 5 years or end of eligibility, whichever is later, destroy)**

(15) **Practice Schedule Records** document practice time for athletic teams and assist in complying with NCAA, NAIA and conference rules and regulations. This series contains team rosters indicating time spent in practices; meetings; training and conditioning; and competition. **(Retention: 5 years, destroy)**

(16) **Recruiting Records** document the recruitment of athletes into the institution's intercollegiate athletics program. The series also provides a record of the recruitment process for prospective players created by the institution to comply with NCAA, NAIA and conference rules and regulations. This series may include but is not limited to the institution's football questionnaire forms with personal, scholastic, football, general, and transcript release information; information request cover sheets; grade transcripts; Information for Certification of NCAA Freshman Athletics Eligibility Compliance (with By-Law 5-1-j forms, number 40-c); letters of intent; copies of admissions forms and materials; performance reports; telephone and conversation notes; mailing lists; and related documentation and correspondence. **(Retention: 5 years or end of eligibility whichever is longer, destroy)**

(17) **Scheduling Records** document competition schedules set up with other institutions by coaches and the athletic director. This series may include but is not limited to correspondence; phone notes; contracts; final schedules; and related documentation and correspondence. **(Retention: 6 years after expiration of contract, destroy)** (18) **Sports Merchandising Records** document the sale of institutional and NCAA or NAIA-licensed merchandise at sporting events. Records may include sales reports; merchandise comment sheets; and related correspondence. **(Retention: 4 years, destroy)**

(19) **Student Athletes Academic Advising Records** document academic advising of prospective and current student athletes, provides records of academic progress while students are involved in athletic programs at the institution, and complies with NCAA, NAIA and conference reporting requirements. These records include letters of intent; renewals of letters of intent; transcripts; grade reports; petitions; academic evaluations; advanced standing reports; advisors' report sheets showing

progress towards academic degree; program planning sheets; NCAA Progress Reports; students' requests for release from athletic programs; disciplinary memoranda; and related correspondence. **(Retention: 5 years after degree completed or last enrollment, destroy)**

(20) **Student Athletes Dining Rosters Records** document the meals consumed by student athletes as part of the training table. This series may include but is not limited to rosters with the names of athletes partaking of meals and absent from meals; menus; and related documentation and correspondence. **(Retention: 2 years, destroy)**

(21) **Student Athletes Medical Records** document the medical history of each athlete before and during his/her attendance at the institution. This series may include but is not limited to annual health appraisals; authorization to release information forms; treatment consent forms; assumption of risk forms; accident reports; X-rays and X-ray reports; prescription records; off campus treatment source records; insurance questionnaires; psychological counseling records; and related documentation and correspondence. **(Retention: 7 years after student is last enrolled, 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

### 166-475-0085

#### Libraries, Archives, Museums and Other Collections Records

(1) **Appraisal Records** document monetary value appraisals of institutional artifacts, objects, and collections that have been completed by private parties. This series may include but is not limited to appraisals and valuations reports; reference materials used by appraisers; and related documentation and correspondence. **(Retention: Permanent)**

(2) **Borrowers Registration Records** used to grant citizens library cards and privileges Individual borrower information may include but is not limited to name, address, telephone number, date of birth, signature, expiration date, identification number and related data. **(Retention: (a) 3 years for application forms, destroy (b) 6 months after last activity for all other records, destroy)**

(3) **Collection and Artifact Acquisition and Exchange Records** document the acquisition, accessioning, use, preservation, storage, transfer and disposition of artifacts and collections at an institution's museum, archives or library special collection, herbarium, or other repository which is used for research purposes. This series may include but is not limited to a log that lists the date of acquisition, acquisition/accession numbers assigned, brief descriptions of artifacts or collections, and donor names; gift receipt forms or other acquisition records that list detailed descriptions of artifacts, donors' name(s), addresses, telephone numbers, acquisition numbers, and values (if known); cataloging worksheets listing acquisition numbers, identification and provenance of artifacts or collections, description of artifacts, and donor/owner names and addresses; deed of gift listing transfer of legal ownership or custody of artifacts or collections, their descriptions and conditions, declarations as lawful owners of the property, and signatures and dates of transfer; object file cards showing each acquired item arranged by nomenclature; subject file cards showing each acquired item and its arrangement; numerical file cards showing each acquired item arranged in acquisition number sequence; wildlife collecting permits which are the legal documentation for having wildlife carcasses; guns and weapons registration forms which provide the legal authority for the collection unit to possess firearms; condition/conservation records, photographs of objects, and related documentation and correspondence. The series may also include donor correspondence; descriptions of property; inventory lists; incoming loan agreements; background data about the collections and/or persons associated with the collections; receipt of collections documentation; donor agreement forms or instruments of donation; purchasing data; publicity records; foundation equity history reports; declaration of charitable gifts forms; copyright and citation information. **(Retention: Permanent)**

(3) **Circulation Records** document the borrowing of circulating library materials by qualified patrons. This series may include but is not limited to the name and identification of the borrower; the titles of materials borrowed; the due date; overdue and fine payment notations; and related documentation and correspondence. **(Retention: Until the transaction is completed, destroy)**

(4) **Collection or Artifact Loan Records** document artifact and material loans contracted between units of the institution or between the institution and either other institutions or individuals. These records include signed and legally binding agreements for incoming and outgoing loans between the collection administrators; receipts for loans and return of materials to the legal holder; and related forms, documentation and correspondence. **(Retention: 10 years after the termination of the loan, destroy)**

(5) **Collections Control Records** document the maintenance of materials which typically involve accessioning, cataloguing, preserving, and/or referencing. This series may include but is not limited to: accession



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sheets; archives transmittal lists; accession reports; computer cataloging records; catalogs of holdings; reference guides and finding aids; request for permission to publish or reproduce images forms; (collection inquiries; budget and purchasing data;) and related documentation and correspondence. **(Retention:** Permanent)

(6) **Deaccession Records** Records document recommendations concerning deaccessioning of specific holdings and action upon those recommendations. This series may include but is not limited to transfer forms to transfer ownership/custody of materials held within institutional collections to other institutions; deaccessioning documentation which lists the artifacts by acquisition numbers and descriptions, names of persons making deaccession recommendations and dates, reasons for deaccessioning, documentation that legal searches of donor records have been done to establish that the institution is not precluded from deaccessioning and to establish whether the donors are still living, appraised values (including whether these are estimates or have been appraised), signatures of approval for deaccessioning and dates, and dispositions of materials and dates; deaccessioning and weeding listings; reports of deaccessioning; and related documentation and correspondence. **(Retention:** Permanent)

(7) **Exhibit Records** Records document the display and use of artifacts and materials held by the collection units or displays created by the units. This series may include but is not limited to research materials concerning the cultural environmental setting surrounding the artifacts; bibliographies; lists of artifacts or items considered for inclusion; drafts of exhibit descriptions or scripts; publicity or advertisements for exhibits; artifact labels; photographs of exhibits; exhibit renderings and layout diagrams; exhibit scheduling and transport information; contracts and agreements; evaluation forms; condition forms; exhibit assembly and presentation instructions; and related documentation and correspondence. **(Retention:** (a) Permanent for exhibit descriptions or scripts, exhibit renderings and layout diagrams, photographs of exhibits, lists of artifacts or items considered for inclusion, and publicity or advertisements for the exhibits (b) 10 years for all other records, destroy)

(8) **Friends Records** Records document the efforts of special interest support groups to establish relationships with community agencies, individuals, businesses, and groups to gain their assistance with the development and coordination of institutional programs. This series may include but is not limited to establishing documents; bylaws; reports; brochures; newsletters or publications; meeting agendas; minutes; and related documentation and correspondence. **(Retention:** Permanent)

(9) **Inter-Library Loan (ILL) Records** Records document requests made of the institution for materials from outside sources and also institution requests for materials from other institutions. This series may include but is not limited to materials request forms; invoices for services provided; and related documentation. **(Retention:** 3 years, destroy)

(10) **Patron and Visitor Records** Records document the public tours or individual visits to the collection or research facility. The series may include but is not limited to weekly visitor statistics; sign-in sheets; patron logs; and guest books. **(Retention:** 5 years, destroy)

(11) **Records Management Records** Records document the Retention and disposition of records created by the institution's offices and the production of an institutional records Retention and disposition schedule approved and authorized by the State Archivist. This series may include but is not limited to records destruction authorizations; records inventory worksheets; special records disposition schedules; records transmittal lists; guides to microfilmed records; and related documentation and correspondence. **(Retention:** (a) Permanent for records destruction authorizations, records transmittal lists, and guides to microfilmed records (b) 5 years for all other records, destroy)

(12) **Reference Request Records** Records document scholarly requests for information about or access to items within the institution's collections. This series may include but is not limited to collection service request documentation forms that show requestors' names, addresses, and telephone numbers; the nature/explanation of the requests; use/purpose of the requests; dates of receipt and completion of requests; staff member handling the requests; amount of time spent on handling the requests; disposition of the requests; and related documentation and correspondence. **(Retention:** 5 years, destroy)

(13) **Serials Records** Records document the receipt and payment history for serials purchased by the libraries. This series may include but is not limited to periodical check-in cards; shelf list cards; payment cards; serials data input work form sheets; data base reports; item records; and related documentation. **(Retention:** (a) Until input and verified for shelf list cards, destroy (b) Until superseded by permanent cataloging record for check-in cards, destroy (c) 5 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0090

### Payroll Records

(1) **Assumed Wages Reports** Records document computation and payment of workers' compensation insurance premiums. Records document students' services performed in exchange for room and board, and volunteer and prerequisite assumed wages not paid by payroll. Information in the reports may include names, dates, social security numbers, requisition numbers, accounts to be charged, and total assumed pay for the month. **(Retention:** 4 years, destroy)

(2) **Deduction Authorization Records** Records document deductions from salary checks authorized by employees. These records include lists with notation of authorized deductions as well as actual deduction forms. This series may include but is not limited to: deduction information on medical, dental, life, and disability insurance; American Association of University Professors, GCIU, Fair Share, and Oregon Public Employees/Fair Share dues; U.S. Savings Bonds; United Way and foundation contributions; payments for library fines/lost books, parking permits, and institutional credit union accounts; Veterans Affairs; ACH Listings; personal use of state vehicles; and miscellaneous deductions. **(Retention:** 4 years after authorization expires or is superseded, destroy)

(3) **Employment Division Summary Reports Records** document the number of the institutional employees and payroll costs on a monthly basis and yearly basis. This series includes monthly reports by employee category and annual fiscal year reports which summarize the monthly data. **(Retention:** (a) 10 years for annual reports, destroy

(b) 3 years for monthly reports, destroy)

(4) **Employee Time Records** Records document hours worked and leave hours accrued and taken by agency, institution and student employees. Information may include employee name and other personally identifiable information, work schedule, days and time worked, leave time, work-study related time records and approval signatures. **(Retention:** (a) 5 years after issuance of final financial report to awarding agency by the research accounting unit for records of all students paid from U.S. Dept. of Education awards, destroy (b) Retain 4 year unclassified/classified/management personnel, destroy (c) 3 years for all others, destroy)

(5) **Federal and State Tax Records** Records document the collection, distribution, deposit, and transmittal of federal and state income taxes and social security tax. Records include the federal Miscellaneous Income Statement (1099), Request for Taxpayer Identification Number and Certificate (W-9), Request for Student(s) or Borrower(s) Social Security Number and Certificate (W-9S), Employers Quarterly Federal Tax Return (941, 941E), Annual Withholding Tax Return for U.S. Source Income of Foreign Persons (1042), Foreign Person(s) U.S. Source Income Subject to Withholding (1042S), Tax Deposit Coupon (8109), Withholding Allowance Certificates (W-4), Wage And Tax Statements (W-2), and related federal and state tax forms. **(Retention:** 5 years, destroy)

(6) **Forecast and Actual Pay Reports Records** document monthly gross and actual pay by month and account number, along with other database information. It is used to view gross pay/budget records for a previous fiscal year. Data is supplied by the OUS Controllers Division. This series includes employee name and identification number; major account; salary code; FTE; rank; leave status; position title and class number; starting date; appointment; terms of service; tenure; and forecast and actual pay broken down by months of the fiscal year. **(Retention:** 4 years, destroy)

(7) **Garnishment Records** Records document requests and court orders to withhold wages from employee earnings for garnishments, tax levies, support payments, or other reasons. This series usually includes original writs of garnishment; recapitulations of amounts withheld; and related records. **(Retention:** 4 years after resolution, destroy)

(8) **Pay Authorization Records** Records document pay documents which substantiate and, in part, authorize the issuance of payroll checks for particular amounts. This series may include but is not limited to payroll/budget request forms and time cards. **(Retention:** 5 years, destroy)

(9) **Paycheck Delivery Records** Records document the locations assigned for delivery of salary payments to employees. This series may include but is not limited to paycheck deposit authorization forms; payroll check delivery logs; and related correspondence. **(Retention:** (a) 3 years for payroll check delivery logs, destroy (b) Until superseded or 1 year after employee separation for all other records, destroy)

(10) **Payroll Adjustment Records** Records document changes in employee payroll deductions, tax withholdings, and payroll records. This series may include but is not limited to pay/budget action forms; time and attendance records; pay reduction/termination notices; and related documentation and correspondence. **(Retention:** 5 years, destroy)

(11) **Payroll Check Register Records** document payroll checks issued and direct deposits. This series includes lists in check number order that show the check amount, and employee name. **(Retention:** 6 years, destroy)

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(12) **Payroll Data Entry Summary Reports Records** document all timecard and payroll adjustment data entry for each payroll period. This series includes: employee names in alphabetical order; batch and document numbers; and other data. **(Retention: 5 years, destroy)**

(13) **Payroll Draws Records** document payroll draws. This series includes requests for emergency payroll draw forms. **(Retention: 2 years after draw has been recovered, destroy)**

(14) **Payroll Input Detail Reports Records** document daily summary of timecard and payroll adjustment data entry. This series contains separate reports for timecard input and payroll adjustment input. The reports, arranged in batch sequence and document number order, may include but are not limited to social security numbers; account numbers; gross pay; and related data. **(Retention: Until input and verified, destroy)**

(15) **Payroll Register Records** document the pay of all institutional employees. The series includes monthly listings of all paid employees with their earnings and deductions. **(Retention: 75 years, destroy)**

(16) **Purge Lists Records** document institutional employees whose records have been deleted from the personnel data base. This series contains annual lists of former employees, in alphabetical order, and includes employees names; social security numbers; class codes; dates that pay started; termination dates; and related data elements. **(Retention: 3 years, destroy)**

(17) **Revolving Fund Checks Records** document each check issued from an institutional revolving fund for payroll draws, final pay, or special pay. This series contains copies of issued checks showing name; date issued; social security number; amount; check disposition; and other data elements. **(Retention: 6 years, destroy)**

(18) **Shift Summary Sheets Records** document the time worked by employees on various jobs on a daily basis. This series is used to provide a record of time worked by employees for payroll purposes; a record of customer charges incurred for billing purposes; and cost accounting information on a real-time basis. The series may also be used as a back-up source of information for wage related grievance cases brought forth by employees. Information on the individual computer generated sheets may include: employee name; descriptions of duties performed; wages paid for each duty; time worked at each duty; output connected with each duty; and totals. **(Retention: 2 years, destroy)**

(19) **Student Loan Interest and Tuition Payment Statement Records** document loan interest and tuition paid by students so that deductions may be claimed on income taxes. Records may include 1098E and 1098T forms and related correspondence. This series may also include records that were attempted to be mailed or delivered but were returned or otherwise deemed undeliverable. **(Retention: 3 years, destroy)**

(20) **Student Social Security/Medicare Tax Review Reports** document FICA coding for student employees. The reports may include but are not limited to student name and ID number; credit hours carried. **(Retention: 5 years, destroy)**

(21) **Study Abroad Foreign Nationals Payroll Records** document payments to foreign nationals employed both full-time and part-time by the institution as support staff for its study abroad programs. This series may include but is not limited to agreements concerning pay rates; accounting information for payments to persons employed as secretaries and office staff, housing and transportation specialists, and food service workers; time sheets; and related correspondence. **(Retention: 75 years, destroy)**

(22) **Transaction Registers Records** document all employee database data entry transactions. This series includes daily and quarterly registers for deduction, employee, and budget transactions. The registers may include but are not limited to employee name; social security number; institution; FICA code; transaction code; nature and date of last transaction; last transaction; address; major account; class status; sex; Equal Employment Opportunity category; date of birth; ethnicity code; and related data. **(Retention: (a) 4 years for quarterly registers, destroy**

**(b) Until superseded or obsolete for daily, daily registers, destroy)**

(23) **Wage and Tax Statement Records** document data reported on the annual wage and tax statements for institutional employees, corrections to these statements, and a record of transmittal to the federal government. Records include print-outs from the Controllers Division by year in social security number order which include names, social security numbers, tax subject earnings, other data required by law, and summary transmittal forms. Forms include IRS forms W-2, W-2C, W-3, and W-3C. This series also includes records that were attempted to be delivered but were returned or otherwise deemed undeliverable. **(Retention: 5 years, 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0095

### Personnel Records

(1) **Academic and Unclassified Employees Personnel Records** Records document the academic employee's work history at the Institution and includes routine, non-evaluative information such as job title, rank, full-time equivalency (FTE) or appointment percentage, dates of employment, salary, employing department, education and employment background. Some of the documents comprising this series include confidential information such as social security number, birth date, and marital status. Records may include but are not limited to copies of Affirmative Action Compliance Data Forms; Applications for Admission to Graduate School; Applications and Contracts for Sabbatical Leave; Applications for Academic Employment; Athletic Contracts/Overseas Agreements; Conditions of Employment; Memoranda of Agreement; Notices of Appointment; Overload Compensation Requests; Patent Rights Waivers; Pay/Budget Action Forms; forms documenting personnel actions, including Salary Adjustments and Summer Session Appointments; Proposals for Academic Appointment; Requests for Approval for Outside Employment; resumes or curriculum vitae; Retirement Agreements; Leave Accrual Forms; Technology Transfer Agreements; Tenure Relinquishment Forms; employee Social Security number disclosure forms; and related documentation and correspondence, such as letters of resignation and memos confirming appointments. **(Retention: 75 years, destroy)**

(2) **Academic and Unclassified Employees Personnel Records (Supervisor's Copy)** Records document the academic employee's work history maintained in the office of the dean, director, department head, or vice provost. It includes evaluative materials and non-evaluative information such as job title, rank, full-time equivalency (FTE) or appointment percentage, dates of employment, salary, employing department, education and employment background. Some of the documents comprising this series include confidential information such as social security number, birth date, and marital status. These records may be for full-time, part-time, and/or courtesy academic employees. Records may include but are not limited to Activity Reports; copies of Affirmative Action Compliance Data Forms; Applications for Admission to Graduate School; applications, contracts, and other records for sabbatical leave; emeritus faculty status letters; Employee Emergency Medical Information Forms; Applications for Academic Employment; Athletic Contracts/Overseas Agreements; Awards; Conditions of Employment Forms; Notices of Appointment; Overload Compensation Requests; Patent Rights Waivers; Pay/Budget Action Forms; Periodic Reviews of Faculty letters and records; forms documenting personnel actions, including Salary Adjustments and Summer Session Appointments; professional development records; Proposals for Academic Appointment; recommendations; reports of conferences attended; Staff Reports of Service to the Institution; Periodic Reviews of Administrators Summaries; reprimands; Requests for Approval for Outside Employment; resumes or curriculum vitae; Retirement Agreements; Sick Leave Accrual Forms; Teaching Evaluations; Student Evaluations of Faculty Summary Reports; Technology Transfer Agreements; Tenure Relinquishment Agreements; Employment Eligibility Verifications (Form I-9); Vacation Leave Report Forms; home address/telephone disclosures; and other relevant documents and correspondence, including commendations, letters from the chair or the dean concerning the nature of the faculty member's appointment and the expectations of the faculty member, letters granting fellowship, letter of position offer, letter of resignation, memoranda of agreement, Notices of Disciplinary Action, Notices of Layoff, and unsolicited letters praising teaching or participation in a conference. **(Retention: 5 years after employee separation, destroy)**

(3) **Affirmative Action and Equal Opportunity Records** Records document agency compliance with the statutes and regulations of the U.S. Equal Employment Opportunity Commission regarding affirmative action. Records include affirmative action plans and/or policies, and their revisions and updates, which are required to be submitted to the Governor's Affirmative Action Office. Records may also include but are not limited to reports, supporting documentation, and correspondence. **(Retention: (a) Permanent for narrative reports, policy, mission and goal statements, Equal Opportunity and Affirmative Action plans, and audit reports (b) 20 years for EEO-6/Vets 100/Ways and Means reports and Executive Department print-outs, destroy (c) 10 years for statistical and status reports, case histories, correspondence, and related documentation (d) 3 years for all other records, destroy)**

(4) **Affirmative Action and/or Human Resources Recruitment Review Records** Records document view of all stages of academic hiring by the institution's affirmative action office and/or human resources office. Records may include but are not limited to position descriptions; Notifications of Academic Position Opening; Affirmative Action Compliance Data sheets; Affirmative Action compliance statements; Applicant Pool and Appointment Reports; utilization reports; payroll-budget requests or action forms; contract requests to offer appointments; certifi-



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ates of eligible's or applicant lists; and related documentation and correspondence. **(Retention:** 3 years, destroy)

(5) **Appointing Authority Administrative Records** Records document persons given the authority to appoint personnel to positions (as required by special circumstances). Records include policy documentation and correspondence. **(Retention:** Until superseded or obsolete, destroy)

(6) **Bargaining Unit Records** Records document negotiations and contractual agreements between the institution and the bargaining unit; it is also used for labor relations planning. Records may include but are not limited to union contracts and amendments; tentative agreements; arbitrator's recommendations; negotiation work notes; strike contingency plans; management counter proposals; negotiation updates; newspaper clippings; press releases; research background material; employee classification print-outs; Fair Share records; minutes, sound recordings, exhibits and reports of meetings; and related documentation and correspondence. **(Retention:** (a) 75 years for final contracts, amendments, and negotiation minutes, destroy (b) 6 years after contract expires for all other records, destroy)

(7) **Benefits Policies and Procedures Records** Records document policy and procedure decisions and important events in the operations history of the office and includes contracts and formal documents which state or form the basis for policy or set precedents. Records may include but are not limited to records concerning the Academic 12-month Pay Option for Payroll; American Football Coaches Retirement Trust; dependent care flexible spending account program records; early retirement programs; employee orientation program; Employee Assistance Program; injured worker benefits; Continuing Benefits to Injured Workers (CBIW) records; insurance continuation coverage known as COBRA (Consolidated Omnibus Budget Reconciliation Act); medical, dental, life/disability insurance program records; open enrollment records; the institution Staff Handbook; Life Insurance; post doctorate fellow insurance program; Public Employee Retirement System (PERS); Retirees; tax deferred investment programs; Teachers Insurance Annuity Association and College Retirement Equities Fund (TIAA/CREF); Unionflex program; (US Savings Bonds;) Volunteer Insurance; and related documentation and correspondence. **(Retention:** 6 years after expiration of program or contract, destroy)

(8) **Certificates of Eligible's Records** document the names of applicants currently eligible for hire for specific classified positions. The list is supplied by the personnel office to departments seeking to fill vacancies. Data elements on this list may include but are not limited to name; address; telephone number; and rank or exam results. Copies of Employment Applications and Skill Code Sheets may be included with this record series. **(Retention:** (a) 3 years after end of search if part of recruitment, destroy (b) 1 year if not part of a search, destroy)

(9) **Classified Employees Layoff Records** Records document layoff procedures followed for affected employees. Records may include but are not limited to employees names; position titles; classification numbers; hire dates; layoff dates; seniority status; and related documentation and correspondence. **(Retention:** 3 years after employee separation, destroy)

(10) **Classified Employees Non-Routine Evaluations Records** document the non-routine evaluation of the classified employee's work performance. Records may include commendations; recommendations; disciplinary actions; reprimands; explanations or opinions filed in response to critical material; and related correspondence. **(Retention:** 3 years, destroy)

(11) **Classified Employees Personnel Records** Records document the classified employee's work history at the institution and includes routine evaluative materials and non-evaluative information such as job title, full-time equivalency (FTE) or appointment percentage, dates of employment, salary, employing department, education and employment background. Some documents in this series contain confidential information such as social security number, birth date, and marital status. Records may include but are not limited to employment applications which may include skill code sheets; resumes; selected memos such as agreement or request for position change, merit increase requests and notices, request for re-employment (letter of hire), resignation letters from employees, and termination letters from employer; commendations; recommendations; reprimands; work plans; forms documenting personnel actions; (personnel) performance evaluations; pay/budget action forms; leave records; time and attendance records; (designation of beneficiary forms;) union dues information; resumes; layoff notices; awards; licenses and certificates; college credit information; employee Social Security number disclosure forms; home address/telephone disclosure authorizations and related correspondence. **(Retention:** (a) 75 years for employment applications, agreements or requests for position change, merit increase requests and notices, request for re-employment, resignation letters, employer termination letters, personnel action forms, layoff notices, designation of beneficiary forms, personnel evaluations, and resumes, destroy (b) 3 years for letters of reprimand, destroy (c) 3 years after employee separation for all other records, destroy)

(12) **Classified Employment Testing Records** Records document the testing process for classified positions administered by human resources

staff. Records may include but are not limited to test forms completed by qualified applicants; summary lists with scores; testing materials; and related documentation and correspondence. **(Retention:** 3 years, destroy)

(13) **Classified Rejected Applications Records** document employment applications that were submitted for jobs with the institution and for reasons of incompleteness or inadequate qualifying experience/training are rejected. Records may include but are not limited to institutional employment applications and state forms PD 100 and PD 229R. **(Retention:** 3 years after position filled or recruitment canceled, destroy)

(14) **Classified Unsolicited Applications Records** document unsolicited requests for consideration for employment possibilities in institution units. Records may include but are not limited to curriculum vitae and resumes; transcripts; letters of application; and related materials and correspondence. **(Retention:** 3 months, destroy).

(15) **Continuation of Insurance Benefits (COBRA) Records** Records document the institution's compliance with the Consolidated Omnibus Reconciliation Act of 1986 (COBRA). Records may include notices given to insurance administrators when employees leave the institution; information includes employee and dependent names and Social Security numbers, insurance package currently carried, dates of termination, coverage end date, and dates of notice to the contractor. **(Retention:** 3 years, destroy)

(16) **Continuing Education Instructor's Records** Records document competency of persons applying to teach continuing education courses. Records, which are filed by course with term and instructor name, may include but are not limited to resumes; curriculum vitae; personnel actions; time sheets; course proposals; request for undergraduate and graduate course and instructor approval forms; tentative course outlines; letters of nomination; letters of appointment and/or rejection; and related documentation and correspondence. **(Retention:** (a) 75 years for appointment information, destroy (b) 5 years after separation from Continuing Education faculty for all other records, destroy)

(17) **Drug Testing Records** Records document the testing of current and prospective employees for controlled substances prohibited by policy, procedure, or statute. Records may include but are not limited to the documentation of test results, the collection process, the random sample process, and those documenting the decision to administer reasonable suspicion drug testing. **(Retention:** (a) Retain negative drug test results, 1 year, destroy (b) Retain positive drug test results, 3 years, destroy)

(18) **Employee Medical Records** Records document an individual employee's work related medical history. These records are not personnel records and must be kept physically separate from employee personnel records--in a separate location, as required by the Americans with Disabilities Act. Records may include but are not limited to medical examination records (pre-employment, pre-assignment, periodic, or episodic), X-rays, records of significant health or disability limitations related to job assignments, documentation of work related injuries or illnesses, hearing test records, hazard exposure records, first-aid incident records, physician statements, release consent forms, and related correspondence. These records are not personnel records and must be kept physically separate from employee personnel records--in a separate location, as required by the Americans with Disabilities Act. SEE ALSO Medical Surveillance Records in the Safety and Security section. **(Retention:** (a) Retain hazard exposure records: 30 years after employee separation (29 CFR 1910.1020), destroy (b) Retain audiometric (hearing) test records: Until employee's termination date (29 CFR 1910.95(m)) (c) Retain other employee medical records: 3 years after employee separation, destroy)

(19) **Employees Benefits Records** Records document an individual employee's benefit information such as selection of insurance plans, retirement, pension, and disability plans, deferred compensation plans, and other benefit program information. Records may include but are not limited to plan selection and application forms, enrollment records, contribution and deduction summaries, personal data records, authorizations, beneficiary information, and related documentation. Records may be filed with the individual Employee Personnel Records. SEE ALSO Employee Payroll Records in the Payroll section. **(Retention:** (a) Retain PERS enrollment records: 75 years, destroy (b) Retain optimal plan enrollment records 75 years, destroy (c) Retain all other benefits records: 3 years after employee separation or eligibility expired, destroy)

(20) **Employees Training Records** Records document employee participation in training courses or programs for development purposes. Records may include but are not limited to staff fee requests to take classes; course agendas, descriptions, and syllabi; course outlines and materials; enrollment and attendance records; training requests and authorizations; certificates of completion; and related documentation and correspondence. **(Retention:** 3 years, destroy)

(21) **Employees Employment Verification Records** Records document the responses to inquiries for evidence of employment from offices within the institution, banks and credit agencies, government agents, businesses, and current and former personnel. Records may include but are not



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limited to copies of written requests; release of information authorization forms; telephone request forms; office control documents; statistical summaries; and related documentation and correspondence. **(Retention: 3 years, destroy)**

(22) **Employment Eligibility Verification Forms Records** document information used to establish the identity and to verify the employment eligibility of employees to preclude the unlawful hiring of persons not authorized to work in the United States. Records include completed I-9 forms and copies of documents that establish the identity and the employment eligibility of the employee. **(Retention: 3 years after date of hire or 1 year after separation, whichever is longer, destroy)**

(23) **Employment Policies and Procedures Records** Records document employment policies and procedures administered by institution personnel offices. Records may include but are not limited to information on academic year appointments; employment of disabled persons; family employment program; interviewing; job sharing; overseas employment; student employment; temporary appointments; transfers; and related documentation and correspondence. **(Retention: Permanent)**

(24) **Executive Evaluations Administration Records** Records document the administration of routine performance evaluations of OUS chancellors and individual college and university presidents. Records may include appointment schedules; letters of follow-up and thank you; press releases and announcements; hotel and travel arrangements; and related correspondence. **(Retention: 3 years, destroy)**

(25) **Family and Medical Leave Case Files Records** document requests for leave and granted leaves by employees under provisions of the Federal Family and Medical Leave Act and the Oregon Family Medical Leave Act. Records may include but are not limited to employee leave request forms; notices to employees of leaves granted or rejected; Certification of Health Care Providers for the employee or a family member; employee backup information and leave history records; employee time records; Continuation of Health and Dental Insurance Benefits Memorandum; and related documentation and correspondence. **(Retention: 3 years after case closed, destroy)**

(26) **Graduate Assistantship Applications Records** Records document applications of graduate students for Graduate Teaching Assistantships and Graduate Research Assistantships in academic programs. Records include applications developed by individual units; resumes and vitae; and related documentation and correspondence. **(Retention: (a) 5 years after application or termination of employment, whichever is longer for successful applicants, destroy (b) 3 years for denied applicants, destroy)**

(27) **H-1 Visa Scholars Records** Records document the temporary employment of internationals by the institution and is used to monitor compliance with Immigration and Naturalization Service regulations. Records may include but are not limited to Petition for a Non-immigrant Worker (Form I-797); Labor Conditions Applications for H-1B Non-immigrant; Prevailing Wage Information Request; Application to Immigrant and Naturalization Service (INS); documentation of requests for visa extensions; details of work assignments; and related documentation and correspondence including the letter of support. **(Retention: 6 years after expiration of visa and extensions granted, destroy)**

(28) **Health Emergency Information Records** Records document the health identification information of students, faculty or staff. Health information may be collected for sponsored field trips, participation in physical education classes, and other activities. Information may include but is not limited to personal identification and physician's name and contact information, and emergency contact and health insurance information. Note: These records are not the same as the Emergency Notification Forms found in the Personnel File. **(Retention: 1 year after the end of the event or activity for which this information was collected, destroy)**

(29) **Immigrant Visa Scholars Records** Records document the application and approval of international scholars for permanent immigrant status. Records may include but are not limited to Applications for Alien Employment Certifications issued by the Department of Labor, Employment and Training Administration; advertisements for positions; curriculum vitae; transcripts; letters of recommendation; notes on all applicants for positions demonstrating that a petitioner was the best qualified for an advertised position; forms indicating the institution's efforts to employ comparably qualified U.S. citizens (ETA750); interviewers' notes and memoranda; and related correspondence. **(Retention: 75 years, destroy)**

(30) **J-1 Visa Scholars Records** Records document the short-term appointment of non-immigrant international scholars as visiting faculty, specialists, researchers and trainees. Records may include but are not limited to United States Information Service Certificates of Eligibility for Exchange Visitors Forms (IAP-66); descriptions of work to be performed; methods of financial support; copies of passports; check-in forms with personal data such as addresses, telephone numbers, and information concerning dependents; related correspondence, most often concerning eligibility of spouses and children to accompany or join the scholar; log sheets noting

the nature of telephone calls concerning each scholar's status; and related documentation. **(Retention: 3 years after visa expiration, destroy)**

(31) **Layoff Administration Records** Records document policies and procedures administered by institution personnel offices with regard to layoffs. Records may include but are not limited to position elimination information; employee assistance information; layoff lists; management service layoff policy; news publications; salary funding requests; vacancy lists; and related documentation and correspondence. **(Retention: 75 years, destroy)**

(32) **Merit Increase and Trial Service Performance Appraisal Lists Records** document classified employees who are expected to receive merit pay increases or successfully complete their six-month trial service period. The lists, organized by academic department or administrative office, include employee's name; class; social security number; position number; employee status and type; FTE; pay rate qualifier; current step and pay rate; new pay rate and step (merit increase only); and trial service completion date (trial service only). **(Retention: 6 months, destroy)**

(33) **National Faculty Exchange Program Records** Records document an exchange program which allows university faculty members to exchange teaching positions with other institutions' faculty members within the United States. Records include contracts; summaries; and related correspondence. **(Retention: (a) Permanent for summaries (b) 5 years for all other records, destroy)**

(34) **Personnel Research Data Records** Records document the comparative salaries, benefits, collective bargaining agreements, staffing requirements, minimum qualifications, recruitment, and training of an institution's employees. Records include but are not limited to published and unpublished data; statistical reports; and related documentation and correspondence. **(Retention: Until superseded or obsolete, destroy)**

(35) **Position Descriptions Records** document job descriptions for classified and faculty positions and is used for employee recruiting, Fair Labor Standards Act eligibility analysis, position review, and reclassification purposes. Information fields in the position descriptions may include position names, position numbers, qualifications, functions and responsibilities, duties, hierarchical data, job classification numbers, description of duties, and pay rates. Records may include but are not limited to Position Description forms; Reclassification Position Descriptions and documentation; Classification Listings; Positions Listings; and related documentation and correspondence. **(Retention: (a) 5 years after superseded, destroy (b) 5 years for position reclassification records, destroy)**

(36) **Promotion, Tenure, and Salary Increase Records** Records document the periodic consideration of faculty who are eligible for changes in rank, tenure status, and/or pay. Records may include but are not limited to promotion and tenure dossiers compiled and presented by the faculty member as per instructions from Academic Affairs as well as other materials which are compiled and maintained for inclusion, analysis, and summarization into the dossier folders. The dossiers may include but are not limited to candidate dossier cover form or checklist; prior service agreement; Confidential Waiver for letters of evaluation; current position description; letters of evaluation; current curriculum vitae or resume; activity summary and evaluations of teaching, curriculum development and advising from students, participants/clients, and peers; candidate acknowledgment of dossier review; student evaluations of faculty summary reports; committee signature sheets; committee findings; recommendations of administrative superiors; and related documentation and correspondence. These files should always be maintained physically separate from departmental and college personnel files, but are considered to be a part of the academic personnel record. **(Retention: 10 years, destroy)**

(37) **Recruiting Pool Records** Records document prospective applicants for faculty and staff positions drawn from either previous recruitments or unsolicited applications. Records may include but are not limited to curriculum vitae or resumes; cover letters; Applications for Employment; interview materials; position announcements; evaluations of prospective employees; and related correspondence. **(Retention: 3 years, destroy)**

(38) **Residential Advisor (RA) Employees Records** Records document the selection process, requirements, and work history of residential advisors. RAs apply in the Winter Term for the following school year. After preliminary screening and approval applicants are required to enroll in a course designed for potential RAs taught by student housing staff. Records may include but are not limited to application forms; transcripts; recommendations; interviewers' notes; notification letters; contracts which give duties and responsibilities, enrollment hours limitations, and signatures; papers or projects completed in the required RA course; staff evaluations of applicants and term-by-term evaluations of appointees; and related documentation and correspondence. **(Retention: 5 years after employee separation, destroy)**

(39) **Retirement Incentive Program Records** Records document the cost of incentive programs providing benefits for university employees who choose early retirement. Records include agreements between the university and employees for lump sum, monthly, or annual payments; records of

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actual payments; and related correspondence. (**Retention:** 6 years after final payment, destroy)

(40) **Sabbatical Leave Records** Records document sabbatical leave activities of institution faculty. Records may include but are not limited to reports; applications; contracts; and related documentation and correspondence. (**Retention:** (a) Permanent for reports (b) all other records 75 years, destroy)

(41) **Search Records** Records document the selection process for academic, classified and student positions within the institution. Records may include but are not limited to applications; curriculum vitae or resumes; academic transcripts; samples of writing or publications; approvals of recruitment proposals; candidate lists; position announcements; position advertisements; position descriptions; Certificate of Eligible's; copies of Affirmative Action Compliance Data Forms; Requests to Fill Academic Position Forms; interview materials such as schedules, rating sheets, tallies, screening and interview notes, review committee notes and memoranda; telephone conversation notes; and related correspondence such as cover letters and reference letters. **NOTE:** Application materials of successful academic and classified candidates become part of the employee's personnel file. (**Retention:** (a) 3 years after search completed for academic and classified search records, destroy (b) 1 year for student search records, destroy)

(42) **Staffing Policies Records** Records document the adoption and implementation of personnel and staffing policies at the college and/or unit level pertaining to topics such as faculty evaluations; faculty Retention; merit increases; performance evaluations; promotion and tenure, both instructions and guidelines; sabbatical leave, both policies and reports; salary adjustments, both guidelines and statistics; and support staff information. Records may include but are not limited to notations on priority staffing decisions; position descriptions; requests for approval of new staff positions; justification statements; descriptions of teaching responsibilities for positions requested; funding information; job announcements; memoranda; and related documentation and correspondence. (**Retention:** 2 years after superseded or obsolete, destroy)

(43) **Social Security Number Records** Records document international students' and scholars' acquisition of social security numbers. This series may include but is not limited to social security number applications; Statement of Information — Social Security Account Number forms (CO-204); photocopies of social security cards; Controllers Division reports; and related documentation and correspondence. (**Retention:** 3 years, destroy)

(44) **Student and Classified Employees Compensation Records** Records document and defines pay rates for classified and student employees. Records may include but are not limited to compensation plans; conversion tables for annual, monthly, hourly, and overtime rates; records concerning extra merit increase, merit pay system, overtime pay, shift differential, student pay, variable rate pay, and working out of class; and related documentation and correspondence. (**Retention:** Until superseded or obsolete, destroy)

(45) **Student Employees Personnel Records** Records document the student employee's work history from the supervisor's perspective. This series may contain records for work-study and/or regular departmental budgeted student employees. This series may include resumes; interview questionnaires and notes; work referral forms; Student Schedule Slips; Financial Aid Employment Reference Forms; Student Employment Registration Forms; Personnel Actions Forms; Pay/Budget Action Forms; Work-Study Time Certificates; Performance Evaluations; Employee Withholding Allowance Certificate (W-4) forms; Payroll Check Delivery Authorizations; Requests for Emergency Payroll Draw Forms; commendations; recommendations; reprimands or notices of disciplinary action; notices of layoff; letters of resignation; work permits; copies of visas and related immigration status information; Student Driver Authorization Forms; Employment Eligibility Forms (I-9); home address/telephone disclosure authorizations; and related correspondence and documents. The series may also include photocopies of each employee's drivers license; birth certificate; or Certificate of Student Employment Registration. (**Retention:** (a) 5 years after employee separation for work-study student records, destroy (b) 3 years after date of hire or one year after separation, whatever is longer for Employment Eligibility Forms (I-9), destroy (c) 3 years after employee separation for other student employee records, destroy)

(46) **Student Faculty/Course Evaluation Records** Records document students' evaluations of teaching personnel and is used to help determine faculty tenure, promotion, merit increases and/or to review instructional courses and programs. These records provide students' opinions on faculty members' familiarity with current literature of the discipline, preparation, assignments, examinations, lecture styles, willingness to engage in dialogue, and availability. Records include bubble forms (input documents); course reaction inventory printouts; statistical tabulations; summary reports; and related documentation and correspondence. (**Retention:** (a) Until tabulated and verified for bubble forms, destroy (b) 5 years for all other records, destroy)

(47) **Tuition Reduction Records** Records document employee and/or dependents participation in courses or programs offered by OUS institutions at reduced tuition rates. Records may include but are not limited to staff fee requests to take classes, course agendas, descriptions and syllabi, course outlines and materials, enrollment and attendance records, training requests and authorizations, certificates of completion, related documentation and correspondence. (**Retention:** 4 years, destroy)

(48) **Volunteer Program Records** Records document the activities and administration of volunteer programs in the agency and institutions. Records may include but are not limited to volunteer applications, emergency notification forms, volunteer hour statistics, volunteer program publicity records, insurance requirement information, and related documentation. SEE ALSO Criminal Background Check Records in this section. (**Retention:** (a) Retain individual volunteer records 5 years after volunteer separation, destroy (b) Retain all other volunteer program records 5 years, destroy)

(49) **Unemployment Compensation Claim Records** Records document claims submitted by former institution employees for unemployment compensation. Records may include but are not limited to claim records; notices; reports; records generated by the appeal of claim determinations; and related documentation and correspondence. (**Retention:** 2 years, destroy)

(50) **Work Time Adjustment Agreements Records** document agreements between the employer and the employee regarding a change in the employee's work hours. Records may include but are not limited to the official signed agreement; related documentation and correspondence. (**Retention:** Until superseded or obsolete, 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0100

### Publications, Promotions and Alumni Records

(1) **Alumni Records** Records document the activities of an institution or department's alumni and may also provide alumni offices with information on alumni. Records may be used to create a network of support from alumni, primarily through organized alumni groups; to track alumni; to monitor their achievements, activities, and recognitions; to create statistics; to reply to information requests; and to provide information on the accomplishments of previous students. This series may include but is not limited to memberships lists with names, addresses, employer names and addresses, and positions; minutes, by-laws and directories of clubs in many Oregon communities and several major cities throughout the United States; promotional materials concerning annual gatherings; homecoming plans and programs; data cards and files for individual alumni; degree recipient lists; outstanding alumni lists; student leader lists; class officer lists; foreign student rosters; international alumni club records; and notes, memoranda, and related correspondence concerning general alumni affairs. (**Retention:** Permanent)

(2) **Alumni Association Board Records** Records document the activities of the alumni association board of directors. The board is responsible for promoting the interests and ideals of the institution; stimulating and encouraging school pride in students, graduates, and former students; and developing a sense of responsibility for continued progress in educational programs for the institution. This series may include but is not limited to agendas; minutes; reports; notes; working papers; and related documentation and correspondence. (**Retention:** (a) Permanent for agendas, minutes, reports, and policy/historical correspondence (b) 5 years for all other records, destroy)

(3) **Alumni Association Services Program Records** Records document the implementation of programs administered by the office such as those relating to marketing products, credit cards; insurance, and football tickets. This series may include but is not limited to agreements; dues information; postal information; and related documentation and correspondence. (**Retention:** 5 years, destroy)

(4) **Alumni Mailing List Records** This series provides a record of the whereabouts of alumni for information request and mailing purposes. This series includes mailing lists and related documentation and correspondence. (**Retention:** Until superseded or obsolete, destroy)

(5) **Biographical Records** Records document biographical data for institutional faculty and staff. The records are used for public information releases and reference by the institutional staff to provide responses to inquiries. This series may include but is not limited to biographical sketches developed by the office of employment, the individuals concerned, or other sources; vitae; photographs; personal history data sheets; newspaper clippings; retirement notices; funeral programs; and obituaries. (**Retention:** Permanent)

(6) **Class Gift Records** Records document gifts given to the institution by senior classes. This series may include but is not limited to gift lists;



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gift histories; a record of gift placement arrangements; and related documentation and correspondence. **(Retention: Permanent)**

(7) **Films, Videotapes, and Sound Recordings Records** document institutional activities and events including intercollegiate athletics, students, faculty, and staff with significant relevance to either the institution's or individual unit's function and mission. These productions may have been created for recruitment and orientation, fund-raising, publicity, research, or teaching. This series may include but is not limited to identified and labeled audio/video records.

**NOTE:** Contingencies must be made for transferring information to a more stable medium. **(Retention: Permanent)**

(8) **Fund-Raising Records** document institutional efforts to raise funds to support program functions and facilities. This series may include but is not limited to requests for fund-raising; individual benefactors and prospective donors files; public relations records; event planning and arrangement records; gift history reports; background on previous donations; pledges; and related documentation and correspondence. **(Retention: 6 years, destroy)**

(9) **Hometown Information Records** document newspapers published in Oregon and is used to promote the institution. It is arranged alphabetically by town name and county and refers to the appropriate newspaper and its location. This series includes Oregon town and county names that refer to the serving newspaper; brief descriptions of scholarship awards offered on this campus; and all state high schools by town, county, and phone number. **(Retention: Until superseded or obsolete, destroy)**

(10) **News Release Records** document newsworthy events of the institution. This series may include but is not limited to news releases issued by institution news and communications units arranged by topic and/or date of issue. The news releases may contain but are not limited to the source of the information; title; byline; activity location and dates; and specified time of release. **(Retention: (a) Permanent for releases pertaining to significant events and policy matters (b) 10 years for routine releases, destroy)**

(11) **Ordering Records** document continuing requests for publications produced by an office. This series may include but is not limited to standing order cards or lists indicating the name and address of the requestor; book titles; transaction date; invoice number; and related documentation and correspondence. **(Retention: Until request becomes inactive, destroy)**

(12) **Photographs Records** document institution activities, events, students, faculty, and staff with significant relevance to either the institution's or individual unit's function and mission. It may be used for student recruitment and orientation, fund-raising, publicity, publications, research, or teaching. This series includes photographs in print, negative, and slide formats. **(Retention: a) Permanent for institutionally accepted pictures documenting historic events and people b) until obsolete for all others, destroy)**

(13) **Publications Inventory Records** document publications in stock in an office. This series may include but is not limited to cards and lists. The information may include but is not limited to publication title; date of publication; and retail cost. **(Retention: 4 years after superseded or obsolete, destroy)**

(14) **Publications Records** document publications produced by individual institution offices. It may be used to document the activities of the office, for educational purposes and/or for informational purposes. Types of publications may include but are not limited to catalogs; books; magazines; newsletters; handbooks; yearbooks; directories; brochures; pamphlets; media guides; guidebooks; proceedings; programs; and flyers. Series may include but is not limited to working papers; mock-ups; drafts; and final publications. **(Retention: (a) Permanent for final publications (b) 1 year for all other records, destroy)**

(15) **Sample Publications and Job Specification Records** document specifications used in setting up publications for printing by the institution's publications office. This series may include but is not limited to job cards indicating description, specifications, and dollar cost of production; art work including drawings, maps, and blueprints; samples of changes made to publications; completed publications; and related documentation and correspondence. **(Retention: 5 years, destroy)**

(16) **Scholarship Reports Records** document recipients of scholarships in colleges or departments. These records may include information regarding the names of recipients; when they received the scholarships; names of scholarships; dollar value of scholarships; years recipients entered and graduated; and related correspondence and documentation. **(Retention: Permanent)**

(17) **Unit/Institution/Organization History Records** document the historical development of the institution; units within the institution; and organizations associated with the institution, such as honor societies, fraternities and sororities, and student/faculty/ staff clubs. This series may include but is not limited to newspaper clippings; photographs; published and unpublished historical sketches; publications; statistics;

ephemera; and related documentation and correspondence. **(Retention: Permanent)**.

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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0105

### Safety and Security Records

(1) **Accident and Injuries Records** document claims made by institution employees to the SAIF (State Accident Insurance Fund) Corporation for occupational injuries, accidents, or illnesses; insurance coverage and related reimbursement issues; and safety analysis and compliance inspections. This record series does not include accidents or incidents which involve hazardous substance or radiation exposure. This series may include but is not limited to report of accident forms; SAIF Worker's and Employer's Report of Occupational Injury or Disease form (463.801); Occupational Safety and Health Administration (OSHA) Form 300; OSHA Form 101; incident logs; employer payroll reports; hearing transcripts; notices of claim disposition; determination orders; opinions and orders; appeal letters; claim adjustment documentation; medical reports; cost statements; and related documentation and correspondence. **(Retention: 6 years after final disposition of claim, destroy)**

(2) **Annual Vehicle Inspection Records** document the safety of institutionally owned automobiles, vans, trucks, and other motorized vehicles. This series includes but is not limited to annual motor vehicle inspection reports and related forms; documentation; and correspondence. **(Retention: 2 years after the vehicle is disposed of, destroy)**

(3) **Asbestos Records** document a building by building survey and plan to correct asbestos material hazards. This series may include but is not limited to surveys; monitoring tests and reports; data forms; building plans; correction checklists; removal job records; and related documentation and correspondence. **(Retention: (a) 30 years after separation for records documenting persons contacting or removing asbestos, destroy (b) 40 years: all other records, destroy)**

(4) **Carcinogenic Compound Inventory Records** document inventory and stock of high and extremely high carcinogenic compounds. This series contains but is not limited to project and departmental lists of chemical inventories; lists of persons involved in the research project; and related forms, documentation, and correspondence. **(Retention: (a) 30 years after separation for records documenting persons using or contacting compounds, destroy (b) 40 years for all other records, destroy)**

(5) **Carcinogenic Compounds Use Records** document the use of hazardous carcinogenic compounds by institutional researchers. This series may contain but is not limited to research protocols; registration for use of high and extreme hazard carcinogens; chemical carcinogen animal care requirement forms; lists of personnel involved in laboratory contact with chemical carcinogens; list of carcinogenic compounds to be used in the specific research project; and related documentation and correspondence. **(Retention: 30 years after employee or researcher separation, destroy)**

(6) **Chemical Hazardous Material Survey Forms Records** document student and employee exposure to hazardous chemicals as per federal regulation. This series includes but is not limited to Chemical Hazardous Material Survey Forms which contain dates, employee or student names, chemical name, and comments; and related documentation and information. **(Retention: 30 years after student or employee separation, destroy)**

(7) **Chemical Incident Records** document the investigation of hazardous chemical material accidents or incidents including releases. This series may include but is not limited to incident reports noting locations, names, dates, times, description of incident, personnel involved, remarks, and name of contact; and related documentation and correspondence. **(Retention: 30 years after employee separation, destroy)**

(8) **Chemical and Hazardous Waste Disposal Records** document the receipt, shipment, and disposal of chemical material or hazardous wastes on campus. This series includes but is not limited to chemical and waste inspection forms; drum packing sheets; Uniform Hazardous Waste Manifest forms (EPA 8700); Certificates of Disposal from vendors; land disposal notification forms; waste disposal records; and related documentation and correspondence. **(Retention: 30 years, destroy)**

(9) **Emergency Response Plans and Procedures Records** documents procedures to be followed in the event of emergency. Records may include step-by-step procedures; unit and institutional disaster preparedness plans; and related correspondence. **(Retention: Until superseded or obsolete, destroy)**

(10) **Environmental Regulations Records** document institutional compliance with environmental laws and guidelines of federal, state, or local governments. These records include communications with the Regional Air Pollution Authority (RAPA) which is under the jurisdiction of the Environmental Protection Agency (EPA) of the federal government and also the state Department of Environmental Quality (DEQ). This series may



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include but is not limited to Title V Air Discharge Permits; Air Quality Reports; Waste Water Discharge Permit Applications; Waste Water Discharge Permits; Water Quality Reports; Waste Water Discharge Records; Notices of Violation; Notices of Non-compliance; and related documentation and correspondence. **(Retention:** 10 years, destroy)

(11) **Fire Alarm and Drill Records** Records document response to any alarm that is activated on campus. This series may include but is not limited to the following information, when and where the incident occurred; specific response; reset time; and rewind time, if appropriate. **(Retention:** 3 years, destroy)

(12) **Human Materials Authorizations Records** Records document faculty proposals to use human materials in classroom instruction. This series includes but is not limited to written proposals from classroom instructors; departmental and committee approvals or disapprovals; reports; and related documentation and correspondence. **(Retention:** 10 years, destroy)

(13) **Inspections Records** Records document inspections done by various agencies such as the city building department, health department, or fire department in the course of routine business and is used by the institution to correct and analyze safety problems and to document compliance with regulations. This series may include but is not limited to inspection sheets which show date of inspection, notation of violations, and suggested corrective measures; reports acknowledging compliance with regulations; authorizing signatures; and related information, documentation and correspondence. **(Retention:** 10 years, destroy)

(14) **Material Safety Data Sheets Records** Records document the institution's inventory of hazardous chemicals; record keeping is mandated by the Hazardous Communications Program of the Occupational Safety and Health Administration (OSHA). This series contains but is not limited to Material Safety Data Sheets which list chemical name, description, composition, intended use, flash point, transportation, hazards, safe handling, and extinguishing methods; and related documentation. **(Retention:** 30 years, destroy)

(15) **Medical Surveillance Records** Records document the medical history of employees working in positions with exposure to high risk hazardous conditions such as Class B and C carcinogenic compounds, asbestos, lead, or excessive noise. Medical examinations of workers are made at the beginning and termination of institution employment and periodically throughout the career course as well as immediately following an accident or potential exposure incident. This series may include but is not limited to medical examinations; laboratory test records and results; and related documentation and correspondence. **(Retention:** 30 years after employee separation, destroy)

(16) **Non-Staff Accident and Injuries Records** Records document the reporting and investigation of campus related accidents that result in injury to non-staff and/or their property. This record series does not include accidents or incidents which involve hazardous substance or radiation exposure. This series may include but is not limited to Report of Accident forms; complaints; investigation reports; insurance appraisals and estimates; photographs; and related documentation and correspondence. **(Retention:** (a) If incident results in a claim: transfer to appropriate claim file (b) If no claim results: retain 10 years, destroy, destroy)

(17) **Protective Wear and Device Request Records** Records document the authorization and acquisition of specialized safety devices and clothing for employees working in hazardous situations. This series may include but is not limited to Safety Shoe Request and Authorization Forms; Prescription Safety Glasses Request and Authorization Forms; and related forms, documentation, and correspondence. **(Retention:** 4 years, destroy)

(18) **Radiation Licensing Records** Records document the licensing of the institution by federal, state, and local agencies to receive, use, store, dispose of, and ship radioactive materials. These records include federal and state applications and certificates including State of Oregon Health Division Radiation Material License forms (P112118-333 (100g)) and amendments (p29939-333 (150)); validation certificates showing fees paid for licenses; and related correspondence. **(Retention:** Permanent)

(19) **Radioactive Material Handling and Disposal Records** Records document the reception, handling, shipment and/disposal of radioactive material or radioactive hazardous wastes at the institution to comply with federal and state record keeping and reporting requirements. The series also provides the office with a record of past activity. Records may include waste material pick up requests and tags; Radioactive Waste Drum Inventory forms ; Uniform Hazardous Waste Manifest forms (EPA 8700-22); Radiation Waste Shipment and Disposal Manifest forms (vendor form); Radiation Material Inventory sheets; Radiation Material Shipment Receipt Record forms; Waste Disposal Record cards; disposal site letters of arrival acknowledgment; Sewered Radioactive Material log sheets; Solid Waste Discharge and Analysis Sheets; Liquid Summary Reports; gaseous waste Summary Reports; and related correspondence. **(Retention:** Permanent)

(20) **Radiation Monitoring and Exposure Records** Records document radiation testing and monitoring of employees, students, visitors, facilities, and the surrounding environment and is used to comply with federal and state reporting and licensing requirements and insurance carrier reporting requirements. This series includes dosimeter reports (vendor form); Exposure History forms; Statement of Occupational Radiation Dosage forms; Neutron Generator Smear Test Survey Forms; Floor Survey Forms; Special Survey Forms (RCHPP .24D); Hood Flow Survey forms; Rotation Rack Filter Survey Forms; Soil/Water/Vegetation Records Survey Forms; and Bio-Essay Reports. **(Retention:** 30 years after employee separation, destroy)

(21) **Radiation Safety Committee Records** Records document the establishment of policy and procedure by the committee. Records include agendas; minutes; reports; notes; working papers and related correspondence. **(Retention:** Permanent)

(22) **Safety Training Records** Records document employee training and certification such as for equipment operation, hazardous material handling and emergency procedures, driver training, CPR and first aid training, and asbestos awareness training for removal, abatement, or transportation. This series may include but is not limited to sign off sheets indicating that employees have received training; acknowledgment of safety rules: instruction sheets; copies of hazardous material data sheets; informational materials; and related documentation and correspondence. **(Retention:** 30 years after employee separation, destroy)

(23) **Security Records** Records document reporting of suspicious and criminal incidents at the institution. Records may include incident reports containing names, dates, case numbers, dollar values, locations, descriptions of incident, and personnel taking report; identification cards created when reports of suspicious behavior are made to the office; warnings records; copies of reports filed by the Oregon State Police or other law enforcement agencies; notes; and related documentation. **(Retention:** (a) 2 years for copies of reports filed by law enforcement agencies, destroy (b) 7 years for annual Clery act report records, destroy (c) 5 years for all other records, destroy)

(24) **Student Incident Records** Records document incidents of injury to residence hall occupants, vandalism, and other infractions of housing rules. The series also documents the disposition of such incidents. This series may include but is not limited to incident report forms usually filed by resident advisors; housing director's written decisions; student appeals of decisions; and related documentation and correspondence. **(Retention:** (a) If incident results in a claim: transfer to appropriate claim file (b) If no claim results: retain 10 years, destroy)

(25) **Vehicle Accident Records** Records document accidents involving vehicles owned by the institution. This series may include but is not limited to vehicle accident reports; vehicle accident claims; damage or loss of state property reports and related documentation and correspondence. Information may include vehicle type and identification number; name of party using the vehicle; notation of condition before and after use; and authorizing signatures. **(Retention:** 4 years, 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

## 166-475-0110 Student Records

(1) **Academic Standing Reports Records** document student academic standing, including academic deficiency and the status changes of academically deficient students. Records may include reports containing student names, grade point averages (GPAs), grade point deficiencies, and numbers of previous suspensions and probations; student petitions for re-evaluation; report of student progress toward academic readmission/removal of probation status at other institutions; academic honors and awards; and related documentation and correspondence. **(Retention:** 3 years, destroy)

(2) **Admissions Reports Records** document summary information relating to student admission programs which may be used for control, planning or review. Records may include but are not limited to working papers; drafts; transitory reports; final reports; and related documentation and reports. Typical report subject categories include the number of new students, advanced placement, and Grade Point Averages summaries. **(Retention:** (a) Permanent for final reports (b) 5 years for all other records, destroy)

(3) **Certification Records** Records document the preparation of students earning degrees and/or certification for licenses or certificates to enter a profession and forms the basis of the initial certification for various professions. Records may include applications for admission to a program; registration for practicum hours and evidence of the completion of the practicum; transcripts; narrative evaluations on practicum; notice of completion of hours required for certification; recommendations and evalua-

## ADMINISTRATIVE RULES

tions; and related correspondence. (**Retention:** 5 years after initial certification, destroy)

(4) **Class Lists Records** document official record of students enrolled in courses taught. The series is used to cross-check students who have enrolled against those who have registered as well as in the generation of statistical reports. Information in the series includes student names; Student ID Number; term; and enrollment/registration status. (**Retention:** 1 term, destroy)

(5) **Commencement Records** Records document commencement program planning and implementation at the institution. Records may include but are not limited to commencement attendance forms; planning records created by commencement committees or other planning groups; and related documentation and correspondence. (**Retention:** (a) Permanent for commencement programs (b) Until degrees conferred for commencement attendance forms, destroy (c) 2 years for all other records, destroy)

(6) **Diploma Mailing Verification Records** Records document students' requests to have diplomas and other graduation records distributed to specific addresses. Records include signed cards listing permanent addresses for diplomas to be mailed to; indicating that fees have been paid; and listing students' names, college or school within the institution, degrees granted, and dates of requests. (**Retention:** 1 year, destroy)

(7) **Enrollment Reports/Records** document enrollments which may be used for planning and research. Information contained in the reports includes student names and levels, grade point averages, demographic data, and academic majors. Records may include but are not limited to working papers; final reports; and related documentation and correspondence. (**Retention:** (a) Permanent for final reports (b) 2 years for all other records, destroy)

(8) **Examinations, Tests, Term Papers, and Homework Records** Records document work of student subject mastery in institution courses not returned to the student. Records may include but are not limited to examinations and answers; quizzes and answers; homework assignments; course papers; term papers; and essay assignments. This series does not include graduate student qualifying or comprehensive examinations. (**Retention:** (a) 1 term after completion for uncontested grade results, destroy (b) Until resolved for contested grade results, destroy)

(9) **Family Educational Rights and Privacy Act (FERPA) Documents Records** document the process of student information release requests and consent authorizations or denials in accordance with the Family Educational Rights and Privacy Act. Records may include but are not limited to requests for formal hearings; requests for release of personally identifiable information; records of disclosures made to third parties; student statements regarding hearing panel decisions; written decisions of the hearing panel; written consent of the student to disclose records; waivers for rights of access; and related documentation and correspondence. (**Retention:** (a) Life of the affected record or until student terminates waiver for written consent of the student to disclose records and waivers for rights of access, destroy (b) Life of the affected record for all other records, destroy)

(10) **Fraternity and Sorority Membership Records** Records document personal information on each organization member. Data elements on cards or lists may include high school attended; major; hometown; date pledged; graduation date; offices held; and awards received. (**Retention:** 5 years after last enrollment, destroy)

(11) **Grade Reports Records** document grades received by students for the term. This is the record copy of reports distributed to students at the end of each term. Individual forms include course numbers and titles; grades awarded; grade point average; student name; and social security number. (**Retention:** 1 term, destroy)

(12) **Grade Rosters Records** document grades awarded by instructors and serves as the basis for students' official academic records. Records include student names and student ID numbers; course titles and numbers; sections; grades awarded; and instructors' signatures. (**Retention:** (a) 10 years for records created after implementation of the Student Information System, destroy (b) 25 years for records created before implementation of the Student Information System, destroy)

(13) **Graduate Students Degree Completed Records** Records document students' admission into graduate programs at the institution and their subsequent academic progress resulting in completion of degrees. (The official institutional academic record for all graduate students is maintained by the Registrar's Office). Records may include but are not limited to applications for admission to Graduate School; notices of admission; standardized placement and evaluation exams; transcripts; requests to audit courses; major department/degree change requests; assignment of an advisor; composition of dissertation/thesis committee and any changes thereof; proposed program sheets; transmittal sheets for records; statements of goals and objectives; certification of transferred courses; grade reports; course waiver requests; removal of incomplete grades forms; seven year time-limit appeal records; oral and written exam results — preliminary, qualifying and comprehensive; report of final oral examination and thesis credit for

advanced degree; thesis title card approvals; petition for change in graduate program; petitions or letters requesting exemption from institution regulations or procedures; advising checklists; transcripts from other institutions; on-leave requests and approvals, official graduation audit; program advisors' reports showing progress towards academic degrees; advancement to candidacy forms; awards; and related documentation and correspondence. (**Retention:** 20 years after degree completed, destroy)

(14) **Graduate Students Degree Uncompleted Records** Records document students' admission into graduate programs at the institution and their subsequent academic progress toward but not resulting in the completion of degrees. (The official institution academic record for all graduate students is maintained by the Registrar's Office.) Records may include but are not limited to applications for admission to graduate school; recommendations/ evaluations for admission; notices of admission; standardized placement and evaluation exams; transcripts; graduate school departmental action forms; requests to audit courses; major department/degree change requests; assignment of an advisor; composition of dissertation/thesis committee and any changes thereof; proposed program sheets; transmittal sheets for records; statements of goals and objectives; abstract of thesis or dissertation; certifications of transferred courses; grade reports; course waiver requests; removal of incomplete grades forms; seven year time-limit appeal records; oral and written exam results — preliminary, qualifying and comprehensive; reports of final oral examination and thesis credit for advanced degree; thesis title card approvals; petitions for change in graduate program; petitions or letters requesting exemption from institution regulations or procedures; on-leave requests and approvals; advising checklists; transcripts from other institutions; program advisors' reports showing progress towards academic degree; advancement to candidacy forms; comprehensive exam results; awards; and related documentation and correspondence. (**Retention:** (a) 25 years after last enrollment for doctoral students, destroy (b) 10 years after last enrollment for masters students, destroy)

(15) **Graduate Students Denied Admission/No Show Records** Records document the application and evaluation process for students applying to enter an instructional unit's academic graduate program who are denied admission or who were admitted but failed to enroll or withdraw. Records may include but are limited to applications for admission to graduate school forms, records of GRE and other test scores, departmental action forms; standardized examination reports, foreign student financial documentation, departmental or college supplemental application forms, departmental or college student application status reports, letters of recommendation, resumes, transcripts, and related documentation and correspondence. (**Retention:** (a) 3 years after denial of admission notification, destroy (b) 1 year after notification of admission if applicant fails to enroll, destroy (c) 1 year for test scores of students that do not apply, destroy)

(16) **Grievance Records** Records document grievances brought forward by students against the institution which do not result in litigation. Grievances may pertain to academic issues; housing; affirmative action and equal opportunity; student conduct; and other issues. Records include notices of grievance; informal discussion notes; grievance responses; formal hearing notes (including audio tapes); final summary statements; settlement agreements; appeals documentation; and related records. (**Retention:** (a) 3 years after last enrollment for appealed grievances, destroy (b) 3 years after resolution for grievances not appealed, destroy)

(17) **Independent Study Records** Records document departmental approval for students to enroll in independent study courses. Records may include but are not limited to permission sheets with students' names; course names; number of credits; and faculty signatures. (**Retention:** 1 year, destroy)

(18) **Instructors' Grade Records** Records document test scores, class work scores, and final grades for students which may be used as backup to the official academic records held by the Registrar. Records may include but are not limited to instructors' grade books; grade confirmation reports; grade confirmation and change records; and final grade rosters. (**Retention:** 2 years, destroy)

(19) **International Students Records** Records document institution assistance to international students who have been admitted to academic programs. These records primarily concern institution admissions, immigration issues, and other non-academic matters. Records may include but are not limited to copies of visas; scholarship information; institution admissions forms; graduate school applications; transcripts of previous college work; grade reports of prior college work; grade reports from institutional courses; international student advisors' notes; degree completion certificates; explanations for student withdrawals; recommendations and evaluations of students; and related documentation and correspondence. (**Retention:** (a) 7 years after last enrollment for all student records of matriculates, destroy (b) 1 year after failure to enroll for all student records of non-matriculates, destroy)

(20) **Internship Program Records** Records document the administration of student internship, practicum and cooperative education pro-

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grams. Programs may be within the institution or off campus and for class credit and/or pay. Records may include but are not limited to applications for internships inside and external to the institution; agreements with departments; postings/notices; student resumes; transcripts; copies of contracts; proposed institution listings; notes; and related documentation and correspondence. **(Retention: 5 years, destroy)**

(21) **Law Student Records** Records document students' admission to law school at the institution. Records may include but are not limited to applications for admission; record of degree candidate; request for transfer of graduate credit; statement of completion of requirements for law degree; requests for permission to re-register in the law school; leave of absence requests; petition to extend time past 7-year completion requirement; awards; and related documentation and correspondence. **(Retention: (a) 75 years for completed degrees, destroy (b) 7 years after last enrollment for uncompleted degrees, destroy)**

(22) **Name Changes Records** Records document students or applicants name changes reported to the admissions or registrar's offices by students. Records may include but are not limited to letters requesting change in name; name change forms; lists or reports of students with changed names; and related documentation and correspondence. **(Retention: 5 years after degree completed or last enrollment, destroy)**

(23) **National Testing Records** Records document services rendered to clients by administering tests required of students seeking admission to various programs or seeking to substitute already acquired knowledge for formal college courses. Tests administered include Scholastic Aptitude (SAT); American College (ACT); Graduate Record Examination (GRE); Medical School Admission (MCAT); Pharmacy School Admission (PCAT); Business School Admission (GMAT); National Teacher Education (NTE); Veterinary College Admission Test (VCAT); and Test of English as a Foreign Language (TOEFL). Records may include but are not limited to testing rules and regulations; rosters of test takers; seating charts; supervisors' reports; and vouchers for payment of testing. This series does not include test scores. **(Retention: 3 years after testing date, destroy)**

(24) **Non-Institution Student Records** Records document and tracks the application, selection, and progress in special instructional programs of elementary through high school and non-institution students belonging to special, minority, or disadvantaged groups. Examples of programs to which this series applies are Science and Mathematics Investigative Learning Experiences (SMILE), Upward Bound, High School Equivalency, and other non-institution programs. Records may include but are not limited to application and admission documentation; personal and family information; medical and health documentation; selection and decision making documentation; Educational Opportunity Program (EOP) documentation; notification of admission and non-admission; recommendations and evaluative materials; copies of academic records; counseling and advising notes and documentation; housing and conduct documentation; federal student aid reports; risk release and insurance forms; immigration and citizenship documentation; financial responsibility records; reports; and related documentation and correspondence. **(Retention: 3 years after separation from program, destroy)**

(25) **Placement Records** Records document the written reference history of a student to be forwarded to potential employers or professional schools. Records may include but are not limited to credentials records showing where, when, and cost of letters sent; release of information form which includes a listing of the reference letters to be sent; reference letters; student teaching reports; professional program certificates; personal data sheets and resumes; College Interview Forms; and related documentation and correspondence. **(Retention: (a) 5 years for established files, destroy (b) 2 years for incomplete file establishment requests, destroy)**

(26) **Placement Survey Records** Records document the results of periodic placement surveys conducted every two years of recent baccalaureate graduates. Records may include but are not limited to reports and questionnaires which provide the following information on individual alumni: career status or job title; continuing education; geographic location; source of finding employment; relationship of employment to major; salary; computer training needs; and number of years enrolled. **(Retention: (a) Permanent for reports (b) 3 years for questionnaires, destroy)**

(27) **Prospective International Student Records** Records document institution assistance to international students who are considering attendance at the institution. Records may include but are not limited to letters of inquiry from prospective students; official replies to inquiries; completed applications and admittance forms; local data sheets; advisory notes; and related documentation and correspondence. **(Retention: 5 years, destroy)**

(28) **Recruiters Records** This series provides a record of recruiter visits to the campus to conduct job interviews. Records may include but are not limited to scheduling calendars; Recruiter Schedules; affirmative action statements; recruiter information forms; lists of interviewees; feedback forms from recruiters; and related documentation and correspondence. **(Retention: 2 years, destroy)**

(29) **Residency Affidavits Records** document declarations filed by students regarding state residency status which is critical for determining tuition status. Records may include but are not limited to affidavits; correspondence regarding residency; and related documentation. **(Retention: 5 years from date status determined, destroy)**

(30) **Services to Students with Disabilities (SSD) Records** Records document student participation in the Services to Students with Disabilities Program. Records may include but are not limited to health professional evaluation reports; recommendations for student applicants; high school transcripts and academic work-sheets; autobiographical essays; copies of applications for admission; copies of notices of admission; special admissions applications checklists; questionnaires; physicians' statements and letters of recommendation; counseling interview notes and referrals; and related documentation and correspondence. **(Retention: 5 years after last contact, destroy)**

(31) **Scholarship Records** Records document the application, recruitment, selection, processing and awarding of private and public scholarships to individual students based upon a predetermined selection criteria. Records may include but not limited to correspondence, applications, disbursement documentation, selection criteria and related documentation. **(Retention: a) Until superseded for award selection criteria, application forms, etc, destroy b) 6 years after award disbursed for individual awarded scholarships, destroy)**

(32) **Special Academic Programs Student Records** Records document and tracks the application, admission, selection, and progress of institution students participating in special academic programs serving, guiding, and aiding institution students. This includes but is not limited to of the individual files for students participating in special institution programs which provide services ranging from counseling and tutoring to tuition waiver assistance. Programs may include but are not limited to the English Language Institute (ELI) and American English Institute; Educational Opportunities Program (EOP); non-traditional student programs; Older Than Average Student Program and Adult Learners; National Student Exchange Program (NSE); Native American Science Program (NASP); University Exploratory Studies Student Program (UESP); Study Abroad Program; Academic Learning Services (ALS); Peer Advising; and other special academic programs. Records may include but are not limited to application documentation; personal information; medical and health documentation; admission and non-acceptance documentation; recommendations and evaluative materials; copies of academic records; counseling and advising notes and documentation; risk release and insurance forms; immigration and citizenship documentation; financial responsibility records; reports; and related documentation and correspondence. **(Retention: (a) 7 years for accepted and enrolled participants, destroy (b) 2 years for denied admission or did not enroll after acceptance, destroy)**

(33) **Student Academic Records** Records document the academic progress of graduate and undergraduate matriculated students at the institution. Records may include but are not limited to institution academic transcripts; high school and non-institutional college transcripts; applications; notices of admission, readmission, denial and acceptance; grade reports; records of grade changes; reservation of credit requests; petitions for exemption from institution regulations and procedures; applications for withdrawal from the institution forms; advanced standing reports; standardized examination reports; letters of recommendation; vault number index card file; and related documentation and correspondence. **(Retention: (a) Permanent for institutional academic transcripts, applications for admission, and grade change records of students awarded degrees (b) 7 years after students graduation/last enrollment for all other records, destroy)**

(34) **Student Activity Reports Records** document graduate and undergraduate student statistics in a specific instructional unit and is used to provide summary information which may be used for planning or review. This report may include but is not limited to country of origin; degree(s) held and pursued; financial situation; gender and ethnicity; marital status; veterans status; academic standing and grade point averages; placement test scores; immigration status; and other data elements. **(Retention: Until superseded or obsolete, destroy)**

(35) **Students Admissions Records** Records document the application process for individuals seeking admission to the institution. Records may include but are not limited to admission applications; academic transcripts from other institutions; test scores; letters of admittance; and related documentation and correspondence. **(Retention: Until matriculation, transfer to the Registrar's Office for inclusion in the Student Academic Records)**

(36) **Student Advising Records** Records document undergraduate and/or graduate student's academic progress within a specific department and or college program. Most of the components in this record series are reference copies of records maintained in the files of the Registrar's Office and/or the Graduate School and are maintained for the convenience of the student academic advisors. Records may include but are not limited to



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applications for program admission; notices of admission; grade reports; degree program requirement lists; departmental course waiver forms; program advisors' reports showing progress towards academic degrees; advising checklist forms; advisors' notes; copies of transcripts; Program Planning Sheets; advanced standing examination reports; official graduation audits; curriculum posting sheets; recommendation letters; suspension notices; re-admission notices; comprehensive exam results; awards; and related documentation and correspondence. **(Retention:** 1 year after degree completed or last enrollment, destroy)

(37) **Student Conduct Records** Records document violations of student conduct codes and policies. Records may include but are not limited to incident reports, evidence, notifications of allegation, notifications of decision or outcome, and related documentation and correspondence. **Retention:** (a) 75 years from the date of the initial incident that resulted in expulsion, degree revocation, negative notation on the transcript destroy, (b) 5 years from the date of the initial incident for suspension, unresolved incidents of academic misconduct and all other student conduct files, destroy).

(38) **Student Development Transcripts Records** Records document students participation in university clubs, organizations, honor societies and special academic programs such as the Study Abroad Program; volunteer service in community organizations; and honors and awards received. Records include transcripts listing activities, background materials used to validate the activities, and related correspondence. **(Retention:** (a) Permanent for transcripts (b) 5 years after last activity for all other records, destroy)

(39) **Student Non-Disclosure Requests Records** Records document the request by a student to restrict release of information normally provided as directory information as per Family Educational Rights and Privacy Act (U.S. Public Law 93-380). This series may contain but is not limited to student requests for non-disclosure of directory information and memoranda distributed to pertinent departments informing units which might have pertinent information not to disclose that information. **(Retention:** (a) 1 year for revoked requests, destroy (b) Permanent all other records)

(40) **Student Organization Administrative Records** Records document the history, development, and policies of campus student organizations. Records may include but are not limited to annual review forms; minutes; constitutions and bylaws; committee, subcommittee, and task-force records; Student Senate bill and resolution files; budgets; handbooks; officer and member rosters; scrapbooks; photographs; and related documentation and correspondence. **(Retention:** Permanent)

(41) **Student Recruitment Records** Records document efforts of the institutional units to recruit students based upon disadvantaged status, academic performance, and other criteria. Records may include but are not limited to prospects lists; interview and conversation notes; photographs; personal information forms and resumes; test scores; academic transcripts; and related documentation and correspondence. **(Retention:** 5 years, destroy)

(42) **Student Status Cards Records** document the status of students who are enrolled or have been enrolled and graduated from the academic program. Information on the individual cards may include but is not limited to name; date entered; department; change of school; graduation dates; degrees; previous schools attended; notation of activities and honors; and photographs of individuals. **(Retention:** 20 years, destroy)

(43) **Students (Undergraduate) Denied Admissions/ No Show Records** Records document undergraduate students who have been denied entry into degree or certificate programs or who have been admitted but have not enrolled or withdrawn. Records may include but are not limited to: admission applications; academic transcripts from other institutions; test scores; letters of admittance; and related documentation and correspondence. **(Retention:** (a) 2 years after denial of admission, destroy (b) 1 year after notification of admission if applicant fails to enroll, destroy)

(44) **Student Statistical Reports Records** document student status and enrollment at the institution. Records may include specialized listings and statistical reports pertaining to departmental and college registration, course changes, add/drops, geographical distribution of students, student age and gender data, mortality of classes, student transfers from other schools, student body grade point averages and GPAs of living groups, and veterans enrollment; reports documenting student and enrollment by term; and reports on other topics. **(Retention:** (a) Permanent for summary and annual reports (b) 3 years for all other records, destroy)

(45) **Student Tracking Records** Records document student enrollment in courses and changes in enrollment. The series also documents admission status changes, affiliation and registration in colleges or schools, and changes in grading basis. Records may include but are not limited to registration forms; registration change forms (add/drop forms); withdrawal forms; application for re-admission forms; change of schools (within the institution) forms; and grading basis (unsatisfactory/satisfactory) change forms. **(Retention:** 1 year, destroy)

(46) **Supplemental Grade Report Records** Records document grade changes submitted by instructors through the academic departments

to the Registrar. Records may include but are not limited to supplemental grade reports (SGRs); removal of I and E forms; and related documentation and correspondence. **(Retention:** (a) 5 years for records created after implementation of the Student Information System, destroy (b) 25 years for records created before implementation of the Student Information System, destroy)

(47) **Theses and Dissertations Records** Records document the completion and academic acceptance of graduate theses and dissertations presented to colleges in fulfillment of requirements for graduate degrees. This series includes but is not limited to final and accepted copies of theses and dissertations and final and terminal projects. **(Retention:** Permanent)

(48) **Transcript Hold or Encumbering Authorization Forms Records** document holds on transcripts and academic reporting information placed by the institution for a number of reasons. This series consists of forms authorizing the holding of academic records and information until a specific action is taken by the subject of the academic record. **(Retention:** Until release of the hold authorization, destroy)

(49) **Transcript Request Forms Records** document students' requests for transcripts to be sent to other institutions. Information on the individual form includes student's present name and other name(s) under which the student attended; social security number; vault number (used in locating the transcript in the Student Record series); home address; phone number; student signature; number of copies of transcript requested; fee status; whether official or unofficial transcripts are desired; date of request; and destination(s) of transcript(s). **(Retention:** 6 months, destroy)

(50) **Undergraduate Degree Audit and Application for Graduation Records** Records document student completion of degree requirements. Records may include but are not limited to work sheets; transcripts; and transfer course evaluations. The series may also include official graduation audit forms that list students' names; colleges; majors; degrees; minors; the course loads taken by the applicants for previous three terms; the breakdown of institutional undergraduate degree requirements (as opposed to school, major, or certificate program graduation requirements) and how the applicants have fulfilled them; grade point averages; and deans' recommendations/ comments and signatures. **(Retention:** 5 years after last enrollment, destroy)

(51) **Veterans Records** Records document the entitlement status and enrollment of veterans in the institution. Records include but are not limited to Oregon State Veterans Affairs form 1006M that certifies Oregon resident veterans educational benefits entitlements; individual veteran student records that certify to the U.S. Department of Veterans Affairs that the student is eligible for educational benefits, is currently enrolled at the institution in a qualifying curriculum, and is maintaining standards required to receive entitlements; veterans attendance reports; and related forms, documentation and correspondence. **(Retention:** 3 years following termination of enrollment period, destroy).

Stat. Auth.: ORS 192 & 357  
Stat. 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 3-2004, f. & cert. ef. 7-29-04; OSA 4-2009, f. & cert. ef. 6-29-09

.....

**Rule Caption:** Pertaining to publishing tables and charts in the On-line Oregon Administrative Rules Compilation.

**Adm. Order No.:** OSA 5-2009

**Filed with Sec. of State:** 7-1-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 6-1-2009

**Rules Amended:** 166-500-0040, 166-500-0050, 166-500-0055

**Subject:** This rules filing amends procedural rules of the Oregon Secretary of State, Archives Division, Administrative Rules Unit to set for the the new procedures by which the Oregon state agencies, boards and commissions that promulgate administrative rules may submit PDFs of tables, charts, appendices, etc., referred to in administrative rule, for publication in the On-line Oregon Administrative Rules Compilation.

**Rules Coordinator:** Julie Yamaka—(503) 378-5199

**166-500-0040**

**Components of a Permanent Administrative Rule Filing**

(1) Permanent Administrative Rule filings have these three components:

(A) Two Certificate and Order for Filing Permanent Administrative Rules forms, including:

(A) One original filing form bearing the original signature of the agency's authorized signer; and

(B) One photocopy of the original filing form.

(b) One 8 1/2 by 11 inch paper copy of the complete and final rule text for each rule listed on the Certificate:

# ADMINISTRATIVE RULES

(A) Agencies shall number paper copy pages consecutively and note any special instructions where needed.

(B) Agencies shall include tables, appendices and other specially formatted material in the original paper copy filed with the Administrative Rules Unit. These items may be omitted from print Oregon Administrative Rule publications per ORS 183.360(2)(a).

(C) Agencies adopting or amending rules incorporating published works by reference may omit copies of the publications from their rule filings if:

- (i) The publications are unusually voluminous or costly to reproduce;
- (ii) The location of the publication and its availability to the public are stated in the rule.

(c) A diskette or CD that contains:

(A) The final rule text as described in 166-500-0055;

(B) A Word copy of the Certificate and Order for Filing Administrative Rules; and

(C) PDFs of any tables, appendices or other specially formatted material appearing in the rule text, submitted as described in 166-500-0055(2). These items may be omitted from print publications, but when possible the Administrative Rules Unit will include these items in the on-line Administrative Rules Compilation.

(2) Each Certificate and Order for Filing Permanent Administrative Rules shall be comprised only of administrative rules for which prior notice was published in the Oregon Bulletin. This provision does not apply in the case of rules being renumbered only.

(3) Forms are available from the Administrative Rules Unit or downloadable from the Administrative Rules Unit Web Site at <<http://arcweb.sos.state.or.us/banners/rules.htm>>.

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

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 183.325, 183.330, 183.335, 183.355 & 183.360

Hist.: OSA 9-1997(Temp), f. & cert. ef. 10-6-97; [OSA 4-1995, f. 8-15-95, cert. ef. 9-1-95; Suspended by OSA 9-1997(Temp), f. & cert. ef. 10-6-97]; OSA 13-1997, f. & cert. ef. 11-3-97, Renumbered from 166-510-0011; OSA 3-2003, f. & cert. ef. 11-20-03; OSA 2-2007, f. & cert. ef. 7-31-07; OSA 5-2009, f. & cert. ef. 7-1-09

## 166-500-0050

### Components of a Temporary Administrative Rule Filing

(1) Temporary Administrative Rule filings have these four components:

(a) Two copies of the Certificate and Order for Filing Temporary Administrative Rules, including:

(A) One original filing form bearing the original signature of the agency's authorized signer; and

(B) One photocopy of the original form.

(b) One 8 1/2 by 11 inch paper copy of the complete and final rule text for each rule listed on the Certificate;

(A) Agencies shall number paper copy pages consecutively and note any special instructions where needed.

(B) Agencies shall include tables, appendices and other specially formatted material in the original paper copy filed with the Administrative Rules Unit. These items may be omitted from print Oregon Administrative Rule publications per ORS 183.360(2)(a).

(C) Agencies adopting or amending rules incorporating published works by reference may omit copies of the publications from their rule filings if:

- (i) The publications are unusually voluminous or costly to reproduce;
- (ii) The location of the publication and its availability to the public are stated in the rule.

(c) A diskette or CD that contains:

(A) The final rule text as described in 166-500-0055;

(B) A Word document of the Certificate and Order for Filing Administrative Rules; and

(C) PDFs of any tables, appendices or other specially formatted material appearing in the rule text, submitted as described in 166-500-0055(2). These items may be omitted from print publications, but when possible the Administrative Rules Unit will include these items in the on-line Administrative Rules Compilation.

(d) Two copies of the Statement of Need and Justification:

(A) One original form bearing the original signature of the agency's authorized signer; and

(B) One photocopy of the original form.

(2) The Administrative Rules Unit will accept Temporary Rule filings by fax when:

(a) The agency needs the rule to be effective immediately; and

(b) A complete Temporary Administrative Rule Filing, as described in section (1) of this rule, is delivered to the Administrative Rules Unit within three working days.

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 183.325, 183.330, 183.335, 183.355 & 183.360

Hist.: OSA 9-1997(Temp), f. & cert. ef. 10-6-97; [OSA 4-1995, f. 8-15-95, cert. ef. 9-1-95; Suspended by OSA 9-1997(Temp), f. & cert. ef. 10-6-97]; OSA 13-1997, f. & cert. ef. 11-3-

97, Renumbered from 166-510-0031; OSA 3-2003, f. & cert. ef. 11-20-03; OSA 2-2007, f. & cert. ef. 7-31-07; OSA 5-2009, f. & cert. ef. 7-1-09

## 166-500-0055

### Computer Disk to Be Filed as Part of Administrative Rule Filing

A computer diskette or CD shall be included with each Permanent or Temporary Administrative Rule filing contain the following:

(1) Text files:

(a) One Word document of the Certificate and Order for Filing Administrative Rules;

(b) Two rule text documents with identical language for each Permanent or Temporary rule filing, with formatting as follows:

(A) The first text document shall be in Word or a similar program, and the second text document shall be in plain text format.

(B) The two rule text documents shall contain complete and final rule text for each rule listed on the Certificate, and shall be clean and free from strike-throughs, underlines, and other formats showing tracked changes. The documents shall contain only the rules that are listed on the Certificate. No rule text shall be submitted for rules being repealed;

(C) Rules text shall be typed in 12 point, or similarly readable size;

(D) Typing shall be from margin to margin, not in column form;

(E) Single spaces shall be used throughout the text, with no double spaces between sentences;

(F) Division titles shall be centered, boldface and use all uppercase letters;

(G) Division subtitles shall be centered, boldface and use initial capitalization only;

(H) Rule numbers shall be in the XXX-XXX-XXXX format and shall be flush left and boldface;

(I) Rule titles shall be flush left, boldface and use initial capitalization;

(J) Rule text shall be flush left;

(K) Within rules the internal numbering shall be (1), (a), (A), (i), (I). There shall not be a (1) without a (2), (a) without a (b), etc.;

(L) The text of each rule shall be followed by:

- (i) The specific statutory authority ("Stat. Auth.") for that rule; and
- (ii) The specific statute(s) being implemented ("Stats. Implemented")

by that rule.

(M) One extra line space (hard return) shall be inserted only in the following locations in the text:

(i) Before and after centered division titles and subtitles;

(ii) After the "Stats. Implemented" of each rule.

(N) Text shall appear in consecutive order by rule number;

(O) Special formatting that is acceptable in rule text:

(i) Special font usage (e.g. bold, italics, underline etc.);

(ii) Special characters (e.g. degree symbol);

(iii) Quoted text;

(iv) Centered text or titles; and

(v) Adoptions by reference.

(P) File names for each text document shall clearly indicate the OAR chapter and division numbers for the rule text being filed.

(2) PDF files:

(a) Tables, appendices and other specially formatted material may be omitted from print Oregon Administrative Rule publications per ORS 183.360(2)(a). When possible, however, these items will be included the on-line Administrative Rules Compilation.

(b) PDFs of tables, appendices, and similar items shall be supplied as follows:

(A) For each rule in which one table or similar item is included or referenced, a PDF of the table only shall be included on the disk.

(B) For each rule in which two or more tables or similar items are included in the text, a PDF of the entire rule, including these items, shall be included on the disk.

(C) Each PDF of a table or a rule containing tables shall be named with the entire rule number.

(3) Labeling: The outside of each disk shall be labeled with:

(a) Agency name;

(b) OAR chapter number; and

(c) Division number(s).

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 183.355 & 183.360

Hist.: OSA 9-1997(Temp), f. & cert. ef. 10-6-97; OSA 13-1997, f. & cert. ef. 11-3-97; OSA 3-2003, f. & cert. ef. 11-20-03; OSA 2-2007, f. & cert. ef. 7-31-07; OSA 5-2009, f. & cert. ef. 7-1-09

# ADMINISTRATIVE RULES

## Secretary of State, Elections Division Chapter 165

**Rule Caption:** Amending the Billing Formula for Local Elections.  
**Adm. Order No.:** ELECT 14-2009

**Filed with Sec. of State:** 6-30-2009

**Certified to be Effective:** 6-30-09

**Notice Publication Date:** 5-1-2009

**Rules Amended:** 165-020-0050, 165-020-0055, 165-020-0060

**Subject:** The amendments update the billing formula for special district elections. The amendment to OAR 165-020-0050 incorporates an exemption from chargeable costs for an election of directors of a soil and water conservation district. The OAR 165-020-0055 amendments update the definitions used in the calculation of costs. These changes would mean that districts would be charged in proportion to the number of candidates and measures qualified to the ballot, rather than on registration within the district. OAR 165-020-0060 would be amended to remove a reference to form SEL 951, because that form would no longer be needed under the new formula provided in the amendment to OAR 165-020-0055.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

### 165-020-0050

#### Purpose

(1) This rule provides a uniform billing system for state, county, city and special district elections as authorized under ORS 246.179, 254.046, and 255.305:

(a) All chargeable costs incurred by the county election officer for the conduct of an election held for the state on a date other than the primary or general election, shall be paid by the state, if provided by the act calling for the election or pursuant to ORS 246.179;

(b) All chargeable costs incurred by the county election officer for the conduct of an election held for a city on a date other than the primary or general election, shall be paid by the city;

(c) All chargeable costs incurred by the county election officer for the conduct of an election held for a special district shall be paid by the special district. Chargeable costs do not include expenses incurred by the county election officer for the election of directors of a soil and water conservation district organized under ORS 568.210 to 568.808 and 568.900 to 568.933.

(2) An "Election Equipment Amortization Worksheet" (SEL 950, SEL 950A, or SEL 950B), "Average Ballots Cast/Average Aggregate Registration Worksheet" (SEL 951), "Allocated Cost Worksheet for Vote By Mail Elections" (SEL 952VBM), and "Local Elections Billing Worksheet" (SEL 953) are adopted by reference and designated for use to detail all costs to be billed to each electoral district holding an election.

(3) Any chargeable cost billed for an election shall be supported by such documentation as copies of payroll registers, invoices, vouchers, sales slips, billings, and receipts. Any cost not specified in this rule, or any unsupported chargeable cost, need not be paid.

(4) Documentation will be provided to the electoral districts upon request.

(5) Any electoral district bills and supporting documentation shall be subject to audit by the secretary of state at any time for the purpose of verifying the accuracy of the chargeable costs.

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

Stat. Auth.: ORS 246.150, 246.179 & 255.305

Stats. Implemented: ORS 246.179, 251.365, 254.046 & 255.305

Hist.: SD 40-1980, f. & ef. 4-2-80; SD 16-1984, f. & ef. 9-5-84; ELECT 2-1990(Temp), f. & cert. ef. 1-19-90; ELECT 22-1990, f. & cert. ef. 6-4-90; ELECT 11-2000, f. & cert. ef. 6-7-00; ELECT 10-2003, f. & cert. ef. 9-3-03; ELECT 4-2004, f. & cert. ef. 4-15-04; ELECT 26-2007, f. & cert. ef. 12-31-07; ELECT 14-2009, f. & cert. ef. 6-30-09

### 165-020-0055

#### Definition of Terms

(1) "Adjustment Cost." A value which occurs when the voter registration of a district which did not have an excess credit is multiplied by the adjustment cost per elector.

(2) "Adjustment Cost Per Elector." A unit charge derived by dividing the total excess credit by the adjustment registration.

(3) "Adjustment Registration." The total aggregate registration minus the registration of those districts which have an excess credit.

(4) "Aggregate Registration." The total number of district offices plus the total number of district measures multiplied by the number of active electors in the district.

(5) "Allocated Cost." The total of all costs on the "Allocated Cost Worksheet for Vote By Mail Elections (SEL 952 VBM) incurred by the county election officer for a given election.

(6) "Allocated Cost Per Elector." A unit charge determined by dividing the allocated cost by the aggregate registration.

(7) "Amortization." The allocation of a cost of an asset over its estimated economic life:

(a) "Estimated Economic Life." The period of time over which the asset will be used. This period of time cannot be longer than the estimated physical life of the asset;

(b) "Hardware." The physical equipment used in an information system;

(c) "Software or Program." The detailed instructions which direct the hardware functions of an information system;

(d) "Hardware Maintenance Agreement." An annual expenditure for the repair or preventative maintenance of the hardware portion of an information system;

(e) "Software License or Royalty." An expenditure for the licensed use of an information system's software.

(8) "Chargeable Cost." A charge directly associated with and incurred by the county election officer to conduct a given election. Chargeable costs include each district office and district measure's apportioned costs and dedicated expenditures. Chargeable costs apply only to those district offices and district measures qualified to appear on the ballot. Costs associated with a county's voters' pamphlet shall be considered chargeable costs for local elections.

(9) "Apportioned Cost." A value which occurs when the aggregate registration for each district office and district measure is multiplied by the allocated cost per elector.

(10) "Dedicated Expenditure." Any charge associated with and incurred by the county election officer to conduct a given election but specific to one electoral district and not to be shared or apportioned to any other electoral district; such as notice of ballot title.

(11) "Election Cost." The billing cost for a district election. A value derived by subtracting the adjustment cost from the value in the total chargeable costs minus total revenue column for each district on the "Local Elections Billing Worksheet" (SEL 953).

(12) "District." A state, county, city, special district, or other municipal corporation for which the county election officer is required to hold an election.

(13) "Excess Credit." A value which occurs when the total revenue from a district exceeds the total cost for that district election.

(14) "Revenue." The deposits placed on account with the county election officer as provided in ORS 198.775, 261.210, and 607.025 and revenues received from submission of candidate statements and arguments for publication of the county voters' pamphlet.

(15) "Office." Any elected office qualified for the ballot.

(16) "Measure." A proposed law, an Act or part of an Act of the Legislative Assembly, a revision of or amendment to the Oregon Constitution, local, special or municipal legislation or a proposition or question submitted to the people for their approval or rejection at an election.

(17) "Total District Cost." The total cost to a district for each office and measure filed on the ballot.

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

Stat. Auth.: ORS 246.179, 251.365, 254.046 & 255.305

Stats. Implemented: ORS 246.179, 251.365, 254.046 & 255.305

Hist.: SD 40-1980, f. & ef. 4-2-80; SD 16-1984, f. & ef. 9-5-84; ELECT 2-1990(Temp), f. & cert. ef. 1-19-90; ELECT 22-1990, f. & cert. ef. 6-4-90; ELECT 12-1992(Temp), f. & cert. ef. 5-18-92; ELECT 35-1992, f. & cert. ef. 12-15-92; ELECT 12-2000, f. & cert. ef. 6-7-00; ELECT 26-2007, f. & cert. ef. 12-31-07; ELECT 14-2009, f. & cert. ef. 6-30-09

### 165-020-0060

#### Computation of Costs

(1) The Election Equipment Amortization Worksheet Form SEL 950, SEL 950A, or SEL 950B shall be the form used for calculating the amortization of election equipment.

(2) The total amortization costs billed to electoral districts over the years the election equipment is used cannot exceed the total cost of purchasing, operating and maintaining the equipment during the years the equipment is used.

(3) Amortization of election equipment is not mandatory; however, any county election official who chooses to amortize such equipment must use the method designated by this rule.

(4) The Average Ballots Cast/Average Aggregate Registration Worksheet Form SEL 951 shall be the form used for computing the average number of ballots cast per election for prior four years.

(5) The Allocated Cost Worksheet Form SEL 952 shall be the form used for computing the allocated cost of the election.

(6) The Local Elections Billing Worksheet Form SEL 953 shall be the form used for computing the total district cost.

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

Stat. Auth.: ORS 246.120, 246.150, 246.179, 246.540, 254.046 & 255.305

Stats. Implemented: ORS 246.179, 246.540, 251.365, 254.046 & 255.305

Hist.: SD 40-1980, f. & ef. 4-2-80; SD 16-1984, f. & ef. 9-5-84; ELECT 2-1990(Temp), f. & cert. ef. 1-19-90; ELECT 22-1990, f. & cert. ef. 6-4-90; ELECT 13-1997, f. & cert. ef. 10-



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27-97; ELECT 6-1998, f. & cert. ef. 5-8-98; ELECT 10-2003, f. & cert. ef. 9-3-03; ELECT 14-2009, f. & cert. ef. 6-30-09

## Water Resources Department Chapter 690

**Rule Caption:** Changes to the land ownership and lien information required of applicants requesting a water right transfer and/or groundwater registration modification.

**Adm. Order No.:** WRD 1-2009

**Filed with Sec. of State:** 6-18-2009

**Certified to be Effective:** 6-18-09

**Notice Publication Date:** 3-1-2009

**Rules Amended:** 690-380-0090, 690-380-0100, 690-380-4010, 690-382-0100, 690-382-0300, 690-382-0500, 690-382-0700

**Subject:** The Water Resources Commission has adopted amended provisions in administrative rules related to water right transfers (OAR chapter 690, division 380) and ground water registration modifications (OAR chapter 690, division 382) that eliminate the requirement that applicants submit a copy of written notification to all lien holders and the requirement that lien holder information be included in ownership reports prepared by a title company and submitted to the Department. In addition, the amended rules clarify when ownership reports must be prepared to provide better information to establish that applicants are authorized to pursue a water right transfer or modification of a ground water registration.

**Rules Coordinator:** Ruben Ochoa—(503) 986-0874

### 690-380-0090

#### Applicability

The rules in OAR 690, division 380 shall apply to all applications received by the Department after July 1, 2003 and all transfers for which a final order has not been issued by the Department by July 1, 2003 except as follows:

(1) Until July 1, 2003, the Department shall accept applications that conform to the requirements of either OAR 690-380-3000 or 690-015-0060 as adopted by the Commission in June 1996.

(2) Notice of receipt of an application pursuant to OAR 690-380-4000(3) shall not be required if notice of the application has previously been published in the Department's weekly notice pursuant to OAR 690-015-0080(1) as adopted by the Commission in June 1996.

(3) Until July 1, 2003 or if protests are filed during the period described in OAR 690-015-0080 as adopted by the Commission in June 1996, at the discretion of the Director, the Department may:

(a) Prepare a preliminary determination and initiate the procedures described under OAR 690-380-4010 to 690-380-4200; or

(b) Issue a final order pursuant to OAR 690, division 15 as adopted by the Commission in June 1996.

(4) If affidavits are filed pursuant to OAR 690-017-0400, at the discretion of the Director, the Department may:

(a) Prepare a preliminary determination and initiate the procedures described under OAR 690-380-4010 to 690-380-4200; or

(b) Initiate cancellation proceedings under OAR 690, division 17.

(5) The Department shall provide notice of any preliminary determination by publication in the Department's weekly notice, but shall not require newspaper notice pursuant to OAR 690-380-4020(1)(b) if newspaper notice has previously been published pursuant to OAR 690-015-0080(1) as adopted by the Commission in June 1996.

(6) The Department shall not apply OAR 690-380-4010(5) to applications filed prior to January 1, 2005, if a lot book report or a report of ownership information was included with the application.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 1-2009, f. & cert. ef. 6-18-09

### 690-380-0100

#### Definitions

The definitions in this rule, along with the definitions in OAR 690-008-0001 and 690-300-0010, apply to the rules in OAR chapter 690, Division 380. Where a term is defined in more than one rule, the definition in this rule applies.

(1) "District" means an irrigation district formed under ORS Chapter 545, a drainage district formed under Chapter 547, a water improvement district formed under Chapter 552, a water control district formed under Chapter 553 or a corporation organized under Chapter 554.

(2) "Enlargement" means an expansion of a water right and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a right;

(b) Increasing the acreage irrigated under a right;

(c) Failing to keep the original place of use from receiving water from the same source; or

(d) Diverting more water at the new point of diversion or appropriation than is legally available to that right at the original point of diversion or appropriation.

(3) "Injury" or "Injury to an existing water right" means a proposed transfer would result in another, existing water right not receiving previously available water to which it is legally entitled.

(4) "Layered" means a situation in which there are multiple water uses subject to transfer, permits, or certificates of registration that are appurtenant to the same place of use and that have been issued for the purpose of irrigation.

(5) "ODFW" means the Oregon Department of Fish and Wildlife.

(6) "Point of appropriation" means a well or the pump location on a sump at which ground water is withdrawn from the ground for use under a ground water right.

(7) "Point of diversion" means the place at which surface water is diverted from a surface water source as specified in the water right. It may be the head of a ditch, a pump suction line, the center line of a dam, or other point at which control is taken of surface water.

(8) "Primary water right" means the water right designated by the Commission as the principal water supply for the authorized use, or if no designation has been made, the water right designated by the applicant as the principal water supply for the authorized use.

(9) "Protest" means a written statement expressing opposition to approval of a transfer application and disagreement with a preliminary determination that is filed in response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020 and includes the fee prescribed in ORS 536.050.

(10) "Report of ownership information" means a document prepared by a title company that includes ownership and a legal description of the lands to which the water right is appurtenant.

(11) "Standing statement" means a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by ORS 540.520(5) and OAR 690-380-4020.

(12) "Supplemental water right or permit" means an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water right or permit is used in conjunction with a primary water right.

(13) "Water right conveyance agreement" means a purchase and sale agreement, deed, or other document that has been recorded in the deed records by the relevant county describing land to which a water right is appurtenant and demonstrating that the interest in that land and the interest in the appurtenant water right have been separately conveyed.

(14) "Water use subject to transfer" means a water use established by:

(a) An adjudication under ORS Chapter 539 as evidenced by court decree;

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under 537.250; or

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 7-1987, f. & cert. ef. 6-11-87; WRD 10-1988, f. & cert. ef. 8-10-88; WRD 5-1996, f. & cert. ef. 7-11-96; WRD 2-2003, f. & cert. ef. 5-1-03, Renumbered from 690-015-0005; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

### 690-380-4010

#### Preliminary Determination

(1) After the conclusion of the public comment period described in OAR 690-380-4000(4), the Department shall prepare a preliminary determination of whether the application should be approved or denied taking into account comments received in response to the notice provided under OAR 690-380-4000 and the considerations described in section (2) of this rule.

(2) The Department's preliminary determination shall include an assessment of whether:

(a) The right has been used over the past five years according to the terms and conditions of the right and that the right is not subject to forfeiture under ORS 540.610;

(b) The water user is ready, willing and able to use the full amount of water allowed under the right;

(c) The proposed transfer would result in enlargement;

(d) The proposed transfer would result in injury; and

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(e) Any other requirements for water right transfers are met.

(3) For a preliminary determination that indicates that an application should be denied, the preliminary determination shall:

(a) Describe the basis for the denial; and

(b) Identify any conditions or restrictions that, if included in the transfer, would allow approval of the transfer.

(4) The Department shall provide a copy of the draft preliminary determination to the applicant and provide the applicant a period of at least 30 days to amend the application to address any issues identified by the Department in the preliminary determination, including the quantity of water to be transferred, or to withdraw the application.

(5) For permanent transfers under OAR 690-380-2000, upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria described in OAR 690-380-3000(13)(b) or (c) shall submit the following information:

(a) A report of ownership information as defined in OAR 690-380-0100(10) for the land to which the water right is appurtenant;

(b) A copy of any water right conveyance agreement(s) for the land to which the water right is appurtenant; and

(c) If the landowner identified in the report of ownership information is not the applicant, documentation to demonstrate that the applicant is authorized to pursue the transfer, which shall include:

(A) A notarized statement by the landowner(s) identified in the report of ownership information consenting to the transfer;

(B) If the interest in the water right has been conveyed, a notarized statement consenting to the transfer from the person or authorized representative(s) of the entity to whom the interest in the water right has been conveyed identified in a water right conveyance agreement; or

(C) Other documentation demonstrating that the applicant is authorized to pursue the transfer.

(6) The report of ownership information required under subsection (5)(a) of this rule must:

(a) Be prepared no earlier than three months prior to the date of the draft preliminary determination showing current ownership; or

(b) If the interest in the water right has been conveyed be prepared within three months of the date the water right conveyance agreement was recorded or show ownership for the appurtenant land at the time the water right conveyance agreement was recorded.

(7) The draft preliminary determination shall constitute the notification of the Department's intent to cancel a supplemental right required under OAR 690-380-2250.

(8) If the applicant amends the application or provides additional information in support of approval of the application, the Department shall revise the draft preliminary determination as appropriate.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.510 - 540.532

Hist.: WRD 2-2003, f. & cert. ef. 5-1-03; WRD 8-2004, f. & cert. ef. 11-5-04; WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

## 690-382-0100

### Definitions

The definitions in this rule, along with the definitions in OAR 690-008-0001 and 690-300-0010, apply to the rules in OAR chapter 690, division 382. Where a term is defined in more than one rule, the definition in this rule applies.

(1) "Certificate of registration" or "registration" means a certificate of registration of the right to appropriate ground water under ORS 537.585 and 537.595 as documented under ORS 537.605. A certificate of registration is also known as a ground water registration.

(2) "Enlargement" means an expansion of a certificate of registration and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a certificate of registration;

(b) Increasing the acreage irrigated under a certificate of registration;

(c) Failing to keep the original place of use from receiving water from the same source; or

(d) Diverting more water at the new point of appropriation than is legally available to that certificate of registration at the original point of appropriation.

(3) "Injury" or "Injury to an existing water right" means a proposed certificate of registration modification would result in another, existing water right not receiving previously available water to which it is legally entitled.

(4) "Layered" means a situation in which there are multiple water uses subject to transfer, permits, or certificates of registration that are appurtenant to the same place of use and that have been issued for the purpose of irrigation.

(5) "Point of appropriation" means a well or the pump location on a sump at which ground water is withdrawn from the ground for use under a ground water right or certificate of registration.

(6) "Protest" means a written statement expressing opposition to approval of a transfer application or an application to modify a certificate of registration and disagreement with a preliminary determination that is filed in response to the notice prescribed by OAR 690-382-0800 and includes the fee prescribed in ORS 536.050.

(7) "Report of ownership information" means a document prepared by a title company that includes ownership and a legal description of the lands to which the certificate of registration is appurtenant.

(8) "Standing statement" means a written statement expressing support for a preliminary determination that is filed in response to the notice prescribed by OAR 690-382-0800.

(9) "Water right conveyance agreement" means a purchase and sale agreement, deed, or other document that has been recorded in the deed records by the relevant county describing land to which a water right is appurtenant and demonstrating that the interest in that land and the interest in the appurtenant water right have been separately conveyed.

(10) "Water use subject to transfer" means a water use established by:

(a) An adjudication under ORS Chapter 539 as evidenced by court decree;

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Commission under ORS 537.250; or

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Commission.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

## 690-382-0300

### Modification of Certificates of Registrations

(1) An application for recognition of a modification of a certificate of registration may be filed by:

(a) The person named on the certificate of registration or to whom the certificate of registration has been assigned;

(b) The owner of the land to which the registration is appurtenant provided that the application is accompanied by a request for assignment under OAR 690-320-0060; or

(c) Any other person or entity who can demonstrate that they are authorized to request recognition of a modification.

(2) When modification of a certificate of registration is necessary to change the point of appropriation, place of use, or character of use under the registration, an application for recognition of the modification shall be submitted on a form provided by the Department. The application may propose modification of only one certificate of registration unless the registrations to be modified are layered.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

## 690-382-0500

### Fee Refunds

If an applicant for a modification to change the point of appropriation abandons the original well identified in the claim according to well construction standards within one year of the Department's recognition of the modification, the applicant may request a refund of \$100 of the fee paid under OAR 690-382-0400 (18)(b).

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

## 690-382-0700

### Preliminary Determination

(1) After the conclusion of the public comment period described in OAR 690-382-0600(4), the Department shall prepare a preliminary determination of whether the modification should be recognized, taking into account comments received in response to the notice provided under OAR 690-382-0600 and the considerations described in section (2) of this rule.

(2) The Department's preliminary determination shall include an assessment of whether:

(a) The proposed modification would result in enlargement;

(b) The proposed modification would result in a state Scenic Waterway not receiving previously available water during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835;

(c) The proposed modification would result in injury; and

(d) Any other requirements for registration modifications are met.

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(3) For a preliminary determination that indicates that an application should not be recognized, the preliminary determination shall:

(a) Describe the basis for the Department's conclusions; and

(b) Identify any conditions or restrictions that, if included in the order recognizing the modification, would allow recognition of the modification.

(4) The Department shall provide a copy of the draft preliminary determination to the applicant and provide the applicant a period of at least 30 days to amend the application to address any issues identified by the Department in the preliminary determination, including the quantity of water to be included in the modification, or to withdraw the application.

(5) Upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria described in OAR 690-382-0400(16)(b) or (c) shall submit the following information:

(a) A report of ownership information as defined in OAR 690-382-0100(7) for the land to which the certificate of registration is appurtenant;

(b) A copy of any water right conveyance agreement(s) for the land to which the certificate of registration is appurtenant; and

(c) If the applicant is not both the person named on the certificate of registration or the assignee and the owner of the lands to which the registration is appurtenant as identified in the report of ownership information, documentation to demonstrate that the applicant is authorized to pursue the modification, which shall include:

(A) Notarized statements consenting to the modification by all persons, other than the applicant, who are named on the certificate of registration or identified as landowners in the report of ownership information;

(B) Notarized statement consenting to the modification by the person or authorized representatives of an entity to whom the interest in the certificate of registration has been conveyed as identified in a water right conveyance agreement; or

(C) Other documentation demonstrating that the applicant is authorized to pursue the modification.

(6) The report of ownership information required under subsection (5)(a) of this rule must:

(a) Be prepared no earlier than three months prior to the date of the draft preliminary determination showing current ownership; or

(b) If the interest in the certificate of registration has been conveyed be prepared within three months of the date the water right conveyance agreement was recorded or show ownership for the appurtenant land at the time the water right conveyance agreement was recorded.

(7) The draft preliminary determination shall constitute the notification required under OAR 690-382-0200 that there are other layered rights, permits, or registrations that must be addressed prior to recognition of the modification.

(8) If the applicant amends the application or provides additional information in support of approval of the application, the Department shall revise the draft preliminary determination as appropriate.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)

Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 1-2009, f. & cert. ef. 6-18-09

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**Rule Caption:** Modifies the Malheur Lake Basin Program to create a reservation of water for multi-purpose storage for future economic development.

**Adm. Order No.:** WRD 2-2009

**Filed with Sec. of State:** 6-18-2009

**Certified to be Effective:** 7-1-09

**Notice Publication Date:** 4-1-2009

**Rules Adopted:** 690-512-0100

**Rules Amended:** 690-512-0040

**Subject:** On October 6, 2008, the Oregon water Resources Department (Department) received a request from Harney County for a reservation of 4,550 acre feet of unappropriated water on Home Creek, tributary to the Catlow Valley in the Malheur Lakes Basin, for multi-purpose storage for future economic development. On February 25, 2009 The Oregon Water Resources Commission (Commission) authorized the Department to initiate a rulemaking to modify the Malheur Lakes Basin Program (OAR chapter 690, division 512) to authorize the reservation request in administrative rule. On June 10, 2009 the Commission adopted rules that reserve 4,550 acre feet of unappropriated water for multi-purpose storage for future economic development as requested by Harney County. The adopted rules establish a priority date for the reservation, provide a 20-year period from the time of rule adoption for cancellation of the reser-

vation and require the Department to provide a progress report to certain parties every five years.

**Rules Coordinator:** Ruben Ochoa—(503) 986-0874

## 690-512-0040

### Water Availability

(1) Except as provided in section (3) of this rule, the Department shall not accept an application for permit, or issue a permit, for any use of surface water, or of groundwater the use of which has the potential to substantially interfere with surface water, in the Malheur Lake Basin unless the applicant shows, by a preponderance of evidence, that unappropriated water is available to supply the proposed use at the times and in the amounts requested. The evidence provided shall be prepared by a qualified hydrologist or other water resources specialist and shall include:

(a) Streamflow measurements of gage records from the source or, for use of groundwater, the stream in hydraulic connection with the source; or

(b) An estimate of water availability from the source or, for use of groundwater, the stream in hydraulic connection with the source which includes correlations with streamflow measurements or gage records on other, similar streams and considers current demands for water affecting the streamflows.

(2) The criteria used in determining if the use of groundwater has the potential to substantially interfere with surface water shall be those established in OAR chapter 690, division 9.

(3) This rule shall not apply to issuance of:

(a) Instream water rights;

(b) Permits for storage of water between March 1 and May 31; or

(c) Permits for use of water legally stored.

(d) Permits for Multipurpose Storage under OAR 690-512-0100.

Stat. Auth.: ORS 536.300 & 536.340

Stats. Implemented:

Hist.: WRD 3-1985, f. & cert. ef. 3-28-85; WRD 23-1990, f. & cert. ef. 12-14-90;

Administrative Renumbering 1-1993, Renumbered from 690-080-0120; WRD 2-2009, f. 6-

18-09, cert. ef. 7-1-09

## 690-512-0100

### Home Creek Reservations

(1) Reservations of water for economic development are established pursuant to ORS 537.249 and 537.356 economic benefits through both instream and out-of-stream uses of water. 4,550 acre-feet of unappropriated water in Home Creek and tributaries are reserved for multipurpose storage for future economic development as allowed under ORS 537.356 with a priority date of February 25, 2009.

(2) "Multipurpose reservoir", as used in OAR 690-512-0100 means a reservoir storing water to serve more than two potential beneficial uses including but not limited to irrigation, power generation, municipal water supply, recreation and flow augmentation for instream purposes.

(3) Reservations of water for future economic development allocate surface water for storage in multipurpose reservoirs.

(4) For the purposes of review of applications to store reserved water under OAR chapter 690, division 310, and subject to the provisions of section (6), the reserved quantities of water listed in OAR 690-512-0100(1) are available for appropriation.

(5) The determination of water availability under section (4) shall not substitute for consideration during the public interest review of site-specific information related to the capacity of the resource to support the proposed project, as required under OAR chapter 690, division 310.

(6) In addition to the requirements of ORS Chapter 537 and applicable rules, the Department will only issue an order approving an application for a permit to store water in the Home Creek basin reserved under any reservation if it first finds:

(a) The proposed reservoir and any water rights secondary with the storage right are consistent with the purpose and intent of the reservation following consultation with Harney County Court;

(b) The proposed reservoir and any water rights secondary to the storage right will protect instream values, including but not limited to instream flows and water quality based upon a written assessment of these values developed in consultation with Department of Fish and Wildlife and Department of Environmental Quality; and

(c) Whether minimum bypass flows are required.

(7) In addition to the requirements of ORS Chapter 537 and applicable rules, any final order approving an application for a permit to store water and any order for water rights secondary with the storage right under the Home Creek Reservation shall contain the findings required in (6)(a)-(c) above, and will also contain conditions that:

(a) Set the appropriate storage season,

(b) Ensure no injury to senior water rights, including instream water rights,

(c) Protect instream values; and

(d) Set minimum bypass flows if identified under (6)(c) above.



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(8) If the Department has not received applications for multipurpose reservoir permits for the full quantity of reserved water by July 1, 2014, the Department shall provide the Parties involved in the Home Creek Settlement Agreement with a progress report on development of the reservations. The report shall include information on the continued need for the reservations and the quantities of water reserved. The Department shall continue to provide progress reports at five year intervals while these rules are in effect unless the Department receives applications for multipurpose reservoir permits for the full quantity of reserved water.

(9) If the Department has not received applications for multipurpose reservoir permits for the full quantity of water reserved by July 1, 2029, applications for remaining quantities of unallocated water under OAR 690-0512-0100(1) may not be accepted after July 1, 2029, unless this deadline is extended through rulemaking by the Water Resources Commission.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 536.310, 537.249, 537.356 & 537.358

Hist.: WRD 2-2009, f. 6-18-09, cert. ef. 7-1-09

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101-005-0030	2-24-2009	Amend(T)	4-1-2009	111-080-0001	1-30-2009	Adopt	3-1-2009
101-005-0040	2-24-2009	Amend(T)	4-1-2009	111-080-0001(T)	1-30-2009	Repeal	3-1-2009
101-005-0070	2-24-2009	Amend(T)	4-1-2009	111-080-0005	1-30-2009	Adopt	3-1-2009
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137-055-2040	7-1-2009	Repeal	8-1-2009	141-067-0155	7-1-2009	Adopt	8-1-2009
137-055-2140	5-7-2009	Amend(T)	6-1-2009	141-067-0160	7-1-2009	Amend	8-1-2009
137-055-2165	5-7-2009	Amend(T)	6-1-2009	141-067-0165	7-1-2009	Adopt	8-1-2009
137-055-3020	4-1-2009	Amend	5-1-2009	141-067-0170	7-1-2009	Amend	8-1-2009
137-055-3080	4-1-2009	Amend	5-1-2009	141-067-0180	7-1-2009	Amend	8-1-2009
137-055-3100	4-1-2009	Amend	5-1-2009	141-067-0190	7-1-2009	Amend	8-1-2009
137-055-3420	1-2-2009	Amend	2-1-2009	141-067-0195	7-1-2009	Adopt	8-1-2009
137-055-3420	5-7-2009	Amend(T)	6-1-2009	141-067-0200	7-1-2009	Amend	8-1-2009
137-055-3420(T)	1-2-2009	Repeal	2-1-2009	141-067-0210	7-1-2009	Repeal	8-1-2009
137-055-3430	5-7-2009	Amend(T)	6-1-2009	141-067-0215	7-1-2009	Adopt	8-1-2009
137-055-3430	5-14-2009	Amend(T)	6-1-2009	141-067-0220	7-1-2009	Amend	8-1-2009
137-055-3430(T)	5-14-2009	Suspend	6-1-2009	141-067-0230	7-1-2009	Amend	8-1-2009
137-055-3460	4-1-2009	Amend	5-1-2009	141-067-0240	7-1-2009	Repeal	8-1-2009
137-055-5520	7-1-2009	Amend	8-1-2009	141-067-0250	7-1-2009	Amend	8-1-2009
137-055-6210	1-2-2009	Amend	2-1-2009	141-067-0270	7-1-2009	Amend	8-1-2009
137-055-6210(T)	1-2-2009	Repeal	2-1-2009	141-067-0280	7-1-2009	Repeal	8-1-2009
137-060-0150	7-24-2009	Amend	8-1-2009	141-067-0290	7-1-2009	Repeal	8-1-2009
137-060-0160	7-24-2009	Amend	8-1-2009	141-067-0300	7-1-2009	Amend	8-1-2009
137-060-0350	7-24-2009	Amend	8-1-2009	141-067-0310	7-1-2009	Amend	8-1-2009
137-060-0360	7-24-2009	Amend	8-1-2009	141-067-0320	7-1-2009	Amend	8-1-2009
141-001-0000	12-10-2008	Amend	1-1-2009	141-067-0330	7-1-2009	Amend	8-1-2009
141-001-0005	12-10-2008	Amend	1-1-2009	141-067-0340	7-1-2009	Amend	8-1-2009
141-001-0010	12-10-2008	Amend	1-1-2009	141-085-0005	3-1-2009	Repeal	3-1-2009
141-001-0020	12-10-2008	Amend	1-1-2009	141-085-0006	3-1-2009	Repeal	3-1-2009
141-040-0020	1-1-2009	Amend	1-1-2009	141-085-0010	3-1-2009	Repeal	3-1-2009
141-040-0030	1-1-2009	Amend	1-1-2009	141-085-0015	3-1-2009	Repeal	3-1-2009
141-040-0035	1-1-2009	Repeal	1-1-2009	141-085-0018	3-1-2009	Repeal	3-1-2009
141-040-0040	1-1-2009	Repeal	1-1-2009	141-085-0020	3-1-2009	Repeal	3-1-2009
141-040-0211	1-1-2009	Amend	1-1-2009	141-085-0022	3-1-2009	Repeal	3-1-2009





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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	150-294.435(1)-(A)	1-1-2009	Amend	2-1-2009
141-089-0190	3-1-2009	Amend	3-1-2009	150-294.435(1)-(B)	1-1-2009	Repeal	2-1-2009
141-089-0200	3-1-2009	Amend	3-1-2009	150-305.220(1)	1-1-2009	Amend	2-1-2009
141-089-0205	3-1-2009	Amend	3-1-2009	150-305.220(2)	1-1-2009	Amend	2-1-2009
141-089-0210	3-1-2009	Amend	3-1-2009	150-307.140	1-1-2009	Amend	2-1-2009
141-089-0215	3-1-2009	Amend	3-1-2009	150-307.455	1-1-2009	Adopt	2-1-2009
141-089-0220	3-1-2009	Amend	3-1-2009	150-308.515(1)(h)	1-1-2009	Adopt	2-1-2009
141-089-0225	3-1-2009	Amend	3-1-2009	150-308A.056	1-1-2009	Amend	2-1-2009
141-089-0230	3-1-2009	Amend	3-1-2009	150-308A.059	1-1-2009	Repeal	2-1-2009
141-089-0240	3-1-2009	Amend	3-1-2009	150-309.110(1)-(B)	1-1-2009	Am. & Ren.	2-1-2009
141-089-0245	3-1-2009	Amend	3-1-2009	150-309.110(1)-(E)	1-1-2009	Am. & Ren.	2-1-2009
141-089-0250	3-1-2009	Amend	3-1-2009	150-311.670(1)	1-1-2009	Adopt	2-1-2009
141-089-0255	3-1-2009	Amend	3-1-2009	150-311.706(1)	1-1-2009	Adopt	2-1-2009
141-089-0260	3-1-2009	Amend	3-1-2009	150-314.402(1)	1-1-2009	Amend	2-1-2009
141-089-0265	3-1-2009	Amend	3-1-2009	150-314.402(4)(b)	1-1-2009	Amend	2-1-2009
141-089-0275	3-1-2009	Amend	3-1-2009	150-314.515(2)	1-1-2009	Amend	2-1-2009
141-089-0280	3-1-2009	Amend	3-1-2009	150-314.752	1-1-2009	Amend	2-1-2009
141-089-0295	3-1-2009	Amend	3-1-2009	150-316.007-(B)	1-1-2009	Amend	2-1-2009
141-089-0300	3-1-2009	Amend	3-1-2009	150-316.007-(B)	1-5-2009	Amend	2-1-2009
141-089-0310	3-1-2009	Amend	3-1-2009	150-316.082(1)-(B)	1-1-2009	Amend	2-1-2009
141-089-0350	3-1-2009	Amend	3-1-2009	150-316.127-(9)	1-1-2009	Amend	2-1-2009
141-089-0355	3-1-2009	Amend	3-1-2009	150-316.202(3)	1-1-2009	Amend	2-1-2009
141-089-0370	3-1-2009	Amend	3-1-2009	150-316.791	1-1-2009	Adopt	2-1-2009
141-089-0390	3-1-2009	Amend	3-1-2009	150.309.067(1)(b)	1-1-2009	Am. & Ren.	2-1-2009
141-089-0400	3-1-2009	Amend	3-1-2009	151-020-0030	2-5-2009	Amend(T)	3-1-2009
141-089-0405	3-1-2009	Amend	3-1-2009	161-002-0000	1-30-2009	Amend(T)	3-1-2009
141-089-0415	3-1-2009	Amend	3-1-2009	161-006-0025	7-1-2009	Amend(T)	6-1-2009
141-089-0420	3-1-2009	Amend	3-1-2009	161-010-0035	1-30-2009	Amend(T)	3-1-2009
141-089-0430	3-1-2009	Amend	3-1-2009	161-010-0045	1-30-2009	Amend(T)	3-1-2009
141-089-0500	3-1-2009	Amend	3-1-2009	161-010-0085	1-30-2009	Amend	3-1-2009
141-089-0505	3-1-2009	Amend	3-1-2009	161-020-0045	1-30-2009	Amend	3-1-2009
141-089-0515	3-1-2009	Amend	3-1-2009	161-020-0140	1-30-2009	Amend	3-1-2009
141-089-0520	3-1-2009	Amend	3-1-2009	161-020-0150	1-30-2009	Amend	3-1-2009
141-089-0530	3-1-2009	Amend	3-1-2009	161-025-0060	1-30-2009	Amend	3-1-2009
141-089-0550	3-1-2009	Repeal	3-1-2009	165-001-0005	5-22-2009	Amend	7-1-2009

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165-007-0130	5-4-2009	Amend	6-1-2009	166-475-0070	6-29-2009	Amend	8-1-2009
165-012-0005	5-4-2009	Amend	6-1-2009	166-475-0075	6-29-2009	Amend	8-1-2009
165-013-0020	5-4-2009	Amend	6-1-2009	166-475-0080	6-29-2009	Amend	8-1-2009
165-014-0031	5-4-2009	Repeal	6-1-2009	166-475-0085	6-29-2009	Amend	8-1-2009
165-014-0032	5-4-2009	Amend	6-1-2009	166-475-0090	6-29-2009	Amend	8-1-2009
165-020-0050	6-30-2009	Amend	8-1-2009	166-475-0095	6-29-2009	Amend	8-1-2009
165-020-0055	6-30-2009	Amend	8-1-2009	166-475-0100	6-29-2009	Amend	8-1-2009
165-020-0060	6-30-2009	Amend	8-1-2009	166-475-0105	6-29-2009	Amend	8-1-2009
165-020-0430	5-4-2009	Repeal	6-1-2009	166-475-0110	6-29-2009	Amend	8-1-2009
165-020-2022	2-18-2009	Adopt(T)	4-1-2009	166-500-0040	7-1-2009	Amend	8-1-2009
165-020-2023	3-3-2009	Adopt(T)	4-1-2009	166-500-0050	7-1-2009	Amend	8-1-2009
165-020-2024	3-5-2009	Adopt(T)	4-1-2009	166-500-0055	7-1-2009	Amend	8-1-2009
165-020-2025	3-16-2009	Adopt(T)	5-1-2009	170-040-0020	4-10-2009	Amend	5-1-2009
165-020-2026	3-19-2009	Adopt(T)	5-1-2009	170-040-0090	11-28-2008	Adopt	1-1-2009
166-200-0005	12-10-2008	Amend	1-1-2009	170-040-0100	11-28-2008	Adopt	1-1-2009
166-200-0010	12-10-2008	Amend	1-1-2009	170-055-0001	12-29-2008	Adopt	2-1-2009
166-200-0010	6-24-2009	Amend	8-1-2009	170-055-0005	12-29-2008	Repeal	2-1-2009
166-200-0015	12-10-2008	Amend	1-1-2009	170-060-0001	12-29-2008	Adopt	2-1-2009
166-200-0020	12-10-2008	Amend	1-1-2009	170-060-0005	12-29-2008	Adopt	2-1-2009
166-200-0025	12-10-2008	Amend	1-1-2009	170-060-1010	12-29-2008	Amend	2-1-2009
166-200-0030	12-10-2008	Amend	1-1-2009	170-061-0000	12-29-2008	Amend	2-1-2009
166-200-0035	12-10-2008	Amend	1-1-2009	170-061-0005	12-29-2008	Repeal	2-1-2009
166-200-0040	12-10-2008	Amend	1-1-2009	170-061-0015	12-29-2008	Amend	2-1-2009
166-200-0045	12-10-2008	Amend	1-1-2009	170-061-0015	4-22-2009	Amend	6-1-2009
166-200-0050	12-10-2008	Amend	1-1-2009	170-061-0020	12-29-2008	Amend	2-1-2009
166-200-0055	12-10-2008	Amend	1-1-2009	170-061-0100	12-29-2008	Amend	2-1-2009
166-200-0060	12-10-2008	Amend	1-1-2009	170-061-0200	12-29-2008	Amend	2-1-2009
166-200-0065	12-10-2008	Amend	1-1-2009	170-061-0300	12-29-2008	Adopt	2-1-2009
166-200-0070	12-10-2008	Amend	1-1-2009	170-061-0400	12-29-2008	Adopt	2-1-2009
166-200-0075	12-10-2008	Amend	1-1-2009	170-062-0000	12-29-2008	Amend	2-1-2009
166-200-0080	12-10-2008	Amend	1-1-2009	170-063-0000	12-29-2008	Amend	2-1-2009
166-200-0085	12-10-2008	Amend	1-1-2009	170-071-0005	12-29-2008	Amend	2-1-2009
166-200-0090	12-10-2008	Amend	1-1-2009	171-010-0000	6-10-2009	Repeal	8-1-2009
166-200-0095	12-10-2008	Amend	1-1-2009	171-010-0005	6-10-2009	Repeal	8-1-2009
166-200-0100	12-10-2008	Amend	1-1-2009	171-010-0010	6-10-2009	Repeal	8-1-2009
166-200-0105	12-10-2008	Amend	1-1-2009	171-010-0015	6-10-2009	Repeal	8-1-2009
166-200-0110	12-10-2008	Amend	1-1-2009	171-010-0020	6-10-2009	Repeal	8-1-2009
166-200-0115	12-10-2008	Amend	1-1-2009	171-010-0025	6-10-2009	Repeal	8-1-2009
166-200-0120	12-10-2008	Amend	1-1-2009	171-010-0030	6-10-2009	Repeal	8-1-2009
166-200-0125	12-10-2008	Amend	1-1-2009	171-010-0035	6-10-2009	Repeal	8-1-2009
166-200-0130	12-10-2008	Amend	1-1-2009	171-010-0040	6-10-2009	Repeal	8-1-2009
166-200-0135	12-10-2008	Amend	1-1-2009	171-010-0045	6-10-2009	Repeal	8-1-2009
166-200-0140	12-10-2008	Amend	1-1-2009	177-040-0001	1-1-2009	Amend	2-1-2009
166-200-0145	12-10-2008	Amend	1-1-2009	177-040-0005	1-1-2009	Amend	2-1-2009
166-300-0025	2-19-2009	Amend	4-1-2009	177-040-0017	2-1-2009	Amend	3-1-2009
166-400-0060	6-24-2009	Amend	8-1-2009	177-040-0017(T)	2-1-2009	Repeal	3-1-2009
166-475-0010	6-29-2009	Amend	8-1-2009	177-040-0030	1-1-2009	Amend	2-1-2009
166-475-0015	6-29-2009	Amend	8-1-2009	177-040-0050	1-1-2009	Amend	2-1-2009
166-475-0020	6-29-2009	Amend	8-1-2009	177-040-0052	1-1-2009	Amend	2-1-2009
166-475-0025	6-29-2009	Amend	8-1-2009	177-040-0061	2-1-2009	Amend	3-1-2009
166-475-0030	6-29-2009	Amend	8-1-2009	177-040-0061(T)	2-1-2009	Repeal	3-1-2009
166-475-0035	6-29-2009	Amend	8-1-2009	177-045-0000	1-1-2009	Amend	2-1-2009
166-475-0040	6-29-2009	Amend	8-1-2009	177-045-0010	1-1-2009	Amend	2-1-2009
166-475-0045	6-29-2009	Amend	8-1-2009	177-045-0030	1-1-2009	Amend	2-1-2009
166-475-0050	6-29-2009	Amend	8-1-2009	177-045-0040	1-1-2009	Repeal	2-1-2009
166-475-0055	6-29-2009	Amend	8-1-2009	177-046-0020	11-23-2008	Amend(T)	1-1-2009
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177-046-0150	12-1-2008	Repeal	1-1-2009	255-032-0007	6-26-2009	Adopt(T)	8-1-2009
177-050-0025	12-1-2008	Amend	1-1-2009	255-070-0001	4-10-2009	Amend(T)	5-1-2009
177-050-0027	12-1-2008	Amend	1-1-2009	259-001-0005	4-8-2009	Amend	5-1-2009
177-050-0100	12-1-2008	Adopt	1-1-2009	259-008-0010	1-1-2009	Amend	1-1-2009
177-050-0100	3-1-2009	Amend	4-1-2009	259-008-0011	1-1-2009	Amend	1-1-2009
177-069-0000	12-1-2008	Adopt	1-1-2009	259-008-0011	7-13-2009	Amend	8-1-2009
177-069-0010	12-1-2008	Adopt	1-1-2009	259-008-0020	7-13-2009	Amend	8-1-2009
177-069-0020	12-1-2008	Adopt	1-1-2009	259-008-0025	4-8-2009	Amend	5-1-2009
177-069-0030	12-1-2008	Adopt	1-1-2009	259-008-0060	12-29-2008	Amend	2-1-2009
177-069-0040	12-1-2008	Adopt	1-1-2009	259-008-0060	4-8-2009	Amend	5-1-2009
177-069-0050	12-1-2008	Adopt	1-1-2009	259-008-0065	4-8-2009	Amend	5-1-2009
177-075-0010	11-23-2008	Amend(T)	1-1-2009	259-008-0068	6-26-2009	Amend(T)	8-1-2009
177-075-0010	3-1-2009	Amend	4-1-2009	259-008-0068	7-13-2009	Amend	8-1-2009
177-075-0010(T)	3-1-2009	Repeal	4-1-2009	259-008-0068(T)	7-13-2009	Repeal	8-1-2009
177-081-0020	11-23-2008	Amend(T)	1-1-2009	259-008-0070	1-1-2009	Amend	1-1-2009
177-081-0020	3-1-2009	Amend	4-1-2009	259-009-0005	7-13-2009	Amend	8-1-2009
177-081-0020(T)	3-1-2009	Repeal	4-1-2009	259-009-0059	7-13-2009	Amend	8-1-2009
177-083-0020	11-23-2008	Amend(T)	1-1-2009	259-009-0062	7-13-2009	Amend	8-1-2009
177-083-0020	3-1-2009	Amend	4-1-2009	259-009-0070	7-13-2009	Amend	8-1-2009
177-083-0020(T)	3-1-2009	Repeal	4-1-2009	259-020-0010	12-29-2008	Amend(T)	2-1-2009
177-083-0030	11-23-2008	Amend(T)	1-1-2009	259-020-0010	2-2-2009	Amend	3-1-2009
177-083-0030	3-1-2009	Amend	4-1-2009	259-020-0010(T)	2-2-2009	Repeal	3-1-2009
177-083-0030(T)	3-1-2009	Repeal	4-1-2009	259-020-0015	2-2-2009	Amend	3-1-2009
177-083-0040	11-23-2008	Amend(T)	1-1-2009	259-020-0020	2-2-2009	Amend	3-1-2009
177-083-0040	3-1-2009	Amend	4-1-2009	259-020-0025	2-2-2009	Amend	3-1-2009
177-083-0040(T)	3-1-2009	Repeal	4-1-2009	291-019-0130	5-22-2009	Amend	7-1-2009
177-085-0000	1-4-2009	Amend	1-1-2009	291-022-0115	11-25-2008	Amend(T)	1-1-2009
177-085-0005	1-4-2009	Amend	1-1-2009	291-022-0115	5-23-2009	Amend	7-1-2009
177-085-0010	1-4-2009	Amend	1-1-2009	291-022-0160	11-25-2008	Amend(T)	1-1-2009
177-085-0015	11-23-2008	Amend(T)	1-1-2009	291-022-0160	5-23-2009	Amend	7-1-2009
177-085-0015	1-4-2009	Amend	1-1-2009	291-022-0161	11-25-2008	Adopt(T)	1-1-2009
177-085-0015	3-1-2009	Amend	4-1-2009	291-022-0161	5-23-2009	Adopt	7-1-2009
177-085-0015(T)	3-1-2009	Repeal	4-1-2009	291-022-0162	11-25-2008	Adopt(T)	1-1-2009
177-085-0020	1-4-2009	Amend	1-1-2009	291-022-0162	5-23-2009	Adopt	7-1-2009
177-085-0025	1-4-2009	Amend	1-1-2009	291-039-0010	12-16-2008	Amend(T)	2-1-2009
177-085-0030	1-4-2009	Amend	1-1-2009	291-039-0010	7-14-2009	Amend	8-1-2009
177-085-0035	1-4-2009	Amend	1-1-2009	291-039-0015	12-16-2008	Amend(T)	2-1-2009
177-085-0040	1-4-2009	Amend	1-1-2009	291-039-0015	7-14-2009	Amend	8-1-2009
177-085-0045	1-4-2009	Amend	1-1-2009	291-042-0005	1-22-2009	Amend	3-1-2009
177-085-0050	1-4-2009	Amend	1-1-2009	291-042-0010	1-22-2009	Amend	3-1-2009
177-085-0065	1-4-2009	Amend	1-1-2009	291-042-0011	1-22-2009	Amend	3-1-2009
177-094-0020	11-23-2008	Amend(T)	1-1-2009	291-042-0015	1-22-2009	Amend	3-1-2009
177-094-0020	3-1-2009	Amend	4-1-2009	291-042-0025	1-22-2009	Amend	3-1-2009
177-094-0020(T)	3-1-2009	Repeal	4-1-2009	291-042-0035	1-22-2009	Amend	3-1-2009
213-003-0001	1-1-2010	Amend(T)	5-1-2009	291-042-0045	1-22-2009	Repeal	3-1-2009
213-003-0001	1-1-2010	Amend(T)	5-1-2009	291-058-0010	5-29-2009	Amend	7-1-2009
213-017-0004	6-17-2009	Amend(T)	8-1-2009	291-058-0020	5-29-2009	Amend	7-1-2009
213-017-0004	1-1-2010	Amend(T)	5-1-2009	291-058-0030	5-29-2009	Amend	7-1-2009
213-017-0006	1-1-2009	Amend(T)	2-1-2009	291-058-0040	5-29-2009	Amend	7-1-2009
213-017-0006	6-17-2009	Amend(T)	8-1-2009	291-058-0045	5-29-2009	Amend	7-1-2009
213-017-0006	1-1-2010	Amend(T)	5-1-2009	291-058-0046	5-29-2009	Adopt	7-1-2009
213-017-0009	6-17-2009	Amend(T)	8-1-2009	291-058-0050	5-29-2009	Amend	7-1-2009
213-017-0009	1-1-2010	Amend(T)	5-1-2009	291-058-0060	5-29-2009	Amend	7-1-2009
250-018-0060	7-1-2009	Amend	8-1-2009	291-058-0065	5-29-2009	Adopt	7-1-2009
250-018-0090	7-1-2009	Amend	8-1-2009	291-062-0100	3-20-2009	Amend(T)	5-1-2009
250-018-0110	7-1-2009	Amend	8-1-2009	291-062-0100	7-13-2009	Amend	8-1-2009
250-020-0261	5-1-2009	Amend	5-1-2009	291-062-0100(T)	7-13-2009	Repeal	8-1-2009

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291-062-0110	7-13-2009	Amend	8-1-2009	309-114-0005	4-2-2009	Amend(T)	5-1-2009
291-062-0110(T)	7-13-2009	Repeal	8-1-2009	309-114-0005	6-26-2009	Amend	8-1-2009
291-062-0120	3-20-2009	Amend(T)	5-1-2009	309-114-0005(T)	4-2-2009	Suspend	5-1-2009
291-062-0120	7-13-2009	Amend	8-1-2009	309-114-0005(T)	6-26-2009	Repeal	8-1-2009
291-062-0120(T)	7-13-2009	Repeal	8-1-2009	309-114-0010	1-23-2009	Amend(T)	3-1-2009
291-062-0130	3-20-2009	Amend(T)	5-1-2009	309-114-0010	6-26-2009	Amend	8-1-2009
291-062-0130	7-13-2009	Amend	8-1-2009	309-114-0010(T)	6-26-2009	Repeal	8-1-2009
291-062-0130(T)	7-13-2009	Repeal	8-1-2009	309-114-0020	1-23-2009	Amend(T)	3-1-2009
291-062-0140	3-20-2009	Amend(T)	5-1-2009	309-114-0020	6-26-2009	Amend	8-1-2009
291-062-0140	7-13-2009	Amend	8-1-2009	309-114-0020(T)	6-26-2009	Repeal	8-1-2009
291-062-0140(T)	7-13-2009	Repeal	8-1-2009	309-114-0025	6-26-2009	Amend	8-1-2009
291-062-0150	3-20-2009	Amend(T)	5-1-2009	325-005-0015	6-26-2009	Amend	8-1-2009
291-062-0150	7-13-2009	Amend	8-1-2009	330-061-0005	12-5-2008	Amend	1-1-2009
291-062-0150(T)	7-13-2009	Repeal	8-1-2009	330-061-0025	12-5-2008	Amend	1-1-2009
291-062-0160	3-20-2009	Amend(T)	5-1-2009	330-061-0030	12-5-2008	Amend	1-1-2009
291-062-0160	7-13-2009	Amend	8-1-2009	331-001-0000	6-1-2009	Amend	7-1-2009
291-062-0160(T)	7-13-2009	Repeal	8-1-2009	331-001-0010	6-1-2009	Amend	7-1-2009
291-062-0170	3-20-2009	Adopt(T)	5-1-2009	331-010-0000	6-1-2009	Amend	7-1-2009
291-062-0170	7-13-2009	Adopt	8-1-2009	331-010-0020	6-1-2009	Amend	7-1-2009
291-062-0170(T)	7-13-2009	Repeal	8-1-2009	331-010-0030	6-1-2009	Amend	7-1-2009
291-070-0120	12-16-2008	Amend(T)	2-1-2009	331-010-0040	6-1-2009	Amend	7-1-2009
291-070-0120	7-14-2009	Amend	8-1-2009	331-020-0030	6-1-2009	Amend	7-1-2009
291-077-0033	7-1-2009	Amend	8-1-2009	331-020-0040	6-1-2009	Amend	7-1-2009
291-084-0010	7-2-2009	Suspend	8-1-2009	331-020-0060	6-1-2009	Amend	7-1-2009
291-084-0020	7-2-2009	Suspend	8-1-2009	331-020-0070	6-1-2009	Amend	7-1-2009
291-084-0030	7-2-2009	Suspend	8-1-2009	331-030-0000	12-1-2008	Amend(T)	1-1-2009
291-084-0040	7-2-2009	Suspend	8-1-2009	331-030-0000	6-1-2009	Amend	7-1-2009
291-097-0005	3-10-2009	Amend	4-1-2009	331-030-0004	6-1-2009	Adopt	7-1-2009
291-097-0010	3-10-2009	Amend	4-1-2009	331-030-0005	12-1-2008	Adopt(T)	1-1-2009
291-097-0015	3-10-2009	Amend	4-1-2009	331-030-0010	12-1-2008	Amend(T)	1-1-2009
291-097-0020	3-10-2009	Amend	4-1-2009	331-030-0010	6-1-2009	Amend	7-1-2009
291-097-0025	3-10-2009	Amend	4-1-2009	331-030-0020	6-1-2009	Amend	7-1-2009
291-097-0040	3-10-2009	Amend	4-1-2009	331-030-0025	6-1-2009	Adopt	7-1-2009
291-097-0050	3-10-2009	Amend	4-1-2009	331-030-0030	6-1-2009	Am. & Ren.	7-1-2009
291-097-0060	3-10-2009	Amend	4-1-2009	331-030-0040	6-1-2009	Adopt	7-1-2009
291-097-0070	3-10-2009	Amend	4-1-2009	331-810-0038	12-1-2008	Adopt	1-1-2009
291-097-0080	3-10-2009	Amend	4-1-2009	332-015-0070	4-1-2009	Amend	5-1-2009
291-097-0100	3-10-2009	Amend	4-1-2009	332-020-0010	4-1-2009	Amend	5-1-2009
291-097-0110	3-10-2009	Am. & Ren.	4-1-2009	333-004-0010	3-2-2009	Amend	4-1-2009
291-097-0120	3-10-2009	Amend	4-1-2009	333-004-0020	3-2-2009	Amend	4-1-2009
291-105-0015	7-1-2009	Amend	8-1-2009	333-004-0030	3-2-2009	Amend	4-1-2009
291-127-0240	5-15-2009	Amend	6-1-2009	333-004-0040	3-2-2009	Amend	4-1-2009
291-127-0260	12-16-2008	Amend(T)	2-1-2009	333-004-0050	3-2-2009	Amend	4-1-2009
291-127-0260	5-15-2009	Amend	6-1-2009	333-004-0060	3-2-2009	Amend	4-1-2009
291-127-0260(T)	5-15-2009	Repeal	6-1-2009	333-004-0070	3-2-2009	Amend	4-1-2009
291-158-0005	12-26-2008	Amend	2-1-2009	333-004-0080	3-2-2009	Amend	4-1-2009
291-158-0010	12-26-2008	Amend	2-1-2009	333-004-0090	3-2-2009	Repeal	4-1-2009
291-158-0015	12-26-2008	Amend	2-1-2009	333-004-0100	3-2-2009	Amend	4-1-2009
291-158-0025	12-26-2008	Amend	2-1-2009	333-004-0110	3-2-2009	Amend	4-1-2009
291-158-0035	12-26-2008	Amend	2-1-2009	333-004-0120	3-2-2009	Amend	4-1-2009
291-158-0045	12-26-2008	Amend	2-1-2009	333-004-0140	3-2-2009	Amend	4-1-2009
291-158-0055	12-26-2008	Amend	2-1-2009	333-004-0150	3-2-2009	Amend	4-1-2009
291-158-0065	12-26-2008	Amend	2-1-2009	333-004-0160	3-2-2009	Amend	4-1-2009
291-158-0075	12-26-2008	Amend	2-1-2009	333-010-0200	2-13-2009	Adopt	3-1-2009
291-203-0020	5-15-2009	Amend(T)	6-1-2009	333-010-0205	2-13-2009	Adopt	3-1-2009
291-203-0040	5-15-2009	Amend(T)	6-1-2009	333-010-0210	2-13-2009	Adopt	3-1-2009
291-203-0050	5-15-2009	Amend(T)	6-1-2009	333-010-0215	2-13-2009	Adopt	3-1-2009

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333-010-0225	2-13-2009	Adopt	3-1-2009	333-565-0010	4-20-2009	Adopt	6-1-2009
333-010-0230	2-13-2009	Adopt	3-1-2009	333-675-0050	1-1-2009	Amend	2-1-2009
333-010-0235	2-13-2009	Adopt	3-1-2009	334-001-0000	3-1-2009	Amend	3-1-2009
333-010-0240	2-13-2009	Adopt	3-1-2009	334-001-0012	7-2-2009	Amend	8-1-2009
333-010-0245	2-13-2009	Adopt	3-1-2009	334-001-0035	3-1-2009	Amend	3-1-2009
333-010-0250	2-13-2009	Adopt	3-1-2009	334-001-0045	3-1-2009	Amend	3-1-2009
333-010-0255	2-13-2009	Adopt	3-1-2009	334-001-0051	6-26-2009	Adopt(T)	8-1-2009
333-010-0260	2-13-2009	Adopt	3-1-2009	334-001-0060	3-1-2009	Amend	3-1-2009
333-010-0265	2-13-2009	Adopt	3-1-2009	334-001-0060	7-2-2009	Amend	8-1-2009
333-010-0270	2-13-2009	Adopt	3-1-2009	334-010-0005	3-1-2009	Amend	3-1-2009
333-010-0275	2-13-2009	Adopt	3-1-2009	334-010-0005	7-2-2009	Amend	8-1-2009
333-010-0280	2-13-2009	Adopt	3-1-2009	334-010-0010	3-1-2009	Amend	3-1-2009
333-010-0285	2-13-2009	Adopt	3-1-2009	334-010-0010	7-2-2009	Amend	8-1-2009
333-010-0290	2-13-2009	Adopt	3-1-2009	334-010-0012	3-1-2009	Amend	3-1-2009
333-054-0010	6-1-2009	Amend	7-1-2009	334-010-0015	3-1-2009	Amend	3-1-2009
333-054-0020	6-1-2009	Amend	7-1-2009	334-010-0016	3-1-2009	Repeal	3-1-2009
333-054-0025	6-1-2009	Amend	7-1-2009	334-010-0017	3-1-2009	Amend	3-1-2009
333-054-0027	6-1-2009	Adopt	7-1-2009	334-010-0017	7-2-2009	Amend	8-1-2009
333-054-0030	6-1-2009	Amend	7-1-2009	334-010-0025	3-1-2009	Amend	3-1-2009
333-054-0035	6-1-2009	Adopt	7-1-2009	334-010-0031	3-1-2009	Repeal	3-1-2009
333-054-0040	6-1-2009	Amend	7-1-2009	334-010-0033	3-1-2009	Amend	3-1-2009
333-054-0050	6-1-2009	Amend	7-1-2009	334-010-0033	7-2-2009	Amend	8-1-2009
333-054-0055	6-1-2009	Adopt	7-1-2009	334-010-0041	3-1-2009	Am. & Ren.	3-1-2009
333-054-0060	6-1-2009	Amend	7-1-2009	334-010-0046	3-1-2009	Amend	3-1-2009
333-054-0065	6-1-2009	Adopt	7-1-2009	334-010-0046	7-2-2009	Amend	8-1-2009
333-054-0070	6-1-2009	Amend	7-1-2009	334-010-0047	3-1-2009	Amend	3-1-2009
333-060-0125	6-17-2009	Amend(T)	8-1-2009	334-010-0050	3-1-2009	Amend	3-1-2009
333-060-0127	6-17-2009	Adopt(T)	8-1-2009	334-010-0050	7-2-2009	Amend	8-1-2009
333-060-0505	6-17-2009	Amend(T)	8-1-2009	334-020-0005	3-1-2009	Amend	3-1-2009
333-060-0510	6-17-2009	Amend(T)	8-1-2009	334-020-0015	3-1-2009	Amend	3-1-2009
333-061-0020	5-18-2009	Amend	7-1-2009	334-020-0020	3-1-2009	Repeal	3-1-2009
333-061-0025	5-18-2009	Amend	7-1-2009	334-020-0025	3-1-2009	Repeal	3-1-2009
333-061-0030	5-18-2009	Amend	7-1-2009	334-020-0030	3-1-2009	Repeal	3-1-2009
333-061-0031	5-18-2009	Amend	7-1-2009	334-020-0035	3-1-2009	Repeal	3-1-2009
333-061-0032	5-18-2009	Amend	7-1-2009	334-020-0040	3-1-2009	Repeal	3-1-2009
333-061-0034	5-18-2009	Amend	7-1-2009	334-020-0045	3-1-2009	Repeal	3-1-2009
333-061-0036	5-18-2009	Amend	7-1-2009	334-020-0050	3-1-2009	Amend	3-1-2009
333-061-0040	5-18-2009	Amend	7-1-2009	334-020-0050	7-2-2009	Amend	8-1-2009
333-061-0042	5-18-2009	Amend	7-1-2009	334-020-0055	3-1-2009	Amend	3-1-2009
333-061-0043	5-18-2009	Amend	7-1-2009	334-020-0060	3-1-2009	Repeal	3-1-2009
333-061-0045	5-18-2009	Amend	7-1-2009	334-020-0065	3-1-2009	Repeal	3-1-2009
333-061-0050	5-18-2009	Amend	7-1-2009	334-020-0070	3-1-2009	Repeal	3-1-2009
333-061-0058	5-18-2009	Amend	7-1-2009	334-020-0075	3-1-2009	Repeal	3-1-2009
333-061-0060	5-18-2009	Amend	7-1-2009	334-020-0080	3-1-2009	Repeal	3-1-2009
333-061-0064	5-18-2009	Amend	7-1-2009	334-020-0085	3-1-2009	Repeal	3-1-2009
333-061-0065	5-18-2009	Amend	7-1-2009	334-020-0090	3-1-2009	Repeal	3-1-2009
333-061-0070	5-18-2009	Amend	7-1-2009	334-030-0001	3-1-2009	Amend	3-1-2009
333-061-0071	5-18-2009	Amend	7-1-2009	334-030-0002	3-1-2009	Repeal	3-1-2009
333-061-0076	5-18-2009	Amend	7-1-2009	334-030-0005	3-1-2009	Amend	3-1-2009
333-061-0077	5-18-2009	Amend	7-1-2009	334-030-0010	3-1-2009	Repeal	3-1-2009
333-061-0090	5-18-2009	Amend	7-1-2009	334-030-0025	3-1-2009	Am. & Ren.	3-1-2009
333-061-0097	5-18-2009	Amend	7-1-2009	334-040-0001	3-1-2009	Adopt	3-1-2009
333-061-0220	5-18-2009	Amend	7-1-2009	335-005-0010	7-1-2009	Amend	7-1-2009
333-061-0225	5-18-2009	Amend	7-1-2009	335-005-0020	7-1-2009	Amend	7-1-2009
333-061-0270	5-18-2009	Amend	7-1-2009	335-005-0025	7-1-2009	Amend	7-1-2009
333-062-0100	6-17-2009	Amend(T)	8-1-2009	335-060-0010	7-1-2009	Amend	7-1-2009
333-062-0102	6-17-2009	Adopt(T)	8-1-2009	335-060-0020	7-1-2009	Amend	7-1-2009



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335-070-0060	7-1-2009	Amend	7-1-2009	340-228-0623	12-31-2008	Adopt	2-1-2009
335-070-0075	7-1-2009	Amend	7-1-2009	340-228-0624	12-31-2008	Repeal	2-1-2009
335-070-0080	7-1-2009	Amend	7-1-2009	340-228-0625	12-31-2008	Adopt	2-1-2009
335-070-0085	7-1-2009	Amend	7-1-2009	340-228-0626	12-31-2008	Repeal	2-1-2009
335-095-0010	7-1-2009	Amend	7-1-2009	340-228-0627	12-31-2008	Adopt	2-1-2009
335-095-0030	7-1-2009	Amend	7-1-2009	340-228-0628	12-31-2008	Repeal	2-1-2009
335-095-0050	7-1-2009	Amend	7-1-2009	340-228-0629	12-31-2008	Adopt	2-1-2009
335-095-0060	7-1-2009	Amend	7-1-2009	340-228-0630	12-31-2008	Repeal	2-1-2009
339-010-0023	1-1-2009	Amend	1-1-2009	340-228-0631	12-31-2008	Adopt	2-1-2009
339-010-0035	1-1-2009	Amend	1-1-2009	340-228-0632	12-31-2008	Repeal	2-1-2009
339-010-0050	1-1-2009	Amend	1-1-2009	340-228-0633	12-31-2008	Adopt	2-1-2009
339-020-0015	1-1-2009	Adopt	1-1-2009	340-228-0634	12-31-2008	Repeal	2-1-2009
340-054-0024	5-1-2009	Amend(T)	6-1-2009	340-228-0635	12-31-2008	Adopt	2-1-2009
340-054-0025	5-1-2009	Amend(T)	6-1-2009	340-228-0636	12-31-2008	Repeal	2-1-2009
340-054-0035	5-1-2009	Amend(T)	6-1-2009	340-228-0637	12-31-2008	Adopt	2-1-2009
340-054-0098	5-1-2009	Adopt(T)	6-1-2009	340-228-0638	12-31-2008	Repeal	2-1-2009
340-054-0100	5-1-2009	Adopt(T)	6-1-2009	340-228-0640	12-31-2008	Repeal	2-1-2009
340-054-0102	5-1-2009	Adopt(T)	6-1-2009	340-228-0642	12-31-2008	Repeal	2-1-2009
340-054-0104	5-1-2009	Adopt(T)	6-1-2009	340-228-0644	12-31-2008	Repeal	2-1-2009
340-054-0106	5-1-2009	Adopt(T)	6-1-2009	340-228-0646	12-31-2008	Repeal	2-1-2009
340-054-0108	5-1-2009	Adopt(T)	6-1-2009	340-228-0648	12-31-2008	Repeal	2-1-2009
340-100-0002	6-25-2009	Amend	8-1-2009	340-228-0650	12-31-2008	Repeal	2-1-2009
340-102-0060	6-25-2009	Repeal	8-1-2009	340-228-0652	12-31-2008	Repeal	2-1-2009
340-102-0065	6-25-2009	Amend	8-1-2009	340-228-0654	12-31-2008	Repeal	2-1-2009
340-104-0021	6-25-2009	Adopt	8-1-2009	340-228-0656	12-31-2008	Repeal	2-1-2009
340-105-0140	6-25-2009	Adopt	8-1-2009	340-228-0658	12-31-2008	Repeal	2-1-2009
340-200-0040	12-31-2008	Amend	2-1-2009	340-228-0660	12-31-2008	Repeal	2-1-2009
340-200-0040	6-30-2009	Amend	8-1-2009	340-228-0662	12-31-2008	Repeal	2-1-2009
340-216-0020	12-31-2008	Amend	2-1-2009	340-228-0664	12-31-2008	Repeal	2-1-2009
340-216-0060	12-31-2008	Amend	2-1-2009	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

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340-244-0140	12-31-2008	Repeal	2-1-2009	407-007-0355	4-1-2009	Amend	5-1-2009
340-244-0150	12-31-2008	Repeal	2-1-2009	407-007-0360	1-1-2009	Repeal	2-1-2009
340-244-0160	12-31-2008	Repeal	2-1-2009	407-007-0370	1-1-2009	Amend	2-1-2009
340-244-0170	12-31-2008	Repeal	2-1-2009	407-007-0380	1-1-2009	Repeal	2-1-2009
340-244-0180	12-31-2008	Repeal	2-1-2009	407-045-0250	5-1-2009	Amend	6-1-2009
340-244-0210	12-31-2008	Amend	2-1-2009	407-045-0260	5-1-2009	Amend	6-1-2009
340-244-0220	12-31-2008	Amend	2-1-2009	407-045-0270	5-1-2009	Repeal	6-1-2009
340-244-0232	12-31-2008	Adopt	2-1-2009	407-045-0280	5-1-2009	Amend	6-1-2009
340-244-0234	12-31-2008	Adopt	2-1-2009	407-045-0290	5-1-2009	Amend	6-1-2009
340-244-0236	12-31-2008	Adopt	2-1-2009	407-045-0300	5-1-2009	Amend	6-1-2009
340-244-0238	12-31-2008	Adopt	2-1-2009	407-045-0310	5-1-2009	Amend	6-1-2009
340-244-0240	12-31-2008	Adopt	2-1-2009	407-045-0320	5-1-2009	Amend	6-1-2009
340-244-0242	12-31-2008	Adopt	2-1-2009	407-045-0330	5-1-2009	Amend	6-1-2009
340-244-0244	12-31-2008	Adopt	2-1-2009	407-045-0340	5-1-2009	Amend	6-1-2009
340-244-0246	12-31-2008	Adopt	2-1-2009	407-045-0350	5-1-2009	Amend	6-1-2009
340-244-0248	12-31-2008	Adopt	2-1-2009	407-045-0360	5-1-2009	Amend	6-1-2009
340-244-0250	12-31-2008	Adopt	2-1-2009	407-120-0300	12-27-2008	Amend	2-1-2009
340-244-0252	12-31-2008	Adopt	2-1-2009	407-120-0300(T)	12-27-2008	Repeal	2-1-2009
350-040-0020	1-14-2009	Amend(T)	2-1-2009	407-120-0310	12-27-2008	Amend	2-1-2009
350-040-0020	5-1-2009	Amend	5-1-2009	407-120-0310(T)	12-27-2008	Repeal	2-1-2009
350-040-0040	1-14-2009	Amend(T)	2-1-2009	407-120-0320	12-27-2008	Amend	2-1-2009
350-040-0040	5-1-2009	Amend	5-1-2009	407-120-0320(T)	12-27-2008	Repeal	2-1-2009
350-050-0020	1-14-2009	Amend(T)	2-1-2009	407-120-0325	12-27-2008	Adopt	2-1-2009
350-050-0020	5-1-2009	Amend	5-1-2009	407-120-0325(T)	12-27-2008	Repeal	2-1-2009
350-050-0060	1-14-2009	Amend(T)	2-1-2009	407-120-0330	12-27-2008	Amend	2-1-2009
350-050-0060	5-1-2009	Amend	5-1-2009	407-120-0330(T)	12-27-2008	Repeal	2-1-2009
407-001-0000	12-5-2008	Amend	1-1-2009	407-120-0340	12-27-2008	Amend	2-1-2009
407-001-0005	12-5-2008	Amend	1-1-2009	407-120-0340(T)	12-27-2008	Repeal	2-1-2009
407-001-0010	12-5-2008	Amend	1-1-2009	407-120-0350	12-27-2008	Amend	2-1-2009
407-007-0200	1-1-2009	Amend	2-1-2009	407-120-0350(T)	12-27-2008	Repeal	2-1-2009
407-007-0200	4-1-2009	Amend	5-1-2009	407-120-0360	12-27-2008	Amend	2-1-2009
407-007-0210	1-1-2009	Amend	2-1-2009	407-120-0360(T)	12-27-2008	Repeal	2-1-2009
407-007-0210	4-1-2009	Amend	5-1-2009	407-120-0370	12-27-2008	Amend	2-1-2009
407-007-0220	1-1-2009	Amend	2-1-2009	407-120-0370(T)	12-27-2008	Repeal	2-1-2009
407-007-0220	4-1-2009	Amend	5-1-2009	407-120-0380	12-27-2008	Amend	2-1-2009
407-007-0230	1-1-2009	Amend	2-1-2009	407-120-0380(T)	12-27-2008	Repeal	2-1-2009
407-007-0230	4-1-2009	Amend	5-1-2009	407-120-0400	1-12-2009	Adopt(T)	2-1-2009
407-007-0240	1-1-2009	Amend	2-1-2009	407-120-0400	7-10-2009	Adopt	8-1-2009
407-007-0240	4-1-2009	Amend	5-1-2009	407-120-0400(T)	7-10-2009	Repeal	8-1-2009
407-007-0250	1-1-2009	Amend	2-1-2009	409-023-0000	7-1-2009	Amend	8-1-2009
407-007-0250	4-1-2009	Amend	5-1-2009	409-023-0010	7-1-2009	Amend	8-1-2009
407-007-0260	1-1-2009	Repeal	2-1-2009	409-023-0012	7-1-2009	Adopt	8-1-2009
407-007-0270	1-1-2009	Repeal	2-1-2009	409-023-0013	7-1-2009	Adopt	8-1-2009
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407-007-0280	4-1-2009	Amend	5-1-2009	410-014-0000	7-1-2009	Am. & Ren.	8-1-2009
407-007-0290	1-1-2009	Amend	2-1-2009	410-014-0010	7-1-2009	Am. & Ren.	8-1-2009
407-007-0290	4-1-2009	Amend	5-1-2009	410-014-0020	7-1-2009	Am. & Ren.	8-1-2009
407-007-0300	1-1-2009	Amend	2-1-2009	410-014-0030	7-1-2009	Am. & Ren.	8-1-2009
407-007-0310	1-1-2009	Repeal	2-1-2009	410-014-0040	7-1-2009	Am. & Ren.	8-1-2009
407-007-0320	1-1-2009	Amend	2-1-2009	410-014-0050	7-1-2009	Am. & Ren.	8-1-2009
407-007-0320	4-1-2009	Amend	5-1-2009	410-014-0060	7-1-2009	Am. & Ren.	8-1-2009
407-007-0330	1-1-2009	Amend	2-1-2009	410-014-0070	7-1-2009	Am. & Ren.	8-1-2009
407-007-0330	4-1-2009	Amend	5-1-2009	410-050-0861	7-1-2009	Amend	8-1-2009
407-007-0340	1-1-2009	Amend	2-1-2009	410-050-0861	7-15-2009	Amend(T)	8-1-2009
407-007-0340	4-1-2009	Amend	5-1-2009	410-120-0000	12-1-2008	Amend	1-1-2009
407-007-0350	1-1-2009	Amend	2-1-2009	410-120-0000	7-1-2009	Amend	7-1-2009
407-007-0350	4-1-2009	Amend	5-1-2009	410-120-0027	1-12-2009	Adopt(T)	2-1-2009

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410-120-0027	5-1-2009	Amend(T)	6-1-2009	410-122-0365	1-1-2009	Amend	1-1-2009
410-120-0027	6-12-2009	Amend	7-1-2009	410-122-0375	7-1-2009	Amend	7-1-2009
410-120-0027(T)	1-16-2009	Suspend	3-1-2009	410-122-0400	7-1-2009	Amend	7-1-2009
410-120-0027(T)	5-1-2009	Suspend	6-1-2009	410-122-0420	7-1-2009	Amend	7-1-2009
410-120-0027(T)	6-12-2009	Repeal	7-1-2009	410-122-0500	7-1-2009	Amend	7-1-2009
410-120-1140	12-1-2008	Amend	1-1-2009	410-122-0520	7-1-2009	Amend	7-1-2009
410-120-1180	12-1-2008	Amend	1-1-2009	410-122-0560	1-1-2009	Amend	1-1-2009
410-120-1195	12-1-2008	Amend	1-1-2009	410-122-0580	1-1-2009	Amend	1-1-2009
410-120-1260	12-1-2008	Amend	1-1-2009	410-122-0580	7-1-2009	Amend	7-1-2009
410-120-1280	12-1-2008	Amend	1-1-2009	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
410-121-0032	1-1-2009	Amend	1-1-2009	410-123-1220	1-1-2009	Amend	1-1-2009
410-121-0032	7-1-2009	Amend	7-1-2009	410-123-1220	7-1-2009	Amend	7-1-2009
410-121-0040	12-1-2008	Amend	1-1-2009	410-123-1230	1-1-2009	Amend	1-1-2009
410-121-0040	7-1-2009	Amend	7-1-2009	410-123-1240	1-1-2009	Amend	1-1-2009
410-121-0060	12-1-2008	Amend	1-1-2009	410-123-1260	1-1-2009	Amend	1-1-2009
410-121-0060	1-1-2009	Amend	1-1-2009	410-123-1260	7-1-2009	Amend	7-1-2009
410-121-0140	12-1-2008	Amend	1-1-2009	410-123-1490	1-1-2009	Amend	1-1-2009
410-121-0140	1-1-2009	Repeal	1-1-2009	410-123-1490	7-1-2009	Amend	7-1-2009
410-121-0150	12-1-2008	Amend	1-1-2009	410-123-1600	7-1-2009	Amend	7-1-2009
410-121-0150	7-1-2009	Amend	7-1-2009	410-123-1620	1-1-2009	Amend	1-1-2009
410-121-0155	4-1-2009	Amend(T)	5-1-2009	410-123-1620	7-1-2009	Amend	7-1-2009
410-121-0155	7-1-2009	Amend	7-1-2009	410-123-1670	1-1-2009	Amend	1-1-2009
410-121-0157	12-1-2008	Amend	1-1-2009	410-123-1670	7-1-2009	Amend	7-1-2009
410-121-0185	1-1-2009	Amend	1-1-2009	410-125-0020	1-1-2009	Amend	1-1-2009
410-121-0200	12-1-2008	Amend	1-1-2009	410-125-0041	1-1-2009	Amend	1-1-2009
410-121-0300	1-1-2009	Amend	1-1-2009	410-125-0045	1-1-2009	Amend	1-1-2009
410-121-0320	12-1-2008	Amend	1-1-2009	410-125-0080	1-1-2009	Amend	1-1-2009
410-121-0625	1-1-2009	Amend	1-1-2009	410-125-0080	7-1-2009	Amend	7-1-2009
410-122-0040	12-1-2008	Amend	1-1-2009	410-125-0085	1-1-2009	Amend	1-1-2009
410-122-0080	7-1-2009	Amend	7-1-2009	410-125-0125	12-1-2008	Amend	1-1-2009
410-122-0180	7-1-2009	Amend	7-1-2009	410-125-0141	5-1-2009	Amend(T)	6-1-2009
410-122-0182	1-1-2009	Amend	1-1-2009	410-125-0155	1-1-2009	Amend	1-1-2009
410-122-0186	7-1-2009	Amend	7-1-2009	410-125-0181	1-1-2009	Amend	1-1-2009
410-122-0200	1-1-2009	Amend	1-1-2009	410-125-0195	1-1-2009	Amend	1-1-2009
410-122-0202	1-1-2009	Amend(T)	2-1-2009	410-125-0195	5-1-2009	Amend(T)	6-1-2009
410-122-0202	6-1-2009	Amend	7-1-2009	410-125-0210	12-1-2008	Amend	1-1-2009
410-122-0202(T)	6-1-2009	Repeal	7-1-2009	410-125-0220	12-1-2008	Amend	1-1-2009
410-122-0203	1-1-2009	Amend	1-1-2009	410-125-0360	12-1-2008	Amend	1-1-2009
410-122-0204	1-1-2009	Amend	1-1-2009	410-125-0400	12-1-2008	Amend	1-1-2009
410-122-0205	7-1-2009	Amend	7-1-2009	410-125-0600	12-1-2008	Amend	1-1-2009
410-122-0208	7-1-2009	Amend	7-1-2009	410-125-0640	12-1-2008	Amend	1-1-2009
410-122-0211	1-1-2009	Adopt	1-1-2009	410-125-0720	12-1-2008	Amend	1-1-2009
410-122-0320	7-1-2009	Amend	7-1-2009	410-125-1020	1-1-2009	Amend	1-1-2009
410-122-0325	7-1-2009	Amend	7-1-2009	410-125-1070	12-1-2008	Amend	1-1-2009
410-122-0330	1-1-2009	Amend	1-1-2009	410-127-0080	12-1-2008	Amend	1-1-2009
410-122-0340	1-1-2009	Amend	1-1-2009	410-129-0080	12-1-2008	Amend	1-1-2009



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410-130-0180	12-1-2008	Amend	1-1-2009	410-141-0020	12-1-2008	Amend	1-1-2009
410-130-0180	7-1-2009	Amend	7-1-2009	410-141-0120	1-1-2009	Amend	1-1-2009
410-130-0200	7-1-2009	Amend	7-1-2009	410-141-0220	12-1-2008	Amend	1-1-2009
410-130-0220	7-1-2009	Amend	7-1-2009	410-141-0266	1-1-2009	Amend	1-1-2009
410-130-0240	7-1-2009	Amend	7-1-2009	410-141-0425	1-5-2009	Adopt(T)	2-1-2009
410-130-0255	7-1-2009	Amend	7-1-2009	410-141-0520	1-1-2009	Amend	1-1-2009
410-130-0365	7-1-2009	Amend	7-1-2009	410-141-0520	1-30-2009	Amend(T)	3-1-2009
410-130-0595	7-1-2009	Amend	7-1-2009	410-141-0520	4-1-2009	Amend(T)	5-1-2009
410-132-0100	12-1-2008	Amend	1-1-2009	410-141-0520	4-17-2009	Amend(T)	6-1-2009
410-133-0000	7-1-2009	Amend	7-1-2009	410-141-0520(T)	1-1-2009	Repeal	1-1-2009
410-133-0040	12-28-2008	Amend	2-1-2009	410-141-0520(T)	4-1-2009	Suspend	5-1-2009
410-133-0040	7-1-2009	Amend	7-1-2009	410-141-0520(T)	4-17-2009	Suspend	6-1-2009
410-133-0060	7-1-2009	Amend	7-1-2009	410-146-0021	12-1-2008	Amend	1-1-2009
410-133-0080	7-1-2009	Amend	7-1-2009	410-146-0040	1-1-2009	Amend	1-1-2009
410-133-0090	12-28-2008	Amend	2-1-2009	410-146-0060	12-1-2008	Amend	1-1-2009
410-133-0090	7-1-2009	Amend	7-1-2009	410-146-0080	12-1-2008	Amend	1-1-2009
410-133-0100	12-28-2008	Amend	2-1-2009	410-146-0085	12-1-2008	Amend	1-1-2009
410-133-0100	7-1-2009	Amend	7-1-2009	410-146-0085	7-1-2009	Amend	7-1-2009
410-133-0120	7-1-2009	Amend	7-1-2009	410-146-0086	12-1-2008	Amend	1-1-2009
410-133-0140	12-28-2008	Amend	2-1-2009	410-146-0100	12-1-2008	Amend	1-1-2009
410-133-0140	7-1-2009	Amend	7-1-2009	410-146-0120	12-1-2008	Amend	1-1-2009
410-133-0160	7-1-2009	Amend	7-1-2009	410-146-0130	12-1-2008	Amend	1-1-2009
410-133-0180	7-1-2009	Amend	7-1-2009	410-146-0140	12-1-2008	Amend	1-1-2009
410-133-0200	7-1-2009	Amend	7-1-2009	410-146-0340	12-1-2008	Amend	1-1-2009
410-133-0220	12-28-2008	Amend	2-1-2009	410-146-0380	12-1-2008	Amend	1-1-2009
410-133-0220	7-1-2009	Amend	7-1-2009	410-146-0380	7-1-2009	Amend	7-1-2009
410-133-0245	7-1-2009	Amend	7-1-2009	410-146-0440	12-1-2008	Amend	1-1-2009
410-133-0280	12-28-2008	Amend	2-1-2009	410-147-0020	12-1-2008	Amend	1-1-2009
410-133-0280	7-1-2009	Amend	7-1-2009	410-147-0040	1-1-2009	Amend	1-1-2009
410-133-0320	7-1-2009	Amend	7-1-2009	410-147-0060	12-1-2008	Amend	1-1-2009
410-136-0240	12-1-2008	Amend	1-1-2009	410-147-0120	12-1-2008	Amend	1-1-2009
410-136-0240	4-1-2009	Amend(T)	5-1-2009	410-147-0120	7-1-2009	Amend	7-1-2009
410-136-0260	12-1-2008	Amend	1-1-2009	410-147-0125	12-1-2008	Amend	1-1-2009
410-136-0300	12-1-2008	Amend	1-1-2009	410-147-0125	7-1-2009	Amend	7-1-2009
410-136-0300	4-1-2009	Amend(T)	5-1-2009	410-147-0140	12-1-2008	Amend	1-1-2009
410-137-0080	7-1-2009	Repeal	7-1-2009	410-147-0140	7-1-2009	Amend	7-1-2009
410-138-0000	12-28-2008	Amend	2-1-2009	410-147-0160	12-1-2008	Amend	1-1-2009
410-138-0005	12-28-2008	Adopt	2-1-2009	410-147-0180	12-1-2008	Amend	1-1-2009
410-138-0007	12-28-2008	Adopt	2-1-2009	410-147-0200	12-1-2008	Amend	1-1-2009
410-138-0009	12-28-2008	Adopt	2-1-2009	410-147-0220	12-1-2008	Amend	1-1-2009
410-138-0020	12-28-2008	Amend	2-1-2009	410-147-0320	12-1-2008	Amend	1-1-2009
410-138-0080	12-28-2008	Amend	2-1-2009	410-147-0340	12-1-2008	Amend	1-1-2009
410-138-0300	12-28-2008	Amend	2-1-2009	410-147-0360	12-1-2008	Amend	1-1-2009
410-138-0320	12-28-2008	Amend	2-1-2009	410-147-0460	12-1-2008	Amend	1-1-2009
410-138-0380	12-28-2008	Amend	2-1-2009	410-147-0480	12-1-2008	Amend	1-1-2009
410-138-0500	12-28-2008	Amend	2-1-2009	410-147-0540	12-1-2008	Amend	1-1-2009
410-138-0520	12-28-2008	Amend	2-1-2009	410-147-0560	12-1-2008	Amend	1-1-2009
410-138-0560	12-28-2008	Amend	2-1-2009	410-147-0610	12-1-2008	Amend	1-1-2009
410-138-0600	12-28-2008	Amend	2-1-2009	410-147-0620	12-1-2008	Amend	1-1-2009
410-138-0620	12-28-2008	Amend	2-1-2009	410-148-0100	7-1-2009	Amend	7-1-2009
410-138-0680	12-28-2008	Amend	2-1-2009	410-148-0140	7-1-2009	Amend	7-1-2009
410-138-0700	12-28-2008	Amend	2-1-2009	410-148-0260	7-1-2009	Amend	7-1-2009
410-138-0720	12-28-2008	Amend	2-1-2009	411-001-0010	3-3-2009	Repeal	4-1-2009
410-138-0740	12-28-2008	Amend	2-1-2009	411-030-0002	1-1-2009	Amend	2-1-2009
410-138-0780	12-28-2008	Amend	2-1-2009	411-030-0020	1-1-2009	Amend	2-1-2009
410-140-0140	7-1-2009	Amend	7-1-2009	411-030-0033	1-1-2009	Amend	2-1-2009
410-140-0160	7-1-2009	Amend	7-1-2009	411-030-0040	1-1-2009	Amend	2-1-2009

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411-030-0055	1-1-2009	Amend	2-1-2009	411-320-0110	7-13-2009	Amend	8-1-2009
411-030-0070	1-1-2009	Amend	2-1-2009	411-320-0120	7-13-2009	Amend	8-1-2009
411-030-0080	1-1-2009	Amend	2-1-2009	411-320-0130	7-13-2009	Amend	8-1-2009
411-030-0090	1-1-2009	Amend	2-1-2009	411-320-0140	7-13-2009	Amend	8-1-2009
411-030-0100	1-1-2009	Amend	2-1-2009	411-320-0150	7-13-2009	Amend	8-1-2009
411-050-0499	7-1-2009	Adopt	8-1-2009	411-320-0160	7-13-2009	Amend	8-1-2009
411-054-0005	1-1-2009	Amend	2-1-2009	411-320-0170	7-13-2009	Amend	8-1-2009
411-054-0008	1-1-2009	Repeal	2-1-2009	411-320-0175	7-13-2009	Adopt	8-1-2009
411-054-0012	1-1-2009	Amend	2-1-2009	411-320-0180	7-13-2009	Amend	8-1-2009
411-054-0105	1-1-2009	Amend	2-1-2009	411-320-0190	7-13-2009	Amend	8-1-2009
411-054-0125	3-3-2009	Adopt	4-1-2009	411-320-0200	7-13-2009	Amend	8-1-2009
411-054-0125(T)	3-3-2009	Repeal	4-1-2009	411-340-0010	7-1-2009	Amend	8-1-2009
411-070-0005	7-1-2009	Amend(T)	8-1-2009	411-340-0020	7-1-2009	Amend	8-1-2009
411-070-0442	7-1-2009	Amend(T)	8-1-2009	411-340-0030	7-1-2009	Amend	8-1-2009
411-305-0010	6-1-2009	Amend	7-1-2009	411-340-0040	7-1-2009	Amend	8-1-2009
411-305-0020	6-1-2009	Amend	7-1-2009	411-340-0050	7-1-2009	Amend	8-1-2009
411-305-0030	6-1-2009	Amend	7-1-2009	411-340-0060	7-1-2009	Amend	8-1-2009
411-305-0040	6-1-2009	Repeal	7-1-2009	411-340-0070	7-1-2009	Amend	8-1-2009
411-305-0050	6-1-2009	Amend	7-1-2009	411-340-0080	7-1-2009	Amend	8-1-2009
411-305-0060	6-1-2009	Am. & Ren.	7-1-2009	411-340-0090	7-1-2009	Amend	8-1-2009
411-305-0070	6-1-2009	Am. & Ren.	7-1-2009	411-340-0100	7-1-2009	Amend	8-1-2009
411-305-0080	6-1-2009	Amend	7-1-2009	411-340-0110	7-1-2009	Amend	8-1-2009
411-305-0090	6-1-2009	Amend	7-1-2009	411-340-0120	7-1-2009	Amend	8-1-2009
411-305-0100	6-1-2009	Am. & Ren.	7-1-2009	411-340-0130	7-1-2009	Amend	8-1-2009
411-305-0110	6-1-2009	Amend	7-1-2009	411-340-0140	7-1-2009	Amend	8-1-2009
411-305-0120	6-1-2009	Amend	7-1-2009	411-340-0150	7-1-2009	Amend	8-1-2009
411-305-0130	6-1-2009	Am. & Ren.	7-1-2009	411-340-0160	7-1-2009	Amend	8-1-2009
411-305-0140	6-1-2009	Amend	7-1-2009	411-340-0170	7-1-2009	Amend	8-1-2009
411-305-0150	6-1-2009	Am. & Ren.	7-1-2009	411-340-0180	7-1-2009	Amend	8-1-2009
411-305-0160	6-1-2009	Amend	7-1-2009	411-350-0010	3-1-2009	Amend	4-1-2009
411-305-0170	6-1-2009	Amend	7-1-2009	411-350-0020	3-1-2009	Amend	4-1-2009
411-305-0180	6-1-2009	Amend	7-1-2009	411-350-0030	3-1-2009	Amend	4-1-2009
411-308-0010	7-1-2009	Adopt(T)	8-1-2009	411-350-0040	3-1-2009	Amend	4-1-2009
411-308-0020	7-1-2009	Adopt(T)	8-1-2009	411-350-0050	3-1-2009	Amend	4-1-2009
411-308-0030	7-1-2009	Adopt(T)	8-1-2009	411-350-0060	3-1-2009	Am. & Ren.	4-1-2009
411-308-0040	7-1-2009	Adopt(T)	8-1-2009	411-350-0070	3-1-2009	Repeal	4-1-2009
411-308-0050	7-1-2009	Adopt(T)	8-1-2009	411-350-0080	3-1-2009	Amend	4-1-2009
411-308-0060	7-1-2009	Adopt(T)	8-1-2009	411-350-0090	3-1-2009	Repeal	4-1-2009
411-308-0070	7-1-2009	Adopt(T)	8-1-2009	411-350-0100	3-1-2009	Amend	4-1-2009
411-308-0080	7-1-2009	Adopt(T)	8-1-2009	411-350-0110	3-1-2009	Amend	4-1-2009
411-308-0090	7-1-2009	Adopt(T)	8-1-2009	411-350-0115	3-1-2009	Adopt	4-1-2009
411-308-0100	7-1-2009	Adopt(T)	8-1-2009	411-350-0120	3-1-2009	Amend	4-1-2009
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	413-010-0505	7-1-2009	Adopt(T)	8-1-2009
411-308-0130	7-1-2009	Adopt(T)	8-1-2009	413-010-0510	7-1-2009	Adopt(T)	8-1-2009
411-308-0140	7-1-2009	Adopt(T)	8-1-2009	413-010-0515	7-1-2009	Adopt(T)	8-1-2009
411-308-0150	7-1-2009	Adopt(T)	8-1-2009	413-010-0520	7-1-2009	Adopt(T)	8-1-2009
411-320-0010	7-13-2009	Amend	8-1-2009	413-010-0525	7-1-2009	Adopt(T)	8-1-2009
411-320-0020	7-13-2009	Amend	8-1-2009	413-010-0530	7-1-2009	Adopt(T)	8-1-2009
411-320-0030	7-13-2009	Amend	8-1-2009	413-010-0535	7-1-2009	Adopt(T)	8-1-2009
411-320-0040	7-13-2009	Amend	8-1-2009	413-020-0200	7-1-2009	Amend(T)	8-1-2009
411-320-0045	7-13-2009	Adopt	8-1-2009	413-020-0210	7-1-2009	Amend(T)	8-1-2009
411-320-0050	7-13-2009	Amend	8-1-2009	413-020-0230	7-1-2009	Amend(T)	8-1-2009
411-320-0060	7-13-2009	Amend	8-1-2009	413-020-0233	7-1-2009	Amend(T)	8-1-2009
411-320-0070	7-13-2009	Amend	8-1-2009	413-020-0236	7-1-2009	Amend(T)	8-1-2009
411-320-0080	7-13-2009	Amend	8-1-2009	413-020-0240	7-1-2009	Amend(T)	8-1-2009
411-320-0090	7-13-2009	Amend	8-1-2009	413-020-0245	7-1-2009	Amend(T)	8-1-2009

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413-040-0005	7-1-2009	Amend(T)	8-1-2009	413-070-0960(T)	7-1-2009	Suspend	8-1-2009
413-040-0006	7-1-2009	Amend(T)	8-1-2009	413-070-0965	3-31-2009	Amend(T)	5-1-2009
413-040-0010	7-1-2009	Amend(T)	8-1-2009	413-070-0965	7-1-2009	Suspend	8-1-2009
413-040-0011	7-1-2009	Amend(T)	8-1-2009	413-070-0970	3-31-2009	Amend(T)	5-1-2009
413-040-0013	7-1-2009	Amend(T)	8-1-2009	413-070-0970	7-1-2009	Suspend	8-1-2009
413-040-0016	7-1-2009	Amend(T)	8-1-2009	413-070-0980	3-31-2009	Amend(T)	5-1-2009
413-040-0024	7-1-2009	Amend(T)	8-1-2009	413-070-0980	7-1-2009	Suspend	8-1-2009
413-050-0000	3-19-2009	Amend	4-1-2009	413-070-0981	3-31-2009	Suspend	5-1-2009
413-050-0005	3-19-2009	Amend	4-1-2009	413-070-0982	7-1-2009	Amend(T)	8-1-2009
413-050-0010	3-19-2009	Amend	4-1-2009	413-080-0000	7-1-2009	Amend(T)	8-1-2009
413-050-0020	3-19-2009	Amend	4-1-2009	413-080-0010	7-1-2009	Amend(T)	8-1-2009
413-050-0030	3-19-2009	Amend	4-1-2009	413-080-0020	7-1-2009	Amend(T)	8-1-2009
413-050-0040	3-19-2009	Amend	4-1-2009	413-080-0030	7-1-2009	Amend(T)	8-1-2009
413-050-0050	3-19-2009	Amend	4-1-2009	413-080-0040	7-1-2009	Amend(T)	8-1-2009
413-070-0620	7-1-2009	Amend(T)	8-1-2009	413-080-0050	7-1-2009	Amend(T)	8-1-2009
413-070-0625	7-1-2009	Amend(T)	8-1-2009	413-080-0055	7-1-2009	Amend(T)	8-1-2009
413-070-0630	7-1-2009	Amend(T)	8-1-2009	413-080-0059	7-1-2009	Amend(T)	8-1-2009
413-070-0640	7-1-2009	Amend(T)	8-1-2009	413-080-0063	7-1-2009	Amend(T)	8-1-2009
413-070-0900	3-31-2009	Amend(T)	5-1-2009	413-090-0000	7-1-2009	Amend(T)	8-1-2009
413-070-0900	7-1-2009	Amend(T)	8-1-2009	413-090-0005	7-1-2009	Amend(T)	8-1-2009
413-070-0900(T)	7-1-2009	Suspend	8-1-2009	413-090-0010	7-1-2009	Amend(T)	8-1-2009
413-070-0905	3-31-2009	Amend(T)	5-1-2009	413-090-0021	7-1-2009	Adopt(T)	8-1-2009
413-070-0905	7-1-2009	Amend(T)	8-1-2009	413-090-0030	7-1-2009	Amend(T)	8-1-2009
413-070-0905(T)	7-1-2009	Suspend	8-1-2009	413-090-0040	7-1-2009	Amend(T)	8-1-2009
413-070-0910	3-31-2009	Suspend	5-1-2009	413-090-0050	7-1-2009	Amend(T)	8-1-2009
413-070-0915	3-31-2009	Amend(T)	5-1-2009	413-090-0100	7-1-2009	Amend(T)	8-1-2009
413-070-0915	7-1-2009	Amend(T)	8-1-2009	413-090-0110	7-1-2009	Amend(T)	8-1-2009
413-070-0915(T)	7-1-2009	Suspend	8-1-2009	413-090-0120	7-1-2009	Amend(T)	8-1-2009
413-070-0917	3-31-2009	Amend(T)	5-1-2009	413-090-0130	7-1-2009	Amend(T)	8-1-2009
413-070-0917	7-1-2009	Amend(T)	8-1-2009	413-090-0135	7-1-2009	Adopt(T)	8-1-2009
413-070-0917(T)	7-1-2009	Suspend	8-1-2009	413-090-0140	7-1-2009	Amend(T)	8-1-2009
413-070-0920	3-31-2009	Amend(T)	5-1-2009	413-090-0150	7-1-2009	Amend(T)	8-1-2009
413-070-0920	7-1-2009	Amend(T)	8-1-2009	413-090-0160	7-1-2009	Suspend	8-1-2009
413-070-0920(T)	7-1-2009	Suspend	8-1-2009	413-090-0170	7-1-2009	Suspend	8-1-2009
413-070-0925	3-31-2009	Amend(T)	5-1-2009	413-090-0180	7-1-2009	Suspend	8-1-2009
413-070-0925	7-1-2009	Amend(T)	8-1-2009	413-090-0190	7-1-2009	Suspend	8-1-2009
413-070-0925(T)	7-1-2009	Suspend	8-1-2009	413-090-0200	7-1-2009	Suspend	8-1-2009
413-070-0930	3-31-2009	Amend(T)	5-1-2009	413-090-0210	7-1-2009	Amend(T)	8-1-2009
413-070-0930	7-1-2009	Amend(T)	8-1-2009	413-120-0400	2-2-2009	Amend	3-1-2009
413-070-0930(T)	7-1-2009	Suspend	8-1-2009	413-120-0400(T)	2-2-2009	Repeal	3-1-2009
413-070-0935	3-31-2009	Amend(T)	5-1-2009	413-120-0410	2-2-2009	Repeal	3-1-2009
413-070-0935	7-1-2009	Amend(T)	8-1-2009	413-120-0420	2-2-2009	Amend	3-1-2009
413-070-0935(T)	7-1-2009	Suspend	8-1-2009	413-120-0420(T)	2-2-2009	Repeal	3-1-2009
413-070-0937	3-31-2009	Amend(T)	5-1-2009	413-120-0440	2-2-2009	Amend	3-1-2009
413-070-0937	7-1-2009	Amend(T)	8-1-2009	413-120-0440(T)	2-2-2009	Repeal	3-1-2009
413-070-0937(T)	7-1-2009	Suspend	8-1-2009	413-120-0450	2-2-2009	Amend	3-1-2009
413-070-0940	3-31-2009	Amend(T)	5-1-2009	413-120-0450(T)	2-2-2009	Repeal	3-1-2009
413-070-0940	7-1-2009	Amend(T)	8-1-2009	413-120-0455	2-2-2009	Amend	3-1-2009
413-070-0940(T)	7-1-2009	Suspend	8-1-2009	413-120-0455(T)	2-2-2009	Repeal	3-1-2009
413-070-0945	3-31-2009	Amend(T)	5-1-2009	413-120-0460	2-2-2009	Amend	3-1-2009
413-070-0945	7-1-2009	Amend(T)	8-1-2009	413-120-0460(T)	2-2-2009	Repeal	3-1-2009
413-070-0945(T)	7-1-2009	Suspend	8-1-2009	413-120-0470	2-2-2009	Amend	3-1-2009
413-070-0950	3-31-2009	Suspend	5-1-2009	413-120-0470(T)	2-2-2009	Repeal	3-1-2009
413-070-0955	3-31-2009	Amend(T)	5-1-2009	413-130-0000	7-1-2009	Amend(T)	8-1-2009
413-070-0955	7-1-2009	Amend(T)	8-1-2009	413-130-0010	7-1-2009	Amend(T)	8-1-2009
413-070-0955(T)	7-1-2009	Suspend	8-1-2009	413-130-0020	7-1-2009	Amend(T)	8-1-2009
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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	416-530-0070	2-2-2009	Amend	3-1-2009
413-130-0060	7-1-2009	Amend(T)	8-1-2009	423-001-0006	12-12-2008	Amend(T)	1-1-2009
413-130-0070	7-1-2009	Amend(T)	8-1-2009	423-001-0006	6-24-2009	Amend	8-1-2009
413-130-0075	7-1-2009	Amend(T)	8-1-2009	423-010-0023	12-12-2008	Amend	1-1-2009
413-130-0080	7-1-2009	Amend(T)	8-1-2009	436-009-0004	7-1-2009	Amend	7-1-2009
413-130-0090	7-1-2009	Amend(T)	8-1-2009	436-009-0005	1-1-2009	Amend	1-1-2009
413-130-0100	7-1-2009	Amend(T)	8-1-2009	436-009-0008	1-1-2009	Amend	1-1-2009
413-130-0110	7-1-2009	Amend(T)	8-1-2009	436-009-0010	7-1-2009	Amend	7-1-2009
413-130-0115	7-1-2009	Amend(T)	8-1-2009	436-009-0015	7-1-2009	Amend	7-1-2009
413-130-0120	7-1-2009	Amend(T)	8-1-2009	436-009-0018	1-1-2009	Adopt	1-1-2009
413-130-0125	7-1-2009	Amend(T)	8-1-2009	436-009-0018	7-1-2009	Amend	7-1-2009
413-130-0127	7-1-2009	Suspend	8-1-2009	436-009-0020	1-1-2009	Amend	1-1-2009
413-130-0130	7-1-2009	Amend(T)	8-1-2009	436-009-0020	7-1-2009	Amend	7-1-2009
413-200-0270	2-2-2009	Amend	3-1-2009	436-009-0022	1-1-2009	Amend	1-1-2009
413-200-0272	2-2-2009	Amend	3-1-2009	436-009-0022	7-1-2009	Amend	7-1-2009
413-200-0272(T)	2-2-2009	Repeal	3-1-2009	436-009-0030	1-1-2009	Amend	1-1-2009
413-200-0274	2-2-2009	Amend	3-1-2009	436-009-0030	7-1-2009	Amend	7-1-2009
413-200-0274(T)	2-2-2009	Repeal	3-1-2009	436-009-0035	1-1-2009	Amend	1-1-2009
413-200-0276	2-2-2009	Amend	3-1-2009	436-009-0040	1-1-2009	Amend	1-1-2009
413-200-0278	2-2-2009	Amend	3-1-2009	436-009-0040	7-1-2009	Amend	7-1-2009
413-200-0278(T)	2-2-2009	Repeal	3-1-2009	436-009-0050	7-1-2009	Amend	7-1-2009
413-200-0281	2-2-2009	Amend	3-1-2009	436-009-0060	7-1-2009	Amend	7-1-2009
413-200-0281(T)	2-2-2009	Repeal	3-1-2009	436-009-0070	1-1-2009	Amend	1-1-2009
413-200-0283	2-2-2009	Amend	3-1-2009	436-009-0080	1-1-2009	Amend	1-1-2009
413-200-0283(T)	2-2-2009	Repeal	3-1-2009	436-009-0090	1-1-2009	Amend	1-1-2009
413-200-0287	2-2-2009	Amend	3-1-2009	436-009-0090	7-1-2009	Amend	7-1-2009
413-200-0287(T)	2-2-2009	Repeal	3-1-2009	436-009-0095	1-1-2009	Adopt	1-1-2009
413-200-0292	2-2-2009	Amend	3-1-2009	436-009-0100	1-1-2009	Amend	1-1-2009
413-200-0292(T)	2-2-2009	Repeal	3-1-2009	436-010-0230	7-1-2009	Amend	7-1-2009
413-200-0296	2-2-2009	Amend	3-1-2009	436-010-0275	7-1-2009	Amend	7-1-2009
413-200-0301	2-2-2009	Amend	3-1-2009	436-015-0007	1-1-2009	Adopt	1-1-2009
413-200-0305	2-2-2009	Amend	3-1-2009	436-015-0120	1-1-2009	Amend	1-1-2009
413-200-0306	2-2-2009	Amend	3-1-2009	436-060-0005	1-1-2009	Amend	1-1-2009
413-200-0306(T)	2-2-2009	Repeal	3-1-2009	436-060-0009	1-1-2009	Amend	1-1-2009
413-200-0308	2-2-2009	Amend	3-1-2009	436-060-0010	1-1-2009	Amend	1-1-2009
413-200-0314	2-2-2009	Amend	3-1-2009	436-060-0015	1-1-2009	Amend	1-1-2009
413-200-0314(T)	2-2-2009	Repeal	3-1-2009	436-060-0017	1-1-2009	Amend	1-1-2009
413-200-0335	2-2-2009	Amend	3-1-2009	436-060-0018	1-1-2009	Amend	1-1-2009
413-200-0354	2-2-2009	Amend	3-1-2009	436-060-0020	1-1-2009	Amend	1-1-2009
413-200-0358	2-2-2009	Amend	3-1-2009	436-060-0025	1-1-2009	Amend	1-1-2009
413-200-0362	2-2-2009	Amend	3-1-2009	436-060-0035	1-1-2009	Amend	1-1-2009
413-200-0371	2-2-2009	Amend	3-1-2009	436-060-0060	1-1-2009	Amend	1-1-2009
413-200-0371(T)	2-2-2009	Repeal	3-1-2009	436-060-0105	1-1-2009	Amend	1-1-2009
413-200-0379	2-2-2009	Amend	3-1-2009	436-060-0135	1-1-2009	Amend	1-1-2009
413-200-0383	2-2-2009	Amend	3-1-2009	436-060-0137	1-1-2009	Amend	1-1-2009
413-200-0383(T)	2-2-2009	Repeal	3-1-2009	436-060-0147	1-1-2009	Amend	1-1-2009
413-200-0386	2-2-2009	Amend	3-1-2009	436-060-0150	1-1-2009	Amend	1-1-2009
413-200-0388	2-2-2009	Amend	3-1-2009	436-060-0153	1-1-2009	Adopt	1-1-2009
413-200-0390	2-2-2009	Amend	3-1-2009	436-060-0155	1-1-2009	Amend	1-1-2009
413-200-0393	2-2-2009	Amend	3-1-2009	436-060-0500	1-1-2009	Amend	1-1-2009
413-200-0395	2-2-2009	Amend	3-1-2009	437-001-0015	2-3-2009	Amend	3-1-2009
413-200-0396	2-2-2009	Amend	3-1-2009	437-001-0160	2-3-2009	Amend	3-1-2009
416-340-0010	4-17-2009	Amend	5-1-2009	437-001-0205	2-3-2009	Amend	3-1-2009
416-340-0020	4-17-2009	Amend	5-1-2009	437-001-0760	2-3-2009	Amend	3-1-2009
416-340-0030	4-17-2009	Amend	5-1-2009	437-001-1015	2-3-2009	Amend	3-1-2009
416-340-0040	4-17-2009	Amend	5-1-2009	437-001-1020	2-3-2009	Amend	3-1-2009

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437-002-0069	4-17-2009	Repeal	5-1-2009	442-001-0070	1-1-2009	Adopt	2-1-2009
437-002-0071	4-17-2009	Repeal	5-1-2009	442-001-0080	1-1-2009	Adopt	2-1-2009
437-002-0072	4-17-2009	Adopt	5-1-2009	442-001-0090	1-1-2009	Adopt	2-1-2009
437-002-0073	4-17-2009	Repeal	5-1-2009	442-001-0100	1-1-2009	Adopt	2-1-2009
437-002-0074	4-17-2009	Adopt	5-1-2009	442-001-0110	1-1-2009	Adopt	2-1-2009
437-002-0075	4-17-2009	Repeal	5-1-2009	442-001-0120	1-1-2009	Adopt	2-1-2009
437-002-0076	4-17-2009	Adopt	5-1-2009	442-001-0130	1-1-2009	Adopt	2-1-2009
437-002-0080	5-29-2009	Amend	7-1-2009	442-001-0140	1-1-2009	Adopt	2-1-2009
437-002-0120	5-29-2009	Amend	7-1-2009	442-001-0150	1-1-2009	Adopt	2-1-2009
437-002-0180	5-29-2009	Amend	7-1-2009	442-001-0160	1-1-2009	Adopt	2-1-2009
437-002-0182	10-1-2009	Amend	8-1-2009	443-002-0070	2-12-2009	Amend(T)	3-1-2009
437-002-0187	12-31-2008	Amend	2-1-2009	443-002-0070	4-15-2009	Amend	5-1-2009
437-002-0256	7-21-2009	Amend	8-1-2009	443-002-0070(T)	4-15-2009	Repeal	5-1-2009
437-002-0320	4-17-2009	Amend	5-1-2009	443-002-0180	4-15-2009	Amend	5-1-2009
437-002-0360	5-29-2009	Amend	7-1-2009	459-005-0001	2-12-2009	Amend	3-1-2009
437-003-0001	5-29-2009	Amend	7-1-2009	459-005-0525	11-26-2008	Amend	1-1-2009
437-004-1120	1-26-2009	Amend	3-1-2009	459-005-0535	11-26-2008	Amend	1-1-2009
437-005-0001	5-29-2009	Amend	7-1-2009	459-005-0545	11-26-2008	Amend	1-1-2009
437-005-0002	5-29-2009	Amend	7-1-2009	459-007-0001	4-6-2009	Amend	5-1-2009
437-005-0002	6-5-2009	Amend	7-1-2009	459-007-0005	4-6-2009	Amend	6-1-2009
437-005-0003	5-29-2009	Amend	7-1-2009	459-007-0015	4-6-2009	Amend	5-1-2009
437-005-0003	6-5-2009	Amend	7-1-2009	459-007-0020	4-6-2009	Amend	5-1-2009
441-025-0060	2-3-2009	Adopt	3-1-2009	459-007-0025	4-6-2009	Amend	5-1-2009
441-500-0020	2-3-2009	Amend	3-1-2009	459-007-0050	4-6-2009	Amend	5-1-2009
441-730-0010	6-2-2009	Amend	7-1-2009	459-007-0060	4-6-2009	Amend	5-1-2009
441-730-0015	6-2-2009	Amend	7-1-2009	459-007-0080	4-6-2009	Amend	5-1-2009
441-730-0025	6-2-2009	Amend	7-1-2009	459-007-0110	4-6-2009	Amend	5-1-2009
441-730-0030	2-3-2009	Amend	3-1-2009	459-007-0230	4-6-2009	Amend	5-1-2009
441-730-0030	6-2-2009	Amend	7-1-2009	459-007-0240	4-6-2009	Amend	5-1-2009
441-730-0050	6-2-2009	Amend	7-1-2009	459-007-0250	4-6-2009	Amend	5-1-2009
441-730-0070	6-2-2009	Amend	7-1-2009	459-007-0300	4-6-2009	Amend	5-1-2009
441-730-0080	6-2-2009	Amend	7-1-2009	459-007-0320	4-6-2009	Adopt	6-1-2009
441-730-0100	6-2-2009	Amend	7-1-2009	459-007-0330	4-6-2009	Adopt	6-1-2009
441-730-0110	6-2-2009	Amend	7-1-2009	459-007-0340	4-6-2009	Adopt	6-1-2009
441-730-0120	6-2-2009	Amend	7-1-2009	459-007-0400	4-6-2009	Adopt	6-1-2009
441-730-0150	6-2-2009	Amend	7-1-2009	459-007-0410	4-6-2009	Adopt	6-1-2009
441-730-0165	6-2-2009	Adopt	7-1-2009	459-007-0420	4-6-2009	Adopt	6-1-2009
441-730-0170	6-2-2009	Amend	7-1-2009	459-007-0900	4-6-2009	Amend	5-1-2009
441-730-0180	6-2-2009	Amend	7-1-2009	459-010-0010	11-26-2008	Amend	1-1-2009
441-730-0200	6-2-2009	Amend	7-1-2009	459-010-0300	6-3-2009	Adopt	7-1-2009
441-730-0205	6-2-2009	Amend	7-1-2009	459-011-0100	2-12-2009	Amend	3-1-2009
441-730-0210	6-2-2009	Amend	7-1-2009	459-011-0110	2-12-2009	Amend	3-1-2009
441-730-0250	6-2-2009	Amend	7-1-2009	459-013-0260	11-26-2008	Amend	1-1-2009
441-730-0255	6-2-2009	Amend	7-1-2009	459-015-0001	2-12-2009	Amend	3-1-2009
441-730-0270	6-2-2009	Repeal	7-1-2009	459-017-0060	4-6-2009	Amend	5-1-2009
441-730-0271	6-2-2009	Adopt	7-1-2009	459-030-0011	2-12-2009	Amend	3-1-2009
441-730-0272	6-2-2009	Adopt	7-1-2009	459-030-0025	2-12-2009	Amend	3-1-2009
441-730-0275	6-2-2009	Amend	7-1-2009	459-030-0030	2-12-2009	Amend	3-1-2009
441-730-0280	6-2-2009	Amend	7-1-2009	459-050-0037	11-26-2008	Amend	1-1-2009
441-730-0310	6-2-2009	Amend	7-1-2009	459-050-0075	2-12-2009	Amend	3-1-2009
441-730-0320	6-2-2009	Amend	7-1-2009	459-070-0001	2-12-2009	Amend	3-1-2009
441-865-0025	12-10-2008	Adopt	1-1-2009	459-075-0175	11-26-2008	Adopt	1-1-2009
442-001-0000	1-1-2009	Amend	2-1-2009	459-076-0001	2-12-2009	Amend	3-1-2009
442-001-0005	1-1-2009	Amend	2-1-2009	459-080-0100	2-12-2009	Amend	3-1-2009
442-001-0010	1-1-2009	Repeal	2-1-2009	459-080-0200	4-6-2009	Amend	6-1-2009
442-001-0015	1-1-2009	Repeal	2-1-2009	459-080-0250	4-6-2009	Amend	6-1-2009

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461-001-0000	4-1-2009	Amend	5-1-2009	461-135-1175	4-1-2009	Amend	5-1-2009
461-001-0000	7-1-2009	Amend	8-1-2009	461-135-1175	6-1-2009	Amend(T)	7-1-2009
461-001-0025	1-1-2009	Amend	2-1-2009	461-135-1195	1-1-2009	Amend	2-1-2009
461-001-0030	7-1-2009	Amend	8-1-2009	461-135-1195	7-1-2009	Amend(T)	8-1-2009
461-101-0010	1-1-2009	Amend	2-1-2009	461-135-1230	4-1-2009	Amend	5-1-2009
461-110-0330	1-1-2009	Amend	2-1-2009	461-135-1250	1-1-2009	Amend(T)	2-1-2009
461-110-0330	5-1-2009	Amend(T)	6-1-2009	461-135-1250	4-1-2009	Amend	5-1-2009
461-110-0350	1-1-2009	Amend	2-1-2009	461-135-1250(T)	4-1-2009	Repeal	5-1-2009
461-110-0350	4-1-2009	Amend	5-1-2009	461-140-0040	4-1-2009	Amend	5-1-2009
461-110-0370	4-1-2009	Amend	5-1-2009	461-145-0080	7-1-2009	Amend(T)	8-1-2009
461-110-0530	5-1-2009	Amend(T)	6-1-2009	461-145-0143	3-3-2009	Adopt(T)	4-1-2009
461-110-0530	7-1-2009	Amend	8-1-2009	461-145-0380	1-1-2009	Amend	2-1-2009
461-110-0530	7-1-2009	Amend(T)	8-1-2009	461-145-0380	7-1-2009	Amend	8-1-2009
461-110-0530(T)	7-1-2009	Repeal	8-1-2009	461-145-0455	4-1-2009	Amend	5-1-2009
461-110-0630	7-1-2009	Amend	8-1-2009	461-145-0460	4-1-2009	Amend	5-1-2009
461-115-0050	1-1-2009	Amend	2-1-2009	461-145-0540	1-1-2009	Amend	2-1-2009
461-115-0050	7-1-2009	Amend	8-1-2009	461-145-0550	3-3-2009	Amend(T)	4-1-2009
461-115-0530	1-1-2009	Amend	2-1-2009	461-145-0580	4-1-2009	Amend	5-1-2009
461-115-0705	5-6-2009	Amend(T)	6-1-2009	461-145-0820	1-1-2009	Amend	2-1-2009
461-120-0110	4-1-2009	Amend(T)	4-1-2009	461-145-0830	1-1-2009	Amend	2-1-2009
461-120-0110	4-1-2009	Amend(T)	5-1-2009	461-145-0840	1-1-2009	Repeal	2-1-2009
461-120-0110(T)	4-1-2009	Suspend	5-1-2009	461-150-0020	7-1-2009	Amend	8-1-2009
461-120-0125	1-1-2009	Amend(T)	2-1-2009	461-150-0030	7-1-2009	Amend	8-1-2009
461-120-0125	4-1-2009	Amend	5-1-2009	461-150-0042	7-1-2009	Amend	8-1-2009
461-120-0125	5-1-2009	Amend(T)	6-1-2009	461-150-0047	7-1-2009	Repeal	8-1-2009
461-120-0125(T)	4-1-2009	Repeal	5-1-2009	461-150-0048	1-1-2009	Repeal	2-1-2009
461-120-0310	7-1-2009	Amend(T)	8-1-2009	461-150-0049	1-1-2009	Amend	2-1-2009
461-120-0340	7-1-2009	Amend(T)	8-1-2009	461-150-0049	7-1-2009	Repeal	8-1-2009
461-130-0335	1-1-2009	Amend	2-1-2009	461-150-0050	1-1-2009	Amend	2-1-2009
461-135-0010	1-1-2009	Amend	2-1-2009	461-150-0050	7-1-2009	Amend	8-1-2009
461-135-0010	4-1-2009	Amend(T)	5-1-2009	461-150-0055	7-1-2009	Amend	8-1-2009
461-135-0010	5-6-2009	Amend(T)	6-1-2009	461-150-0060	7-1-2009	Amend	8-1-2009
461-135-0010(T)	5-6-2009	Suspend	6-1-2009	461-150-0070	7-1-2009	Amend	8-1-2009
461-135-0070	5-1-2009	Amend(T)	6-1-2009	461-150-0080	7-1-2009	Amend	8-1-2009
461-135-0075	1-1-2009	Amend	2-1-2009	461-150-0090	7-1-2009	Amend	8-1-2009
461-135-0075	7-1-2009	Amend	8-1-2009	461-150-0100	7-1-2009	Amend	8-1-2009
461-135-0075	7-1-2009	Amend(T)	8-1-2009	461-155-0030	5-1-2009	Amend(T)	6-1-2009
461-135-0075	7-1-2009	Amend(T)	8-1-2009	461-155-0150	4-1-2009	Amend(T)	4-1-2009
461-135-0075(T)	1-1-2009	Repeal	2-1-2009	461-155-0180	1-27-2009	Amend	3-1-2009
461-135-0075(T)	7-1-2009	Repeal	8-1-2009	461-155-0190	4-1-2009	Amend(T)	5-1-2009
461-135-0082	5-1-2009	Amend(T)	6-1-2009	461-155-0190	7-1-2009	Amend	8-1-2009
461-135-0085	1-1-2009	Amend	2-1-2009	461-155-0190(T)	7-1-2009	Repeal	8-1-2009
461-135-0089	1-1-2009	Amend	2-1-2009	461-155-0235	1-27-2009	Amend	3-1-2009
461-135-0400	4-1-2009	Amend(T)	4-1-2009	461-155-0250	1-1-2009	Amend	2-1-2009
461-135-0400	4-1-2009	Amend(T)	5-1-2009	461-155-0250	3-1-2009	Amend(T)	4-1-2009
461-135-0400(T)	4-1-2009	Suspend	5-1-2009	461-155-0250	7-1-2009	Amend	8-1-2009
461-135-0405	5-1-2009	Amend(T)	6-1-2009	461-155-0250(T)	7-1-2009	Repeal	8-1-2009
461-135-0415	7-1-2009	Amend	8-1-2009	461-155-0270	1-1-2009	Amend	2-1-2009
461-135-0475	4-1-2009	Amend(T)	5-1-2009	461-155-0290	4-1-2009	Amend(T)	5-1-2009
461-135-0475	7-1-2009	Amend(T)	8-1-2009	461-155-0290	7-1-2009	Amend	8-1-2009
461-135-0475(T)	7-1-2009	Suspend	8-1-2009	461-155-0290(T)	7-1-2009	Repeal	8-1-2009
461-135-0730	1-1-2009	Amend	2-1-2009	461-155-0291	4-1-2009	Amend(T)	5-1-2009
461-135-0745	1-1-2009	Amend	2-1-2009	461-155-0291	7-1-2009	Amend	8-1-2009
461-135-0780	1-1-2009	Amend	2-1-2009	461-155-0291(T)	7-1-2009	Repeal	8-1-2009
461-135-0832	1-1-2009	Amend	2-1-2009	461-155-0295	1-1-2009	Amend	2-1-2009
461-135-0900	5-1-2009	Amend(T)	6-1-2009	461-155-0295	4-1-2009	Amend(T)	5-1-2009
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461-155-0320	1-1-2009	Amend	2-1-2009	461-170-0150	1-1-2009	Amend	2-1-2009
461-155-0500	1-1-2009	Amend	2-1-2009	461-170-0150	4-1-2009	Amend	5-1-2009
461-155-0500(T)	1-1-2009	Repeal	2-1-2009	461-170-0150	7-1-2009	Amend	8-1-2009
461-155-0526	1-1-2009	Amend	2-1-2009	461-170-0160	1-1-2009	Amend	2-1-2009
461-155-0526(T)	1-1-2009	Repeal	2-1-2009	461-170-0160	4-1-2009	Amend	5-1-2009
461-155-0600	1-1-2009	Amend	2-1-2009	461-170-0170	1-1-2009	Repeal	2-1-2009
461-155-0600(T)	1-1-2009	Repeal	2-1-2009	461-170-0200	1-1-2009	Amend	2-1-2009
461-155-0610	1-1-2009	Amend	2-1-2009	461-175-0220	1-1-2009	Amend	2-1-2009
461-155-0610(T)	1-1-2009	Repeal	2-1-2009	461-175-0240	1-1-2009	Amend	2-1-2009
461-155-0660	7-1-2009	Amend	8-1-2009	461-175-0270	1-1-2009	Amend	2-1-2009
461-155-0700	1-1-2009	Adopt	2-1-2009	461-175-0280	1-1-2009	Amend	2-1-2009
461-155-0700(T)	1-1-2009	Repeal	2-1-2009	461-175-0280	4-1-2009	Amend	5-1-2009
461-155-0710	1-1-2009	Adopt	2-1-2009	461-175-0305	1-1-2009	Amend	2-1-2009
461-155-0710(T)	1-1-2009	Repeal	2-1-2009	461-180-0005	1-1-2009	Amend	2-1-2009
461-160-0040	4-1-2009	Amend(T)	4-1-2009	461-180-0006	4-1-2009	Amend	5-1-2009
461-160-0060	4-1-2009	Amend	5-1-2009	461-180-0070	4-1-2009	Amend	5-1-2009
461-160-0100	1-1-2009	Amend	2-1-2009	461-180-0090	1-1-2009	Amend	2-1-2009
461-160-0300	7-1-2009	Amend	8-1-2009	461-180-0125	1-1-2009	Amend	2-1-2009
461-160-0410	1-1-2009	Amend	2-1-2009	461-190-0360	5-1-2009	Amend(T)	6-1-2009
461-160-0410	4-1-2009	Amend	5-1-2009	461-193-0000	4-1-2009	Amend	5-1-2009
461-160-0550	1-1-2009	Amend(T)	2-1-2009	461-193-0001	4-1-2009	Repeal	5-1-2009
461-160-0550	4-1-2009	Amend	5-1-2009	461-193-0005	4-1-2009	Repeal	5-1-2009
461-160-0550	7-1-2009	Amend	8-1-2009	461-193-0007	4-1-2009	Repeal	5-1-2009
461-160-0550(T)	4-1-2009	Repeal	5-1-2009	461-193-0010	4-1-2009	Amend	5-1-2009
461-160-0551	1-1-2009	Amend(T)	2-1-2009	461-193-0016	4-1-2009	Repeal	5-1-2009
461-160-0551	4-1-2009	Amend	5-1-2009	461-193-0026	4-1-2009	Repeal	5-1-2009
461-160-0551	7-1-2009	Amend	8-1-2009	461-193-0031	4-1-2009	Amend	5-1-2009
461-160-0551(T)	4-1-2009	Repeal	5-1-2009	461-193-0031	5-1-2009	Amend(T)	6-1-2009
461-160-0580	1-1-2009	Amend	2-1-2009	461-193-0040	4-1-2009	Repeal	5-1-2009
461-160-0620	1-1-2009	Amend	2-1-2009	461-193-0042	4-1-2009	Amend	5-1-2009
461-160-0620	7-1-2009	Amend	8-1-2009	461-193-0046	4-1-2009	Repeal	5-1-2009
461-165-0010	7-1-2009	Amend	8-1-2009	461-193-0130	4-1-2009	Amend	5-1-2009
461-165-0030	1-1-2009	Amend	2-1-2009	461-193-0185	4-1-2009	Amend	5-1-2009
461-165-0060	4-1-2009	Amend	5-1-2009	461-193-0190	4-1-2009	Amend	5-1-2009
461-165-0060	4-1-2009	Amend(T)	5-1-2009	461-193-0221	4-1-2009	Amend	5-1-2009
461-165-0060	7-1-2009	Amend	8-1-2009	461-193-0240	4-1-2009	Amend	5-1-2009
461-165-0060(T)	7-1-2009	Repeal	8-1-2009	461-193-0246	4-1-2009	Amend	5-1-2009
461-165-0060(T)	4-1-2009	Repeal	5-1-2009	461-193-0470	4-1-2009	Amend	5-1-2009
461-165-0130	7-1-2009	Amend	8-1-2009	461-193-0560	4-1-2009	Amend	5-1-2009
461-165-0140	7-1-2009	Amend	8-1-2009	461-193-0610	4-1-2009	Repeal	5-1-2009
461-165-0180	4-1-2009	Amend	5-1-2009	461-193-0640	4-1-2009	Repeal	5-1-2009
461-165-0410	4-1-2009	Amend	5-1-2009	461-193-0650	4-1-2009	Amend	5-1-2009
461-165-0420	4-1-2009	Amend	5-1-2009	461-193-0650	7-1-2009	Repeal	8-1-2009
461-170-0010	1-1-2009	Amend	2-1-2009	461-193-0660	4-1-2009	Repeal	5-1-2009
461-170-0011	4-1-2009	Amend	5-1-2009	461-193-0670	4-1-2009	Amend	5-1-2009
461-170-0015	1-1-2009	Am. & Ren.	2-1-2009	461-193-0690	4-1-2009	Amend	5-1-2009
461-170-0020	1-1-2009	Am. & Ren.	2-1-2009	461-193-0890	4-1-2009	Amend	5-1-2009
461-170-0025	1-1-2009	Am. & Ren.	2-1-2009	461-193-0940	4-1-2009	Amend	5-1-2009
461-170-0030	1-1-2009	Am. & Ren.	2-1-2009	461-193-0960	4-1-2009	Amend	5-1-2009
461-170-0035	1-1-2009	Am. & Ren.	2-1-2009	461-193-1200	4-1-2009	Amend	5-1-2009
461-170-0100	1-1-2009	Amend	2-1-2009	461-193-1230	4-1-2009	Amend	5-1-2009
461-170-0101	1-1-2009	Amend	2-1-2009	461-193-1610	4-1-2009	Repeal	5-1-2009
461-170-0101	4-1-2009	Amend	5-1-2009	461-195-0501	7-1-2009	Amend	8-1-2009
461-170-0102	1-1-2009	Amend	2-1-2009	461-195-0521	4-1-2009	Amend(T)	5-1-2009
461-170-0102	4-1-2009	Amend	5-1-2009	461-195-0521	7-1-2009	Amend	8-1-2009
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462-220-0030	7-1-2009	Amend	6-1-2009	579-020-0006	3-12-2009	Amend	4-1-2009
462-220-0070	7-1-2009	Amend	6-1-2009	580-021-0027	3-13-2009	Adopt(T)	4-1-2009
471-010-0025	12-1-2008	Adopt	1-1-2009	580-040-0035	1-22-2009	Amend	3-1-2009
471-010-0045	12-1-2008	Adopt	1-1-2009	580-040-0040	2-20-2009	Amend(T)	4-1-2009
471-030-0012	7-1-2009	Adopt(T)	8-1-2009	580-040-0040	3-13-2009	Amend(T)	4-1-2009
471-030-0038	6-29-2009	Amend(T)	8-1-2009	580-040-0040(T)	3-13-2009	Suspend	4-1-2009
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471-031-0072	12-1-2008	Amend	1-1-2009	581-011-0050	6-29-2009	Amend	8-1-2009
471-031-0151	12-1-2008	Amend	1-1-2009	581-011-0052	6-29-2009	Amend	8-1-2009
471-031-0190	12-1-2008	Adopt	1-1-2009	581-011-0055	6-29-2009	Amend	8-1-2009
471-031-0195	12-1-2008	Adopt	1-1-2009	581-011-0060	6-29-2009	Amend	8-1-2009
471-031-0200	12-1-2008	Adopt	1-1-2009	581-011-0065	6-29-2009	Amend	8-1-2009
471-031-0205	12-1-2008	Adopt	1-1-2009	581-011-0066	6-29-2009	Amend	8-1-2009
471-031-0210	12-1-2008	Adopt	1-1-2009	581-011-0067	6-29-2009	Amend	8-1-2009
471-031-0215	12-1-2008	Adopt	1-1-2009	581-011-0070	6-29-2009	Amend	8-1-2009
471-031-0220	12-1-2008	Adopt	1-1-2009	581-011-0071	6-29-2009	Amend	8-1-2009
471-031-0225	12-1-2008	Adopt	1-1-2009	581-011-0072	6-29-2009	Repeal	8-1-2009
471-031-0230	12-1-2008	Adopt	1-1-2009	581-011-0073	6-29-2009	Repeal	8-1-2009
543-060-0000	3-2-2009	Amend	4-1-2009	581-011-0074	6-29-2009	Repeal	8-1-2009
543-060-0010	3-2-2009	Amend	4-1-2009	581-011-0075	6-29-2009	Amend	8-1-2009
543-060-0020	3-2-2009	Amend	4-1-2009	581-011-0076	6-29-2009	Repeal	8-1-2009
543-060-0030	3-2-2009	Amend	4-1-2009	581-011-0077	6-29-2009	Repeal	8-1-2009
543-060-0040	3-2-2009	Amend	4-1-2009	581-011-0078	6-29-2009	Repeal	8-1-2009
543-060-0060	3-2-2009	Amend	4-1-2009	581-011-0079	6-29-2009	Repeal	8-1-2009
543-060-0070	3-2-2009	Adopt	4-1-2009	581-011-0080	6-29-2009	Amend	8-1-2009
571-060-0005	7-1-2009	Amend	6-1-2009	581-011-0086	6-29-2009	Amend	8-1-2009
571-060-0005	7-1-2009	Amend	8-1-2009	581-011-0087	6-29-2009	Adopt	8-1-2009
573-040-0005	6-15-2009	Amend	7-1-2009	581-011-0090	6-29-2009	Amend	8-1-2009
574-050-0005	2-13-2009	Amend	3-1-2009	581-011-0095	6-29-2009	Amend	8-1-2009
576-003-0000	6-9-2009	Adopt(T)	7-1-2009	581-011-0114	6-29-2009	Adopt	8-1-2009
576-003-0005	6-9-2009	Adopt(T)	7-1-2009	581-011-0117	6-29-2009	Amend	8-1-2009
576-003-0010	6-9-2009	Adopt(T)	7-1-2009	581-011-0118	6-29-2009	Repeal	8-1-2009
576-003-0020	6-9-2009	Adopt(T)	7-1-2009	581-011-0119	6-29-2009	Repeal	8-1-2009
576-003-0040	6-9-2009	Adopt(T)	7-1-2009	581-011-0120	6-29-2009	Repeal	8-1-2009
576-003-0050	6-9-2009	Adopt(T)	7-1-2009	581-011-0125	6-29-2009	Repeal	8-1-2009
576-003-0060	6-9-2009	Adopt(T)	7-1-2009	581-011-0130	6-29-2009	Repeal	8-1-2009
576-003-0070	6-9-2009	Adopt(T)	7-1-2009	581-011-0131	6-29-2009	Repeal	8-1-2009
576-003-0080	6-9-2009	Adopt(T)	7-1-2009	581-011-0135	6-29-2009	Repeal	8-1-2009
576-003-0090	6-9-2009	Adopt(T)	7-1-2009	581-011-0136	2-24-2009	Adopt(T)	4-1-2009
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576-003-0110	6-9-2009	Adopt(T)	7-1-2009	581-011-0142	2-24-2009	Adopt(T)	4-1-2009
576-003-0120	6-9-2009	Adopt(T)	7-1-2009	581-011-0145	6-29-2009	Repeal	8-1-2009
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576-030-0020	7-1-2009	Amend	8-1-2009	581-022-0711	12-19-2008	Adopt	2-1-2009
576-030-0025	7-1-2009	Amend	8-1-2009	581-022-1060	6-29-2009	Amend	8-1-2009
576-030-0030	7-1-2009	Repeal	8-1-2009	581-022-1130	6-30-2009	Amend(T)	8-1-2009
576-030-0035	7-1-2009	Amend	8-1-2009	581-022-1131	4-23-2009	Amend	6-1-2009
576-030-0040	7-1-2009	Amend	8-1-2009	581-022-1310	6-29-2009	Amend	8-1-2009
576-030-0045	7-1-2009	Amend	8-1-2009	581-022-1330	6-29-2009	Amend	8-1-2009
576-030-0050	7-1-2009	Amend	8-1-2009	581-022-1622	6-29-2009	Amend	8-1-2009
576-030-0055	7-1-2009	Amend	8-1-2009	581-022-1640	6-29-2009	Amend	8-1-2009
576-030-0060	7-1-2009	Amend	8-1-2009	581-022-1650	6-29-2009	Amend	8-1-2009
576-030-0070	7-1-2009	Amend	8-1-2009	581-045-0190	6-29-2009	Amend	8-1-2009
576-030-0090	7-1-2009	Amend	8-1-2009	581-045-0500	6-29-2009	Amend	8-1-2009
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581-045-0525	6-29-2009	Amend	8-1-2009	584-048-0067	5-15-2009	Suspend	6-1-2009
581-045-0530	6-29-2009	Amend	8-1-2009	584-048-0070	5-15-2009	Amend(T)	6-1-2009
581-045-0535	6-29-2009	Amend	8-1-2009	584-048-0085	5-15-2009	Amend(T)	6-1-2009
581-045-0538	6-29-2009	Adopt	8-1-2009	584-048-0090	5-15-2009	Suspend	6-1-2009
581-045-0545	6-29-2009	Amend	8-1-2009	584-048-0095	5-15-2009	Amend(T)	6-1-2009
581-045-0550	6-29-2009	Amend	8-1-2009	584-048-0105	5-15-2009	Suspend	6-1-2009
581-045-0555	6-29-2009	Amend	8-1-2009	584-048-0110	5-15-2009	Amend(T)	6-1-2009
581-045-0565	6-29-2009	Amend	8-1-2009	584-048-0115	5-15-2009	Suspend	6-1-2009
581-045-0570	6-29-2009	Amend	8-1-2009	584-050-0004	3-12-2009	Am. & Ren.	4-1-2009
581-045-0575	6-29-2009	Repeal	8-1-2009	584-050-0040	3-12-2009	Amend	4-1-2009
581-053-0517	6-29-2009	Amend	8-1-2009	584-050-0042	3-12-2009	Am. & Ren.	4-1-2009
582-001-0003	12-19-2008	Amend(T)	2-1-2009	584-050-0043	3-12-2009	Am. & Ren.	4-1-2009
582-001-0003	3-27-2009	Amend	5-1-2009	584-050-0100	3-12-2009	Adopt	4-1-2009
582-001-0003(T)	3-27-2009	Repeal	5-1-2009	584-052-0027	3-12-2009	Amend	4-1-2009
582-001-0005	12-19-2008	Amend(T)	2-1-2009	584-052-0030	3-12-2009	Amend	4-1-2009
582-001-0005	3-27-2009	Amend	5-1-2009	584-052-0031	3-12-2009	Amend	4-1-2009
582-001-0005(T)	3-27-2009	Repeal	5-1-2009	584-052-0032	3-12-2009	Amend	4-1-2009
582-001-0010	12-19-2008	Amend(T)	2-1-2009	584-052-0033	3-12-2009	Amend	4-1-2009
582-001-0010	3-27-2009	Amend	5-1-2009	584-060-0002	5-15-2009	Amend(T)	6-1-2009
582-001-0010(T)	3-27-2009	Repeal	5-1-2009	584-060-0012	5-15-2009	Amend(T)	6-1-2009
582-010-0005	2-11-2009	Suspend	3-1-2009	584-060-0013	5-15-2009	Amend(T)	6-1-2009
582-010-0010	2-11-2009	Suspend	3-1-2009	584-060-0014	5-15-2009	Amend(T)	6-1-2009
582-010-0015	2-11-2009	Suspend	3-1-2009	584-060-0022	5-15-2009	Amend(T)	6-1-2009
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582-010-0021	2-11-2009	Suspend	3-1-2009	584-060-0091	3-12-2009	Repeal	4-1-2009
582-010-0022	2-11-2009	Suspend	3-1-2009	584-060-0171	3-12-2009	Amend	4-1-2009
582-010-0025	2-11-2009	Suspend	3-1-2009	584-060-0171	5-15-2009	Amend(T)	6-1-2009
582-010-0030	2-11-2009	Suspend	3-1-2009	584-060-0181	3-12-2009	Amend	4-1-2009
582-050-0000	3-27-2009	Amend	5-1-2009	584-060-0182	3-12-2009	Adopt	4-1-2009
582-070-0010	2-11-2009	Amend(T)	3-1-2009	584-060-0210	3-12-2009	Amend	4-1-2009
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582-080-0010	2-11-2009	Amend(T)	3-1-2009	584-070-0014	5-15-2009	Amend(T)	6-1-2009
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582-080-0040	2-11-2009	Amend(T)	3-1-2009	584-070-0221	5-15-2009	Amend(T)	6-1-2009
582-080-0050	2-11-2009	Amend(T)	3-1-2009	584-070-0310	5-15-2009	Amend(T)	6-1-2009
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584-021-0140	5-15-2009	Amend(T)	6-1-2009	585-005-0015	6-11-2009	Adopt	7-1-2009
584-021-0150	5-15-2009	Amend(T)	6-1-2009	585-005-0020	6-11-2009	Adopt	7-1-2009
584-021-0210	5-15-2009	Amend(T)	6-1-2009	585-005-0025	6-11-2009	Adopt	7-1-2009
584-036-0010	3-12-2009	Amend	4-1-2009	585-005-0030	6-11-2009	Adopt	7-1-2009
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584-036-0080	3-12-2009	Amend	4-1-2009	585-005-0045	6-11-2009	Adopt	7-1-2009
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584-040-0005	5-15-2009	Amend(T)	6-1-2009	585-005-0055	6-11-2009	Adopt	7-1-2009
584-048-0006	5-15-2009	Amend(T)	6-1-2009	585-005-0060	6-11-2009	Adopt	7-1-2009
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585-020-0025	4-13-2009	Amend	5-1-2009	619-005-0030	12-17-2008	Adopt	2-1-2009
585-020-0030	4-13-2009	Amend	5-1-2009	619-005-0040	12-17-2008	Adopt	2-1-2009
585-020-0040	4-13-2009	Amend	5-1-2009	619-005-0050	12-17-2008	Adopt	2-1-2009
585-020-0045	4-13-2009	Amend	5-1-2009	619-005-0060	12-17-2008	Adopt	2-1-2009
585-020-0055	4-13-2009	Repeal	5-1-2009	620-010-0020	3-1-2009	Amend	2-1-2009
585-020-0060	4-13-2009	Amend	5-1-2009	620-010-0020(T)	3-1-2009	Repeal	2-1-2009
589-007-0500	7-6-2009	Amend	8-1-2009	629-021-0700	5-11-2009	Amend	6-1-2009
589-007-0700	7-15-2009	Adopt(T)	8-1-2009	629-022-0030	2-1-2009	Amend	2-1-2009
589-020-0225	12-29-2008	Amend	2-1-2009	629-022-0035	2-1-2009	Adopt	2-1-2009
603-052-0129	2-13-2009	Amend	3-1-2009	629-022-0040	2-1-2009	Amend	2-1-2009
603-052-0153	2-13-2009	Amend	3-1-2009	629-022-0050	2-1-2009	Adopt	2-1-2009
603-052-0160	2-13-2009	Amend	3-1-2009	629-022-0060	2-1-2009	Adopt	2-1-2009
603-052-0201	2-13-2009	Amend	3-1-2009	629-022-0070	2-1-2009	Adopt	2-1-2009
603-052-0265	2-13-2009	Amend	3-1-2009	629-022-0080	2-1-2009	Adopt	2-1-2009
603-052-0360	2-13-2009	Amend	3-1-2009	629-022-0100	2-1-2009	Repeal	2-1-2009
603-052-1020	4-9-2009	Amend	5-1-2009	629-022-0110	2-1-2009	Amend	2-1-2009
603-052-1230	4-9-2009	Amend	5-1-2009	629-022-0120	2-1-2009	Amend	2-1-2009
603-052-1250	4-9-2009	Amend	5-1-2009	629-022-0130	2-1-2009	Amend	2-1-2009
603-057-0110	7-15-2009	Amend	8-1-2009	629-022-0140	2-1-2009	Amend	2-1-2009
603-057-0145	7-15-2009	Amend	8-1-2009	629-022-0150	2-1-2009	Amend	2-1-2009
603-057-0160	7-15-2009	Adopt	8-1-2009	629-022-0160	2-1-2009	Amend	2-1-2009
603-057-0180	7-15-2009	Adopt	8-1-2009	629-022-0200	2-1-2009	Amend	2-1-2009
603-057-0500	1-23-2009	Amend(T)	3-1-2009	629-022-0210	2-1-2009	Amend	2-1-2009
603-057-0500	5-7-2009	Amend	6-1-2009	629-022-0220	2-1-2009	Amend	2-1-2009
603-057-0500(T)	5-7-2009	Repeal	6-1-2009	629-022-0230	2-1-2009	Amend	2-1-2009
603-057-0502	1-23-2009	Adopt(T)	3-1-2009	629-022-0250	2-1-2009	Amend	2-1-2009
603-057-0502	5-7-2009	Adopt	6-1-2009	629-022-0300	2-1-2009	Amend	2-1-2009
603-057-0502(T)	5-7-2009	Repeal	6-1-2009	629-022-0320	2-1-2009	Amend	2-1-2009
603-057-0510	1-23-2009	Amend(T)	3-1-2009	629-022-0380	2-1-2009	Amend	2-1-2009
603-057-0510	5-7-2009	Amend	6-1-2009	629-022-0390	2-1-2009	Amend	2-1-2009
603-057-0510(T)	5-7-2009	Repeal	6-1-2009	629-022-0400	2-1-2009	Amend	2-1-2009
603-057-0515	1-23-2009	Suspend	3-1-2009	629-022-0410	2-1-2009	Amend	2-1-2009
603-057-0515	5-7-2009	Repeal	6-1-2009	629-022-0500	2-1-2009	Repeal	2-1-2009
603-057-0520	1-23-2009	Amend(T)	3-1-2009	629-022-0600	2-1-2009	Repeal	2-1-2009
603-057-0520	5-7-2009	Amend	6-1-2009	629-022-0700	2-1-2009	Repeal	2-1-2009
603-057-0520(T)	5-7-2009	Repeal	6-1-2009	629-022-0800	2-1-2009	Adopt	2-1-2009
603-057-0525	1-23-2009	Amend(T)	3-1-2009	629-022-0810	2-1-2009	Adopt	2-1-2009
603-057-0525	5-7-2009	Amend	6-1-2009	629-022-0820	2-1-2009	Adopt	2-1-2009
603-057-0525(T)	5-7-2009	Repeal	6-1-2009	629-022-0830	2-1-2009	Adopt	2-1-2009
603-057-0530	1-23-2009	Amend(T)	3-1-2009	629-022-0840	2-1-2009	Adopt	2-1-2009
603-057-0530	5-7-2009	Amend	6-1-2009	629-022-0850	2-1-2009	Adopt	2-1-2009
603-057-0530(T)	5-7-2009	Repeal	6-1-2009	629-041-0100	3-25-2009	Amend(T)	5-1-2009
603-057-0532	1-23-2009	Adopt(T)	3-1-2009	632-030-0005	5-15-2009	Amend	6-1-2009
603-057-0532	5-7-2009	Adopt	6-1-2009	632-030-0010	5-15-2009	Amend	6-1-2009
603-057-0532(T)	5-7-2009	Repeal	6-1-2009	632-030-0015	5-15-2009	Amend	6-1-2009
603-074-0080	1-30-2009	Amend	3-1-2009	632-030-0016	5-15-2009	Amend	6-1-2009
603-076-0100	6-30-2009	Adopt(T)	8-1-2009	632-030-0017	5-15-2009	Amend	6-1-2009
603-076-0105	6-30-2009	Adopt(T)	8-1-2009	632-030-0018	5-15-2009	Amend	6-1-2009
603-077-0101	7-15-2009	Amend(T)	8-1-2009	632-030-0019	5-15-2009	Amend	6-1-2009
603-077-0105	7-15-2009	Amend(T)	8-1-2009	632-030-0020	5-15-2009	Amend	6-1-2009
603-077-0110	7-15-2009	Amend(T)	8-1-2009	632-030-0021	5-15-2009	Amend	6-1-2009
603-077-0112	7-15-2009	Amend(T)	8-1-2009	632-030-0022	5-15-2009	Amend	6-1-2009
603-077-0113	7-15-2009	Amend(T)	8-1-2009	632-030-0024	5-15-2009	Amend	6-1-2009
603-077-0115	7-15-2009	Amend(T)	8-1-2009	632-030-0025	5-15-2009	Amend	6-1-2009
603-077-0137	7-15-2009	Amend(T)	8-1-2009	632-030-0026	5-15-2009	Adopt	6-1-2009
603-077-0140	7-15-2009	Amend(T)	8-1-2009	632-030-0027	5-15-2009	Amend	6-1-2009

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632-030-0033	5-15-2009	Amend	6-1-2009	635-005-0001	11-21-2008	Amend	1-1-2009
632-030-0035	5-15-2009	Amend	6-1-2009	635-005-0005	11-21-2008	Amend	1-1-2009
632-030-0040	5-15-2009	Amend	6-1-2009	635-005-0005	12-17-2008	Amend	2-1-2009
632-030-0041	5-15-2009	Adopt	6-1-2009	635-005-0016	11-21-2008	Amend	1-1-2009
632-030-0042	5-15-2009	Amend	6-1-2009	635-005-0045	11-21-2008	Amend	1-1-2009
632-030-0045	5-15-2009	Amend	6-1-2009	635-005-0047	11-21-2008	Amend	1-1-2009
632-030-0049	5-15-2009	Adopt	6-1-2009	635-005-0048	11-21-2008	Amend	1-1-2009
632-030-0052	5-15-2009	Adopt	6-1-2009	635-005-0055	11-21-2008	Amend	1-1-2009
632-030-0056	5-15-2009	Amend	6-1-2009	635-005-0055	12-1-2008	Amend(T)	1-1-2009
632-030-0070	5-15-2009	Amend	6-1-2009	635-005-0055	5-29-2009	Amend(T)	7-1-2009
635-001-0050	1-14-2009	Amend(T)	2-1-2009	635-005-0055(T)	5-29-2009	Suspend	7-1-2009
635-003-0003	5-18-2009	Amend	7-1-2009	635-005-0064	12-17-2008	Amend	2-1-2009
635-003-0004	3-15-2009	Amend(T)	4-1-2009	635-005-0065	11-21-2008	Amend	1-1-2009
635-003-0004	5-18-2009	Amend	7-1-2009	635-005-0065	12-17-2008	Amend	2-1-2009
635-003-0004(T)	5-18-2009	Repeal	7-1-2009	635-005-0067	12-17-2008	Amend	2-1-2009
635-003-0074	5-18-2009	Amend	7-1-2009	635-005-0068	12-17-2008	Adopt	2-1-2009
635-003-0077	5-18-2009	Amend	7-1-2009	635-005-0069	12-17-2008	Adopt	2-1-2009
635-003-0085	5-18-2009	Amend	7-1-2009	635-005-0084	11-21-2008	Amend	1-1-2009
635-004-0005	4-27-2009	Amend	6-1-2009	635-005-0090	11-21-2008	Amend	1-1-2009
635-004-0009	4-27-2009	Amend	6-1-2009	635-005-0095	11-21-2008	Amend	1-1-2009
635-004-0012	4-22-2009	Adopt	6-1-2009	635-005-0100	11-21-2008	Amend	1-1-2009
635-004-0014	11-21-2008	Amend	1-1-2009	635-005-0135	11-21-2008	Amend	1-1-2009
635-004-0016	1-1-2009	Amend(T)	2-1-2009	635-005-0140	11-21-2008	Amend	1-1-2009
635-004-0016	2-23-2009	Amend(T)	4-1-2009	635-005-0145	11-21-2008	Amend	1-1-2009
635-004-0016	4-22-2009	Amend	6-1-2009	635-005-0180	11-21-2008	Amend	1-1-2009
635-004-0016(T)	2-23-2009	Suspend	4-1-2009	635-006-0001	11-21-2008	Amend	1-1-2009
635-004-0016(T)	4-22-2009	Repeal	6-1-2009	635-006-0132	11-21-2008	Amend	1-1-2009
635-004-0017	4-22-2009	Adopt	6-1-2009	635-006-0133	11-21-2008	Amend	1-1-2009
635-004-0017	7-1-2009	Amend(T)	8-1-2009	635-006-0145	11-21-2008	Amend	1-1-2009
635-004-0018	4-27-2009	Amend	6-1-2009	635-006-0150	11-21-2008	Amend	1-1-2009
635-004-0019	12-4-2008	Amend(T)	1-1-2009	635-006-0165	11-21-2008	Amend	1-1-2009
635-004-0019	1-5-2009	Amend(T)	2-1-2009	635-006-0200	11-21-2008	Amend	1-1-2009
635-004-0019	3-18-2009	Amend(T)	5-1-2009	635-006-0205	11-21-2008	Amend	1-1-2009
635-004-0019	4-27-2009	Amend	6-1-2009	635-006-0207	11-21-2008	Amend	1-1-2009
635-004-0019	5-1-2009	Amend(T)	6-1-2009	635-006-0210	11-21-2008	Amend	1-1-2009
635-004-0019	7-2-2009	Amend(T)	8-1-2009	635-006-0211	11-21-2008	Amend	1-1-2009
635-004-0019(T)	12-4-2008	Suspend	1-1-2009	635-006-0212	6-16-2009	Amend(T)	7-1-2009
635-004-0019(T)	3-18-2009	Suspend	5-1-2009	635-006-0213	11-21-2008	Amend	1-1-2009
635-004-0019(T)	4-27-2009	Repeal	6-1-2009	635-006-0215	11-21-2008	Amend	1-1-2009
635-004-0019(T)	7-2-2009	Suspend	8-1-2009	635-006-0215	6-16-2009	Amend(T)	7-1-2009
635-004-0020	11-21-2008	Amend	1-1-2009	635-006-0215	6-25-2009	Amend(T)	8-1-2009
635-004-0027	1-1-2009	Amend(T)	2-1-2009	635-006-0215(T)	6-25-2009	Suspend	8-1-2009
635-004-0033	1-1-2009	Amend(T)	2-1-2009	635-006-0225	11-21-2008	Amend	1-1-2009
635-004-0033	3-1-2009	Amend(T)	4-1-2009	635-006-0225	6-16-2009	Amend(T)	7-1-2009
635-004-0033	4-27-2009	Amend	6-1-2009	635-006-0230	11-21-2008	Amend	1-1-2009
635-004-0033	7-1-2009	Amend(T)	8-1-2009	635-006-0232	1-13-2009	Amend	2-1-2009
635-004-0033(T)	3-1-2009	Suspend	4-1-2009	635-006-0235	11-21-2008	Amend	1-1-2009
635-004-0033(T)	4-27-2009	Repeal	6-1-2009	635-006-0412	11-21-2008	Amend	1-1-2009
635-004-0035	11-21-2008	Amend	1-1-2009	635-006-0425	11-21-2008	Amend	1-1-2009
635-004-0042	6-1-2009	Adopt(T)	6-1-2009	635-006-0810	11-21-2008	Amend	1-1-2009
635-004-0048	11-21-2008	Amend	1-1-2009	635-006-0850	12-17-2008	Amend	2-1-2009
635-004-0050	11-21-2008	Amend	1-1-2009	635-006-0910	12-17-2008	Amend	2-1-2009
635-004-0060	11-21-2008	Amend	1-1-2009	635-006-1015	4-22-2009	Amend	6-1-2009
635-004-0090	1-1-2009	Amend(T)	2-1-2009	635-006-1035	11-21-2008	Amend	1-1-2009
635-004-0090	4-27-2009	Amend	6-1-2009	635-006-1035	12-17-2008	Amend	2-1-2009
635-004-0090(T)	4-27-2009	Repeal	6-1-2009	635-006-1035	4-22-2009	Amend	6-1-2009
635-004-0135	11-21-2008	Amend	1-1-2009	635-006-1075	11-21-2008	Amend	1-1-2009

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635-006-1085	12-17-2008	Amend	2-1-2009	635-023-0095	4-13-2009	Amend(T)	5-1-2009
635-006-1085	2-26-2009	Amend(T)	4-1-2009	635-023-0095	6-6-2009	Amend(T)	7-1-2009
635-006-1085	4-22-2009	Amend	6-1-2009	635-023-0095	7-9-2009	Amend(T)	8-1-2009
635-006-1085(T)	4-22-2009	Repeal	6-1-2009	635-023-0095(T)	2-26-2009	Repeal	4-1-2009
635-008-0055	4-27-2009	Amend	6-1-2009	635-023-0095(T)	6-6-2009	Suspend	7-1-2009
635-008-0095	6-10-2009	Amend	7-1-2009	635-023-0095(T)	7-9-2009	Suspend	8-1-2009
635-008-0123	4-27-2009	Amend	6-1-2009	635-023-0125	1-1-2009	Amend	2-1-2009
635-008-0140	4-27-2009	Amend	6-1-2009	635-023-0125	2-26-2009	Amend	4-1-2009
635-008-0145	1-15-2009	Amend	2-1-2009	635-023-0125	3-1-2009	Amend(T)	3-1-2009
635-008-0147	3-11-2009	Amend(T)	4-1-2009	635-023-0125	5-15-2009	Amend(T)	6-1-2009
635-008-0147	3-30-2009	Amend(T)	5-1-2009	635-023-0125	6-12-2009	Amend(T)	7-1-2009
635-010-0170	12-9-2008	Amend(T)	1-1-2009	635-023-0125(T)	2-26-2009	Repeal	4-1-2009
635-010-0170	5-14-2009	Amend(T)	6-1-2009	635-023-0125(T)	6-12-2009	Suspend	7-1-2009
635-010-0170(T)	5-14-2009	Suspend	6-1-2009	635-023-0128	1-1-2009	Amend	2-1-2009
635-011-0100	1-1-2009	Amend	2-1-2009	635-023-0128	5-18-2009	Amend	7-1-2009
635-013-0003	1-1-2009	Amend	2-1-2009	635-023-0128	6-16-2009	Amend(T)	7-1-2009
635-013-0003	5-18-2009	Amend	7-1-2009	635-023-0130	1-1-2009	Amend	2-1-2009
635-013-0004	1-1-2009	Amend	2-1-2009	635-023-0130	5-18-2009	Amend	7-1-2009
635-013-0007	5-18-2009	Amend	7-1-2009	635-023-0134	1-1-2009	Amend	2-1-2009
635-013-0009	3-15-2009	Amend(T)	4-1-2009	635-023-0134	5-30-2009	Amend(T)	7-1-2009
635-014-0080	1-1-2009	Amend	2-1-2009	635-023-0134	7-1-2009	Amend(T)	8-1-2009
635-014-0090	1-1-2009	Amend	2-1-2009	635-023-0134(T)	7-1-2009	Suspend	8-1-2009
635-014-0090	5-22-2009	Amend(T)	6-1-2009	635-039-0080	1-1-2009	Amend	2-1-2009
635-014-0090	6-15-2009	Amend(T)	7-1-2009	635-039-0080	4-27-2009	Amend	6-1-2009
635-014-0090(T)	6-15-2009	Suspend	7-1-2009	635-039-0085	1-1-2009	Amend	2-1-2009
635-016-0080	1-1-2009	Amend	2-1-2009	635-039-0085	4-27-2009	Amend	6-1-2009
635-016-0090	1-1-2009	Amend	2-1-2009	635-039-0085	5-22-2009	Amend(T)	7-1-2009
635-016-0090	6-1-2009	Amend(T)	7-1-2009	635-039-0090	1-1-2009	Amend	2-1-2009
635-016-0090	7-1-2009	Amend(T)	8-1-2009	635-039-0090	2-2-2009	Amend(T)	3-1-2009
635-016-0090(T)	7-1-2009	Suspend	8-1-2009	635-039-0090	4-27-2009	Amend	6-1-2009
635-017-0080	1-1-2009	Amend	2-1-2009	635-039-0090(T)	4-27-2009	Repeal	6-1-2009
635-017-0090	1-1-2009	Amend	2-1-2009	635-041-0005	11-21-2008	Amend	1-1-2009
635-017-0090	2-25-2009	Amend	4-1-2009	635-041-0010	11-21-2008	Amend	1-1-2009
635-017-0090	3-1-2009	Amend(T)	3-1-2009	635-041-0030	11-21-2008	Amend	1-1-2009
635-017-0090	6-30-2009	Amend(T)	8-1-2009	635-041-0030	2-26-2009	Amend	4-1-2009
635-017-0090(T)	2-25-2009	Repeal	4-1-2009	635-041-0040	11-21-2008	Amend	1-1-2009
635-017-0095	1-1-2009	Amend	2-1-2009	635-041-0045	11-21-2008	Amend	1-1-2009
635-017-0095	1-1-2009	Amend(T)	2-1-2009	635-041-0060	11-21-2008	Amend	1-1-2009
635-017-0095	2-25-2009	Amend	4-1-2009	635-041-0061	11-21-2008	Amend	1-1-2009
635-017-0095(T)	2-25-2009	Repeal	4-1-2009	635-041-0061	2-26-2009	Amend	4-1-2009
635-018-0080	1-1-2009	Amend	2-1-2009	635-041-0063	11-21-2008	Amend	1-1-2009
635-018-0090	1-1-2009	Amend	2-1-2009	635-041-0063	2-26-2009	Amend	4-1-2009
635-018-0090	4-15-2009	Amend(T)	4-1-2009	635-041-0065	11-21-2008	Amend	1-1-2009
635-018-0090	8-1-2009	Amend(T)	7-1-2009	635-041-0065	2-2-2009	Amend(T)	3-1-2009
635-019-0080	1-1-2009	Amend	2-1-2009	635-041-0065	2-16-2009	Amend(T)	3-1-2009
635-019-0090	1-1-2009	Amend	2-1-2009	635-041-0065	3-6-2009	Amend(T)	4-1-2009
635-021-0080	1-1-2009	Amend	2-1-2009	635-041-0065(T)	2-16-2009	Suspend	3-1-2009
635-021-0090	1-1-2009	Amend	2-1-2009	635-041-0065(T)	3-6-2009	Suspend	4-1-2009
635-021-0090	5-30-2009	Amend(T)	7-1-2009	635-041-0076	5-16-2009	Amend(T)	6-1-2009
635-021-0090	6-13-2009	Amend(T)	7-1-2009	635-041-0076	5-27-2009	Amend(T)	7-1-2009
635-021-0090	7-5-2009	Amend(T)	8-1-2009	635-041-0076	6-16-2009	Amend(T)	7-1-2009
635-021-0090(T)	6-13-2009	Suspend	7-1-2009	635-041-0076	6-30-2009	Amend(T)	8-1-2009
635-021-0090(T)	7-5-2009	Suspend	8-1-2009	635-041-0076	7-8-2009	Amend(T)	8-1-2009
635-023-0080	1-1-2009	Amend	2-1-2009	635-041-0076	7-15-2009	Amend(T)	8-1-2009
635-023-0090	1-1-2009	Amend	2-1-2009	635-041-0076(T)	5-27-2009	Suspend	7-1-2009
635-023-0095	1-1-2009	Amend	2-1-2009	635-041-0076(T)	6-16-2009	Suspend	7-1-2009
635-023-0095	1-1-2009	Amend(T)	2-1-2009	635-041-0076(T)	6-30-2009	Suspend	8-1-2009



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635-041-0076(T)	7-15-2009	Suspend	8-1-2009	635-060-0000	1-1-2009	Amend	2-1-2009
635-041-0510	11-21-2008	Amend	1-1-2009	635-060-0008	5-12-2009	Amend(T)	6-1-2009
635-041-0520	11-21-2008	Amend	1-1-2009	635-060-0008	5-14-2009	Amend(T)	6-1-2009
635-041-0600	11-21-2008	Amend	1-1-2009	635-060-0009	1-1-2009	Amend	2-1-2009
635-042-0001	11-21-2008	Amend	1-1-2009	635-060-0009	5-28-2009	Amend(T)	7-1-2009
635-042-0007	11-21-2008	Amend	1-1-2009	635-060-0046	6-10-2009	Amend	7-1-2009
635-042-0022	11-21-2008	Amend	1-1-2009	635-060-0055	1-1-2009	Amend	2-1-2009
635-042-0022	3-27-2009	Amend(T)	5-1-2009	635-065-0001	1-1-2009	Amend	2-1-2009
635-042-0022	4-7-2009	Amend(T)	5-1-2009	635-065-0015	6-10-2009	Amend	7-1-2009
635-042-0022	4-14-2009	Amend(T)	5-1-2009	635-065-0401	1-1-2009	Amend	2-1-2009
635-042-0022(T)	4-7-2009	Suspend	5-1-2009	635-065-0625	1-1-2009	Amend	2-1-2009
635-042-0022(T)	4-14-2009	Suspend	5-1-2009	635-065-0740	1-1-2009	Amend	2-1-2009
635-042-0027	6-18-2009	Amend(T)	7-1-2009	635-065-0760	1-1-2009	Amend	2-1-2009
635-042-0110	11-21-2008	Amend	1-1-2009	635-065-0765	1-9-2009	Amend	2-1-2009
635-042-0110	6-1-2009	Amend(T)	7-1-2009	635-066-0000	1-1-2009	Amend	2-1-2009
635-042-0130	1-1-2009	Amend(T)	2-1-2009	635-066-0010	1-1-2009	Amend	2-1-2009
635-042-0130	2-26-2009	Amend	4-1-2009	635-066-0020	1-1-2009	Amend	2-1-2009
635-042-0130(T)	2-26-2009	Repeal	4-1-2009	635-067-0000	1-1-2009	Amend	2-1-2009
635-042-0133	2-26-2009	Amend	4-1-2009	635-067-0000	6-10-2009	Amend	7-1-2009
635-042-0135	1-1-2009	Amend(T)	2-1-2009	635-067-0004	1-1-2009	Amend	2-1-2009
635-042-0135	2-2-2009	Amend(T)	3-1-2009	635-068-0000	3-1-2009	Amend	4-1-2009
635-042-0135(T)	2-2-2009	Suspend	3-1-2009	635-068-0000	6-10-2009	Amend	7-1-2009
635-042-0145	2-15-2009	Amend(T)	3-1-2009	635-069-0000	2-3-2009	Amend	3-1-2009
635-042-0145	3-11-2009	Amend(T)	4-1-2009	635-069-0000	6-10-2009	Amend	7-1-2009
635-042-0145	5-17-2009	Amend(T)	6-1-2009	635-070-0000	4-1-2009	Amend	5-1-2009
635-042-0145(T)	3-11-2009	Suspend	4-1-2009	635-070-0000	6-10-2009	Amend	7-1-2009
635-042-0145(T)	5-17-2009	Suspend	6-1-2009	635-071-0000	4-1-2009	Amend	5-1-2009
635-042-0160	2-15-2009	Amend(T)	3-1-2009	635-071-0000	6-10-2009	Amend	7-1-2009
635-042-0160	5-17-2009	Amend(T)	6-1-2009	635-072-0000	1-1-2009	Amend	2-1-2009
635-042-0160(T)	5-17-2009	Suspend	6-1-2009	635-073-0000	2-3-2009	Amend	3-1-2009
635-042-0170	2-15-2009	Amend(T)	3-1-2009	635-073-0000	6-10-2009	Amend	7-1-2009
635-042-0180	2-15-2009	Amend(T)	3-1-2009	635-073-0065	2-3-2009	Amend	3-1-2009
635-042-0180	3-6-2009	Amend(T)	4-1-2009	635-073-0070	2-3-2009	Amend	3-1-2009
635-042-0180	4-7-2009	Amend(T)	5-1-2009	635-075-0005	5-5-2009	Amend(T)	6-1-2009
635-042-0180	5-17-2009	Amend(T)	6-1-2009	635-075-0005	6-10-2009	Amend	7-1-2009
635-042-0180(T)	3-6-2009	Suspend	4-1-2009	635-075-0005(T)	6-10-2009	Repeal	7-1-2009
635-042-0180(T)	4-7-2009	Suspend	5-1-2009	635-080-0050	1-1-2009	Amend	2-1-2009
635-042-0180(T)	5-17-2009	Suspend	6-1-2009	635-080-0051	1-1-2009	Amend	2-1-2009
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635-048-0080	5-7-2009	Amend(T)	6-1-2009	635-195-0010	11-24-2008	Adopt	1-1-2009
635-049-0025	6-10-2009	Amend	7-1-2009	647-010-0010	7-1-2009	Amend	6-1-2009
635-049-0055	6-10-2009	Repeal	7-1-2009	660-024-0000	4-16-2009	Amend	5-1-2009
635-049-0065	6-10-2009	Adopt	7-1-2009	660-024-0010	4-16-2009	Amend	5-1-2009
635-049-0067	6-10-2009	Adopt	7-1-2009	660-024-0020	4-16-2009	Amend	5-1-2009
635-049-0069	6-10-2009	Adopt	7-1-2009	660-024-0030	4-16-2009	Amend	5-1-2009
635-049-0071	6-10-2009	Adopt	7-1-2009	660-024-0040	4-16-2009	Amend	5-1-2009
635-049-0073	6-10-2009	Adopt	7-1-2009	660-024-0050	4-16-2009	Amend	5-1-2009
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635-049-0210	1-1-2009	Repeal	2-1-2009	660-033-0120	1-2-2009	Amend	2-1-2009
635-049-0235	1-1-2009	Adopt	2-1-2009	660-033-0130	1-2-2009	Amend	2-1-2009
635-049-0255	5-6-2009	Adopt	6-1-2009	660-041-0010	4-2-2009	Amend	5-1-2009
635-055-0035	1-1-2009	Amend	2-1-2009	660-041-0110	4-2-2009	Amend	5-1-2009
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670-010-0010	7-1-2009	Amend	7-1-2009	733-030-0160	4-3-2009	Amend	5-1-2009
670-010-0011	7-1-2009	Amend	7-1-2009	733-030-0180	4-3-2009	Amend	5-1-2009
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690-205-0200	1-2-2009	Amend	2-1-2009	733-030-0250	4-3-2009	Amend	5-1-2009
690-205-0205	1-2-2009	Adopt	2-1-2009	733-030-0260	4-3-2009	Amend	5-1-2009
690-215-0005	1-2-2009	Amend	2-1-2009	733-030-0270	4-3-2009	Amend	5-1-2009
690-215-0006	1-2-2009	Adopt	2-1-2009	733-030-0280	4-3-2009	Amend	5-1-2009
690-215-0025	1-2-2009	Adopt	2-1-2009	733-030-0290	4-3-2009	Amend	5-1-2009
690-215-0030	1-2-2009	Amend	2-1-2009	733-030-0300	4-3-2009	Amend	5-1-2009
690-215-0035	1-2-2009	Adopt	2-1-2009	733-030-0320	4-3-2009	Amend	5-1-2009
690-215-0040	1-2-2009	Amend	2-1-2009	733-030-0330	4-3-2009	Amend	5-1-2009
690-220-0030	1-2-2009	Amend	2-1-2009	733-030-0340	4-3-2009	Amend	5-1-2009
690-220-0040	1-2-2009	Amend	2-1-2009	733-030-0350	4-3-2009	Amend	5-1-2009
690-220-0050	1-2-2009	Amend	2-1-2009	733-030-0400	6-1-2009	Adopt	7-1-2009
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690-220-0070	1-2-2009	Amend	2-1-2009	733-030-0420	6-1-2009	Adopt	7-1-2009
690-220-0080	1-2-2009	Amend	2-1-2009	733-030-0430	6-1-2009	Adopt	7-1-2009
690-220-0115	1-2-2009	Adopt	2-1-2009	733-030-0440	6-1-2009	Adopt	7-1-2009
690-240-0010	1-2-2009	Amend	2-1-2009	733-030-0450	6-1-2009	Adopt	7-1-2009
690-240-0035	1-2-2009	Amend	2-1-2009	733-030-0460	6-1-2009	Adopt	7-1-2009
690-240-0375	1-2-2009	Amend	2-1-2009	733-030-0470	6-1-2009	Adopt	7-1-2009
690-240-0385	1-2-2009	Adopt	2-1-2009	733-030-0480	6-1-2009	Adopt	7-1-2009
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690-380-0100	6-18-2009	Amend	8-1-2009	734-060-0000	3-23-2009	Adopt	5-1-2009
690-380-4010	6-18-2009	Amend	8-1-2009	734-060-0010	2-20-2009	Amend	4-1-2009
690-382-0100	6-18-2009	Amend	8-1-2009	734-060-0105	2-20-2009	Amend	4-1-2009
690-382-0300	6-18-2009	Amend	8-1-2009	734-060-0175	2-20-2009	Amend	4-1-2009
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690-382-0700	6-18-2009	Amend	8-1-2009	734-062-0100	3-23-2009	Adopt	5-1-2009
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735-060-0120	7-1-2009	Amend	8-1-2009	735-174-0000	7-1-2009	Amend	7-1-2009
735-060-0130	7-1-2009	Amend	8-1-2009	735-174-0010	7-1-2009	Amend	7-1-2009
735-062-0005	1-1-2009	Amend	1-1-2009	735-174-0020	7-1-2009	Amend	7-1-2009
735-062-0014	1-1-2009	Adopt	1-1-2009	735-174-0030	7-1-2009	Amend	7-1-2009
735-062-0014(T)	1-1-2009	Repeal	1-1-2009	735-174-0035	7-1-2009	Adopt	7-1-2009
735-062-0015	1-1-2009	Amend	1-1-2009	735-174-0040	7-1-2009	Amend	7-1-2009
735-062-0015(T)	1-1-2009	Repeal	1-1-2009	735-174-0045	7-1-2009	Adopt	7-1-2009
735-062-0020	1-1-2009	Amend	1-1-2009	735-176-0000	7-1-2009	Amend	7-1-2009
735-062-0020(T)	1-1-2009	Repeal	1-1-2009	735-176-0010	7-1-2009	Amend	7-1-2009
735-062-0040	2-20-2009	Amend	4-1-2009	735-176-0015	7-1-2009	Repeal	7-1-2009
735-062-0078	2-20-2009	Adopt	4-1-2009	735-176-0017	7-1-2009	Adopt	7-1-2009
735-062-0080	2-20-2009	Amend	4-1-2009	735-176-0018	7-1-2009	Repeal	7-1-2009
735-062-0080	7-1-2009	Amend	8-1-2009	735-176-0019	7-1-2009	Adopt	7-1-2009
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735-063-0055	2-20-2009	Repeal	4-1-2009	735-176-0040	7-1-2009	Amend	7-1-2009
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735-160-0010	2-20-2009	Amend	4-1-2009	736-018-0045	5-1-2009	Amend	5-1-2009
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735-160-0093	2-20-2009	Repeal	4-1-2009	736-146-0015	12-15-2008	Amend	1-1-2009
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736-148-0020	12-15-2008	Amend	1-1-2009	800-025-0027	2-5-2009	Amend	3-1-2009
736-149-0010	12-15-2008	Amend	1-1-2009	800-025-0030	2-5-2009	Amend	3-1-2009
740-015-0020	12-15-2008	Amend	1-1-2009	800-025-0040	2-5-2009	Amend	3-1-2009
740-015-0040	12-15-2008	Amend	1-1-2009	800-025-0050	2-5-2009	Amend	3-1-2009
740-100-0010	4-1-2009	Amend	5-1-2009	800-025-0060	2-5-2009	Amend	3-1-2009
740-100-0060	4-1-2009	Amend	5-1-2009	800-025-0070	2-5-2009	Amend	3-1-2009
740-100-0065	4-1-2009	Adopt	5-1-2009	800-030-0025	2-5-2009	Amend	3-1-2009
740-100-0070	4-1-2009	Amend	5-1-2009	800-030-0050	2-5-2009	Amend	3-1-2009
740-100-0080	4-1-2009	Amend	5-1-2009	801-001-0035	1-1-2009	Amend	2-1-2009
740-100-0085	4-1-2009	Adopt	5-1-2009	801-010-0010	1-1-2009	Amend	2-1-2009
740-100-0090	4-1-2009	Amend	5-1-2009	801-010-0050	1-1-2009	Amend	2-1-2009
740-100-0100	4-1-2009	Amend	5-1-2009	801-010-0115	1-1-2009	Amend	2-1-2009
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741-105-0020	2-20-2009	Repeal	4-1-2009	806-010-0020	7-10-2009	Amend	8-1-2009
741-105-0030	2-20-2009	Repeal	4-1-2009	806-010-0037	7-10-2009	Amend	8-1-2009
741-110-0020	2-20-2009	Amend	4-1-2009	806-010-0095	2-5-2009	Amend	3-1-2009
741-110-0030	2-20-2009	Amend	4-1-2009	808-001-0008	7-1-2009	Amend	7-1-2009
741-110-0040	2-20-2009	Amend	4-1-2009	808-002-0480	6-1-2009	Amend	7-1-2009
741-110-0050	2-20-2009	Amend	4-1-2009	808-002-0780	2-1-2009	Amend	3-1-2009
741-110-0060	2-20-2009	Amend	4-1-2009	808-003-0045	7-1-2009	Amend	7-1-2009
741-110-0070	2-20-2009	Amend	4-1-2009	808-003-0095	6-3-2009	Amend(T)	7-1-2009
741-110-0080	2-20-2009	Amend	4-1-2009	808-003-0100	7-1-2009	Amend	7-1-2009
741-110-0090	2-20-2009	Amend	4-1-2009	808-003-0105	7-1-2009	Amend	7-1-2009
741-115-0030	2-20-2009	Amend	4-1-2009	808-003-0130	7-1-2009	Amend	7-1-2009
741-115-0040	2-20-2009	Amend	4-1-2009	808-040-0020	5-13-2009	Amend(T)	6-1-2009
741-115-0060	2-20-2009	Amend	4-1-2009	808-040-0050	5-13-2009	Amend(T)	6-1-2009
741-115-0070	2-20-2009	Amend	4-1-2009	808-040-0080	5-13-2009	Amend(T)	6-1-2009
741-120-0020	2-20-2009	Amend	4-1-2009	809-010-0025	7-1-2009	Amend	7-1-2009
741-120-0040	2-20-2009	Amend	4-1-2009	811-015-0025	12-23-2008	Amend	2-1-2009
741-125-0020	2-20-2009	Repeal	4-1-2009	811-015-0030	1-29-2009	Amend	3-1-2009
741-200-0010	2-20-2009	Amend	4-1-2009	812-001-0200	2-23-2009	Amend(T)	4-1-2009
741-200-0040	2-20-2009	Amend	4-1-2009	812-001-0200	6-1-2009	Amend	6-1-2009
741-200-0065	2-20-2009	Adopt	4-1-2009	812-001-0200(T)	6-1-2009	Repeal	6-1-2009
800-010-0020	2-5-2009	Amend	3-1-2009	812-001-0220	6-1-2009	Adopt	6-1-2009
800-010-0025	2-5-2009	Amend	3-1-2009	812-002-0060	11-20-2008	Amend	1-1-2009
800-010-0030	2-5-2009	Amend	3-1-2009	812-002-0262	2-1-2009	Adopt	3-1-2009
800-010-0040	2-5-2009	Amend	3-1-2009	812-002-0420	11-20-2008	Amend	1-1-2009
800-010-0041	2-5-2009	Amend	3-1-2009	812-002-0420	6-1-2009	Amend	6-1-2009
800-010-0042	2-5-2009	Amend	3-1-2009	812-003-0120	6-1-2009	Amend	6-1-2009
800-015-0005	2-5-2009	Amend	3-1-2009	812-003-0140	2-1-2009	Amend	3-1-2009
800-015-0010	2-5-2009	Amend	3-1-2009	812-003-0141	2-1-2009	Adopt	3-1-2009
800-015-0015	2-5-2009	Amend	3-1-2009	812-003-0200	6-1-2009	Amend	6-1-2009
800-015-0020	2-5-2009	Amend	3-1-2009	812-003-0320	6-1-2009	Amend	6-1-2009
800-015-0030	2-5-2009	Amend	3-1-2009	812-003-0330	6-1-2009	Amend	6-1-2009
800-020-0015	2-5-2009	Amend	3-1-2009	812-003-0450	11-20-2008	Repeal	1-1-2009
800-020-0020	2-5-2009	Amend	3-1-2009	812-005-0280	11-20-2008	Amend	1-1-2009
800-020-0025	2-5-2009	Amend	3-1-2009	812-005-0280	6-1-2009	Amend	6-1-2009

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812-005-0800	2-1-2009	Amend	3-1-2009	817-030-0065	12-1-2008	Amend(T)	1-1-2009
812-005-0800	6-1-2009	Amend	6-1-2009	817-030-0065	6-1-2009	Amend	7-1-2009
812-006-0100	11-20-2008	Amend	1-1-2009	817-030-0100	12-1-2008	Suspend	1-1-2009
812-006-0200	11-20-2008	Amend	1-1-2009	817-030-0100	6-1-2009	Repeal	7-1-2009
812-006-0300	6-1-2009	Amend	6-1-2009	817-035-0010	6-1-2009	Amend	7-1-2009
812-006-0400	6-1-2009	Amend	6-1-2009	817-035-0030	12-1-2008	Amend(T)	1-1-2009
812-012-0170	6-1-2009	Adopt	6-1-2009	817-035-0030	6-1-2009	Amend	7-1-2009
812-020-0050	11-20-2008	Adopt	1-1-2009	817-035-0050	6-1-2009	Amend	7-1-2009
812-020-0055	11-20-2008	Adopt	1-1-2009	817-035-0070	6-1-2009	Amend	7-1-2009
812-020-0060	11-20-2008	Adopt	1-1-2009	817-035-0090	6-1-2009	Amend	7-1-2009
812-020-0062	11-20-2008	Adopt	1-1-2009	817-035-0110	6-1-2009	Amend	7-1-2009
812-020-0065	11-20-2008	Adopt	1-1-2009	817-040-0003	7-1-2009	Amend(T)	8-1-2009
812-020-0070	11-20-2008	Adopt	1-1-2009	818-001-0087	7-1-2009	Amend(T)	7-1-2009
812-020-0070	2-1-2009	Amend	3-1-2009	820-010-0215	12-12-2008	Amend	1-1-2009
812-020-0071	7-1-2009	Adopt	8-1-2009	820-010-0325	5-15-2009	Amend	6-1-2009
812-020-0072	11-20-2008	Adopt	1-1-2009	820-010-0635	5-15-2009	Amend	6-1-2009
812-020-0080	11-20-2008	Adopt	1-1-2009	820-030-0060	5-15-2009	Amend	6-1-2009
812-020-0082	11-20-2008	Adopt	1-1-2009	820-040-0005	5-15-2009	Amend	6-1-2009
812-020-0085	11-20-2008	Adopt	1-1-2009	830-001-0000	7-1-2009	Amend	8-1-2009
812-020-0087	11-20-2008	Adopt	1-1-2009	830-011-0000	7-1-2009	Amend	8-1-2009
812-020-0090	11-20-2008	Adopt	1-1-2009	830-011-0020	7-1-2009	Amend	8-1-2009
812-021-0000	7-1-2009	Adopt	8-1-2009	830-011-0040	7-1-2009	Amend	8-1-2009
812-021-0005	7-1-2009	Adopt	8-1-2009	830-020-0030	7-1-2009	Amend	8-1-2009
812-021-0010	7-1-2009	Adopt	8-1-2009	830-030-0000	7-1-2009	Amend	8-1-2009
812-021-0011	7-1-2009	Adopt	8-1-2009	830-030-0050	7-1-2009	Amend	8-1-2009
812-021-0015	7-1-2009	Adopt	8-1-2009	830-030-0060	7-1-2009	Amend	8-1-2009
812-021-0019	7-1-2009	Adopt	8-1-2009	830-040-0000	7-1-2009	Amend	8-1-2009
812-021-0023	7-1-2009	Adopt	8-1-2009	830-040-0040	7-1-2009	Amend	8-1-2009
812-021-0025	7-1-2009	Adopt	8-1-2009	833-020-0050	12-26-2008	Amend	2-1-2009
812-021-0028	7-1-2009	Adopt	8-1-2009	833-020-0164	12-26-2008	Amend	2-1-2009
812-021-0030	7-1-2009	Adopt	8-1-2009	833-025-0050	12-26-2008	Amend	2-1-2009
812-021-0031	7-1-2009	Adopt	8-1-2009	833-030-0001	12-26-2008	Amend	2-1-2009
812-021-0032	7-1-2009	Adopt	8-1-2009	833-030-0010	12-26-2008	Amend	2-1-2009
812-021-0033	7-1-2009	Adopt	8-1-2009	833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
812-021-0034	7-1-2009	Adopt	8-1-2009	833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
812-021-0035	7-1-2009	Adopt	8-1-2009	833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
812-021-0037	7-1-2009	Adopt	8-1-2009	833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
812-021-0040	7-1-2009	Adopt	8-1-2009	833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
812-021-0042	7-1-2009	Adopt	8-1-2009	833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
812-021-0045	7-1-2009	Adopt	8-1-2009	833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
812-021-0047	7-1-2009	Adopt	8-1-2009	836-011-0000	1-29-2009	Amend	3-1-2009
813-110-0010	2-9-2009	Amend(T)	3-1-2009	836-012-0331	7-9-2009	Adopt(T)	8-1-2009
817-005-0005	6-1-2009	Amend	7-1-2009	836-042-0045	1-1-2009	Amend	2-1-2009
817-010-0101	6-1-2009	Amend	7-1-2009	836-043-0005	1-1-2009	Amend	1-1-2009
817-020-0005	6-1-2009	Am. & Ren.	7-1-2009	836-043-0009	1-1-2009	Amend	1-1-2009
817-020-0011	6-1-2009	Am. & Ren.	7-1-2009	836-043-0017	1-1-2009	Amend	1-1-2009
817-020-0012	6-1-2009	Am. & Ren.	7-1-2009	836-043-0021	1-1-2009	Amend	1-1-2009
817-020-0015	6-1-2009	Amend	7-1-2009	836-043-0024	1-1-2009	Amend	1-1-2009
817-030-0005	12-1-2008	Amend(T)	1-1-2009	836-043-0028	1-1-2009	Amend	1-1-2009
817-030-0005	6-1-2009	Amend	7-1-2009	836-043-0032	1-1-2009	Amend	1-1-2009
817-030-0015	12-1-2008	Amend(T)	1-1-2009	836-043-0034	1-1-2009	Adopt	1-1-2009
817-030-0015	6-1-2009	Amend	7-1-2009	836-043-0036	1-1-2009	Repeal	1-1-2009
817-030-0020	12-1-2008	Amend(T)	1-1-2009	836-043-0037	1-1-2009	Repeal	1-1-2009
817-030-0020	6-1-2009	Amend	7-1-2009	836-043-0041	1-1-2009	Amend	1-1-2009
817-030-0040	12-1-2008	Amend(T)	1-1-2009	836-043-0044	1-1-2009	Amend	1-1-2009
817-030-0040	6-1-2009	Amend	7-1-2009	836-043-0046	1-1-2009	Amend	1-1-2009
817-030-0045	12-1-2008	Amend(T)	1-1-2009	836-043-0048	1-1-2009	Amend	1-1-2009

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836-043-0053	1-1-2009	Amend	1-1-2009	837-046-0180	6-2-2009	Adopt(T)	7-1-2009
836-043-0060	1-1-2009	Amend	1-1-2009	839-003-0005	12-5-2008	Amend	1-1-2009
836-043-0062	1-1-2009	Amend	1-1-2009	839-003-0010	12-5-2008	Amend	1-1-2009
836-043-0064	1-1-2009	Amend	1-1-2009	839-003-0020	12-5-2008	Amend	1-1-2009
836-043-0066	1-1-2009	Amend	1-1-2009	839-003-0025	12-5-2008	Amend	1-1-2009
836-043-0068	1-1-2009	Amend	1-1-2009	839-003-0040	12-5-2008	Amend	1-1-2009
836-043-0070	1-1-2009	Repeal	1-1-2009	839-003-0045	12-5-2008	Amend	1-1-2009
836-043-0071	1-1-2009	Adopt	1-1-2009	839-003-0050	12-5-2008	Amend	1-1-2009
836-043-0076	1-1-2009	Amend	1-1-2009	839-003-0055	12-5-2008	Amend	1-1-2009
836-043-0079	1-1-2009	Amend	1-1-2009	839-003-0060	12-5-2008	Amend	1-1-2009
836-043-0082	1-1-2009	Amend	1-1-2009	839-003-0065	12-5-2008	Amend	1-1-2009
836-043-0086	1-1-2009	Repeal	1-1-2009	839-003-0070	12-5-2008	Amend	1-1-2009
836-043-0087	1-1-2009	Adopt	1-1-2009	839-003-0080	12-5-2008	Amend	1-1-2009
836-043-0089	1-1-2009	Amend	1-1-2009	839-003-0085	12-5-2008	Amend	1-1-2009
836-051-0106	12-9-2008	Amend	1-1-2009	839-003-0090	12-5-2008	Amend	1-1-2009
836-051-0750	12-9-2008	Adopt	1-1-2009	839-003-0095	12-5-2008	Amend	1-1-2009
836-051-0755	12-9-2008	Adopt	1-1-2009	839-003-0100	12-5-2008	Amend	1-1-2009
836-051-0760	12-9-2008	Adopt	1-1-2009	839-003-0200	12-5-2008	Amend	1-1-2009
836-051-0765	12-9-2008	Adopt	1-1-2009	839-003-0205	12-5-2008	Amend	1-1-2009
836-051-0770	12-9-2008	Adopt	1-1-2009	839-003-0210	12-5-2008	Amend	1-1-2009
836-051-0775	12-9-2008	Adopt	1-1-2009	839-003-0215	12-5-2008	Amend	1-1-2009
836-052-0119	7-1-2009	Amend	8-1-2009	839-003-0220	12-5-2008	Amend	1-1-2009
836-052-0129	7-1-2009	Amend	8-1-2009	839-003-0225	12-5-2008	Amend	1-1-2009
836-052-0132	7-1-2009	Adopt	8-1-2009	839-003-0230	12-5-2008	Amend	1-1-2009
836-052-0133	7-1-2009	Amend	8-1-2009	839-003-0235	12-5-2008	Amend	1-1-2009
836-052-0134	7-1-2009	Amend	8-1-2009	839-003-0240	12-5-2008	Amend	1-1-2009
836-052-0141	7-1-2009	Adopt	8-1-2009	839-003-0245	12-5-2008	Amend	1-1-2009
836-052-0142	7-1-2009	Amend	8-1-2009	839-005-0000	12-5-2008	Amend	1-1-2009
836-052-0192	7-1-2009	Adopt	8-1-2009	839-005-0003	12-5-2008	Amend	1-1-2009
836-053-0850	4-28-2009	Adopt(T)	6-1-2009	839-005-0010	12-5-2008	Amend	1-1-2009
836-053-0855	4-28-2009	Adopt(T)	6-1-2009	839-005-0016	12-5-2008	Amend	1-1-2009
836-053-0860	4-28-2009	Adopt(T)	6-1-2009	839-005-0026	12-5-2008	Amend	1-1-2009
836-053-0865	4-28-2009	Adopt(T)	6-1-2009	839-005-0195	12-5-2008	Amend	1-1-2009
836-072-0001	12-10-2008	Adopt	1-1-2009	839-005-0200	12-5-2008	Amend	1-1-2009
836-072-0005	12-10-2008	Adopt	1-1-2009	839-005-0205	12-5-2008	Amend	1-1-2009
836-072-0010	12-10-2008	Adopt	1-1-2009	839-005-0220	12-5-2008	Amend	1-1-2009
836-072-0015	12-10-2008	Adopt	1-1-2009	839-020-0050	1-12-2009	Amend	2-1-2009
836-072-0020	12-10-2008	Adopt	1-1-2009	839-025-0700	12-1-2008	Amend	1-1-2009
836-072-0025	12-10-2008	Adopt	1-1-2009	839-025-0700	12-29-2008	Amend	2-1-2009
836-072-0030	12-10-2008	Adopt	1-1-2009	839-025-0700	1-1-2009	Amend	2-1-2009
836-072-0035	12-10-2008	Adopt	1-1-2009	839-025-0700	1-6-2009	Amend	2-1-2009
836-072-0040	12-10-2008	Adopt	1-1-2009	839-025-0700	1-12-2009	Amend	2-1-2009
836-072-0045	12-10-2008	Adopt	1-1-2009	839-025-0700	2-11-2009	Amend	3-1-2009
837-012-0530	4-10-2009	Amend	5-1-2009	839-025-0700	3-17-2009	Amend	5-1-2009
837-012-0625	4-10-2009	Amend	5-1-2009	839-025-0700	3-24-2009	Amend	5-1-2009
837-012-0750	4-10-2009	Amend	5-1-2009	839-025-0700	4-1-2009	Amend	5-1-2009
837-040-0001	12-31-2008	Amend	2-1-2009	839-025-0700	6-10-2009	Amend	7-1-2009
837-040-0015	12-31-2008	Adopt	2-1-2009	839-025-0700	6-30-2009	Amend	8-1-2009
837-040-0020	12-31-2008	Amend	2-1-2009	839-025-0700	7-1-2009	Amend	8-1-2009
837-046-0000	6-2-2009	Adopt(T)	7-1-2009	839-025-0700	7-1-2009	Amend	8-1-2009
837-046-0020	6-2-2009	Adopt(T)	7-1-2009	839-025-0700	7-10-2009	Amend	8-1-2009
837-046-0040	6-2-2009	Adopt(T)	7-1-2009	839-025-0750	3-1-2009	Amend	4-1-2009
837-046-0060	6-2-2009	Adopt(T)	7-1-2009	839-025-0750	4-16-2009	Amend	5-1-2009
837-046-0080	6-2-2009	Adopt(T)	7-1-2009	845-001-0005	8-1-2009	Amend	8-1-2009
837-046-0100	6-2-2009	Adopt(T)	7-1-2009	845-005-0320	7-1-2009	Amend	8-1-2009
837-046-0120	6-2-2009	Adopt(T)	7-1-2009	845-005-0321	7-1-2009	Adopt	8-1-2009
837-046-0140	6-2-2009	Adopt(T)	7-1-2009	845-005-0405	4-1-2009	Amend	5-1-2009



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845-005-0415	4-1-2009	Amend	5-1-2009	851-056-0022	11-26-2008	Amend	1-1-2009
845-005-0415	7-15-2009	Amend(T)	8-1-2009	851-061-0090	5-15-2009	Amend	6-1-2009
845-006-0335	4-1-2009	Amend	5-1-2009	851-062-0020	11-26-2008	Amend	1-1-2009
845-006-0345	5-1-2009	Amend	6-1-2009	851-062-0120	6-26-2009	Amend	8-1-2009
845-006-0425	7-1-2009	Amend	8-1-2009	851-063-0035	5-15-2009	Amend	6-1-2009
845-006-0500	5-1-2009	Amend	6-1-2009	852-005-0005	7-1-2009	Amend	7-1-2009
845-008-0045	7-1-2009	Am. & Ren.	8-1-2009	852-070-0005	7-1-2009	Amend	7-1-2009
845-010-0154	12-20-2008	Adopt	2-1-2009	852-070-0055	7-1-2009	Amend	7-1-2009
845-013-0050	5-1-2009	Amend	6-1-2009	852-070-0060	7-1-2009	Amend	7-1-2009
845-013-0060	5-1-2009	Amend	6-1-2009	855-007-0010	1-5-2009	Adopt(T)	2-1-2009
845-020-0025	1-1-2009	Amend	2-1-2009	855-007-0010	6-22-2009	Adopt	8-1-2009
845-020-0035	1-1-2009	Amend	2-1-2009	855-007-0010(T)	6-22-2009	Repeal	8-1-2009
847-001-0030	5-1-2009	Amend	6-1-2009	855-007-0020	1-5-2009	Adopt(T)	2-1-2009
847-005-0005	1-22-2009	Amend	3-1-2009	855-007-0020	6-22-2009	Adopt	8-1-2009
847-008-0020	1-22-2009	Amend	3-1-2009	855-007-0020(T)	6-22-2009	Repeal	8-1-2009
847-008-0040	1-22-2009	Amend	3-1-2009	855-007-0030	1-5-2009	Adopt(T)	2-1-2009
847-008-0060	5-1-2009	Amend	6-1-2009	855-007-0030	6-22-2009	Adopt	8-1-2009
847-008-0070	1-22-2009	Adopt	3-1-2009	855-007-0030(T)	6-22-2009	Repeal	8-1-2009
847-010-0054	1-22-2009	Repeal	3-1-2009	855-007-0040	1-5-2009	Adopt(T)	2-1-2009
847-010-0055	1-22-2009	Repeal	3-1-2009	855-007-0040	6-22-2009	Adopt	8-1-2009
847-010-0073	5-1-2009	Amend	6-1-2009	855-007-0040(T)	6-22-2009	Repeal	8-1-2009
847-010-0100	1-22-2009	Amend	3-1-2009	855-007-0050	1-5-2009	Adopt(T)	2-1-2009
847-020-0130	1-22-2009	Amend	3-1-2009	855-007-0050	6-22-2009	Adopt	8-1-2009
847-020-0170	4-9-2009	Amend(T)	5-1-2009	855-007-0050(T)	6-22-2009	Repeal	8-1-2009
847-035-0030	5-1-2009	Amend	6-1-2009	855-007-0060	1-5-2009	Adopt(T)	2-1-2009
847-050-0037	7-14-2009	Amend(T)	8-1-2009	855-007-0060	6-22-2009	Adopt	8-1-2009
847-065-0000	5-1-2009	Amend	6-1-2009	855-007-0060(T)	6-22-2009	Repeal	8-1-2009
847-070-0019	1-22-2009	Amend	3-1-2009	855-007-0080	1-5-2009	Adopt(T)	2-1-2009
847-070-0020	1-22-2009	Amend	3-1-2009	855-007-0080	6-22-2009	Adopt	8-1-2009
847-070-0045	1-22-2009	Amend	3-1-2009	855-007-0080(T)	6-22-2009	Repeal	8-1-2009
848-005-0010	5-14-2009	Amend	6-1-2009	855-007-0090	1-5-2009	Adopt(T)	2-1-2009
848-005-0010	7-1-2009	Amend	6-1-2009	855-007-0090	6-22-2009	Adopt	8-1-2009
848-010-0015	1-2-2009	Amend	2-1-2009	855-007-0090(T)	6-22-2009	Repeal	8-1-2009
848-010-0020	1-2-2009	Amend	2-1-2009	855-007-0100	1-5-2009	Adopt(T)	2-1-2009
848-010-0022	1-2-2009	Adopt	2-1-2009	855-007-0100	6-22-2009	Adopt	8-1-2009
848-010-0026	1-2-2009	Amend	2-1-2009	855-007-0100(T)	6-22-2009	Repeal	8-1-2009
848-010-0044	1-2-2009	Amend	2-1-2009	855-007-0110	1-5-2009	Adopt(T)	2-1-2009
848-015-0030	1-2-2009	Amend	2-1-2009	855-007-0110	6-22-2009	Adopt	8-1-2009
848-020-0030	1-2-2009	Amend	2-1-2009	855-007-0110(T)	6-22-2009	Repeal	8-1-2009
848-020-0060	1-2-2009	Amend	2-1-2009	855-007-0120	1-5-2009	Adopt(T)	2-1-2009
848-035-0020	1-2-2009	Amend	2-1-2009	855-007-0120	6-22-2009	Adopt	8-1-2009
848-035-0030	1-2-2009	Amend	2-1-2009	855-007-0120(T)	6-22-2009	Repeal	8-1-2009
848-035-0035	1-2-2009	Adopt	2-1-2009	855-060-0003	6-26-2009	Adopt(T)	8-1-2009
848-035-0040	1-2-2009	Amend	2-1-2009	855-062-0003	6-26-2009	Adopt(T)	8-1-2009
848-040-0100	1-2-2009	Amend	2-1-2009	855-062-0005	6-26-2009	Adopt(T)	8-1-2009
848-040-0117	1-2-2009	Amend	2-1-2009	855-062-0020	6-26-2009	Adopt(T)	8-1-2009
848-040-0145	1-2-2009	Amend	2-1-2009	855-062-0030	6-26-2009	Adopt(T)	8-1-2009
848-040-0160	1-2-2009	Amend	2-1-2009	855-062-0040	6-26-2009	Adopt(T)	8-1-2009
848-040-0175	1-2-2009	Adopt	2-1-2009	855-062-0050	6-26-2009	Adopt(T)	8-1-2009
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850-060-0225	6-17-2009	Amend	8-1-2009	855-110-0003	6-26-2009	Adopt(T)	8-1-2009
850-060-0226	12-8-2008	Amend	1-1-2009	855-110-0007	6-26-2009	Amend(T)	8-1-2009
850-060-0226	6-17-2009	Amend	8-1-2009	855-110-0010	6-26-2009	Amend(T)	8-1-2009
851-031-0090	6-26-2009	Amend	8-1-2009	856-010-0008	6-23-2009	Adopt	8-1-2009
851-050-0138	11-26-2008	Amend	1-1-2009	856-010-0010	6-23-2009	Amend	8-1-2009

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859-040-0010	12-17-2008	Amend(T)	2-1-2009	863-015-0180	1-1-2009	Repeal	1-1-2009
859-040-0010	5-5-2009	Amend	6-1-2009	863-015-0185	1-1-2009	Repeal	1-1-2009
859-040-0010(T)	5-5-2009	Repeal	6-1-2009	863-015-0186	1-1-2009	Amend	1-1-2009
859-040-0015	12-17-2008	Amend(T)	2-1-2009	863-015-0188	1-1-2009	Adopt	1-1-2009
859-040-0015	5-5-2009	Amend	6-1-2009	863-015-0190	1-1-2009	Amend	1-1-2009
859-040-0015(T)	5-5-2009	Repeal	6-1-2009	863-015-0195	1-1-2009	Repeal	1-1-2009
860-022-0041	4-15-2009	Amend(T)	5-1-2009	863-015-0200	1-1-2009	Amend	1-1-2009
860-022-0070	3-25-2009	Amend	5-1-2009	863-015-0205	1-1-2009	Amend	1-1-2009
860-024-0010	12-29-2008	Amend	2-1-2009	863-015-0210	1-1-2009	Amend	1-1-2009
860-024-0020	5-5-2009	Amend	6-1-2009	863-015-0215	1-1-2009	Amend	1-1-2009
860-024-0021	5-5-2009	Amend	6-1-2009	863-015-0220	1-1-2009	Repeal	1-1-2009
860-027-0400	2-5-2009	Adopt	3-1-2009	863-015-0225	1-1-2009	Am. & Ren.	1-1-2009
860-032-0620	4-14-2009	Amend	5-1-2009	863-015-0230	1-1-2009	Am. & Ren.	1-1-2009
860-034-0010	5-5-2009	Amend	6-1-2009	863-015-0250	1-1-2009	Amend	1-1-2009
860-034-0120	5-5-2009	Amend	6-1-2009	863-015-0255	1-1-2009	Amend	1-1-2009
860-034-0310	5-5-2009	Amend	6-1-2009	863-015-0260	1-1-2009	Amend	1-1-2009
860-038-0220	6-25-2009	Amend	8-1-2009	863-015-0265	1-1-2009	Amend	1-1-2009
860-038-0300	6-25-2009	Amend	8-1-2009	863-015-0275	1-1-2009	Amend	1-1-2009
860-083-0005	6-25-2009	Adopt	8-1-2009	863-024-0000	1-1-2009	Adopt	1-1-2009
860-083-0050	6-25-2009	Adopt	8-1-2009	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
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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
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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
863-015-0120	1-1-2009	Am. & Ren.	1-1-2009	863-025-0055	1-1-2009	Amend	1-1-2009
863-015-0130	1-1-2009	Amend	1-1-2009	863-025-0060	1-1-2009	Amend	1-1-2009
863-015-0135	1-1-2009	Amend	1-1-2009	863-025-0065	1-1-2009	Amend	1-1-2009
863-015-0140	1-1-2009	Amend	1-1-2009	863-025-0070	1-1-2009	Amend	1-1-2009
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863-015-0150	1-1-2009	Amend	1-1-2009	863-027-0000	1-1-2009	Adopt	1-1-2009
863-015-0155	1-1-2009	Amend	1-1-2009	863-027-0005	1-1-2009	Adopt	1-1-2009
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863-050-0025	1-1-2009	Amend	1-1-2009	877-040-0020	7-1-2009	Repeal	7-1-2009
863-050-0030	1-1-2009	Amend	1-1-2009	877-040-0045	7-1-2009	Amend	7-1-2009
863-050-0033	1-1-2009	Amend	1-1-2009	877-040-0050	7-1-2009	Amend	7-1-2009
863-050-0035	1-1-2009	Amend	1-1-2009	877-040-0055	7-1-2009	Amend	7-1-2009
863-050-0040	1-1-2009	Repeal	1-1-2009	918-008-0075	1-1-2009	Amend	2-1-2009
863-050-0050	1-1-2009	Amend	1-1-2009	918-008-0080	1-1-2009	Amend	2-1-2009
863-050-0052	1-1-2009	Adopt	1-1-2009	918-008-0085	1-1-2009	Amend	2-1-2009
863-050-0055	1-1-2009	Amend	1-1-2009	918-008-0090	1-1-2009	Amend	2-1-2009
863-050-0060	1-1-2009	Amend	1-1-2009	918-008-0095	1-1-2009	Amend	2-1-2009
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863-050-0066	1-1-2009	Amend	1-1-2009	918-008-0115	1-1-2009	Amend	2-1-2009
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863-050-0105	1-1-2009	Amend	1-1-2009	918-050-0000	1-1-2009	Amend	1-1-2009
863-050-0115	1-1-2009	Amend	1-1-2009	918-050-0010	1-1-2009	Amend	1-1-2009
863-050-0150	1-1-2009	Amend	1-1-2009	918-050-0020	1-1-2009	Amend	1-1-2009
863-050-0151	1-1-2009	Repeal	1-1-2009	918-050-0030	1-1-2009	Amend	1-1-2009
863-050-0205	1-1-2009	Repeal	1-1-2009	918-050-0100	1-1-2009	Amend	1-1-2009
863-050-0210	1-1-2009	Repeal	1-1-2009	918-050-0110	1-1-2009	Amend	1-1-2009
863-050-0215	1-1-2009	Repeal	1-1-2009	918-050-0120	1-1-2009	Amend	1-1-2009
863-050-0220	1-1-2009	Repeal	1-1-2009	918-050-0130	1-1-2009	Amend	1-1-2009
863-050-0225	1-1-2009	Repeal	1-1-2009	918-050-0140	1-1-2009	Amend	1-1-2009
863-050-0230	1-1-2009	Repeal	1-1-2009	918-050-0150	1-1-2009	Amend	1-1-2009
863-050-0235	1-1-2009	Repeal	1-1-2009	918-050-0160	1-1-2009	Amend	1-1-2009
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