50th ANNIVERSARY ISSUE

OREGON BULLETIN

Supplements the 2009 *Oregon Administrative Rules Compilation*

Volume 48, No. 7
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For May 18, 2009–June 15, 2009

Published by
KATE BROWN
Secretary of State

50th ANNIVERSARY ISSUE of the *Oregon Bulletin*

In July of 1959, a modest publication appeared containing five pages and the opening words: "Beginning July 1, and throughout the current biennium, the Administrative Rule Bulletin will be published and distributed monthly." This began the regular publication cycle of the *Bulletin*, which has now circulated every month for half a century.

The *Bulletin* had officially been created a year-and-a-half earlier, on January 1, 1958, as an intermitent publication. That issue began, "The 49th Legislative Assembly has required that the Secretary of State publish from time to time a reference to or the text of all administrative rules filed with him by certain state agencies...." Five Administrative Rule Bulletins were distributed between January 1958 and June 1959.

The first monthly issue, with a publication date of July 1, 1959, was terse. It contained 19 brief entries under the heading, "Resume of Administrative Rules." In its entirety, the initial entry read:

> AGRICULTURE, Department of
> Subject: Relates to creation of Highland Bent Grass Commission.
> Promulgated: June 4, 1959
> Filed with Sec of St: June 8, 1959

The rest of the entries followed suit. In addition, there were two pages of "Opinions of the Attorney General."

From September 1962 through July 1990, the *Bulletin* was published twice a month. Through this time and until January 1997, contents did not include administrative rule text, but rather "reference to" text as stipulated in the original January 1958 edition.

Today's version of the *Oregon Bulletin,* containing full text of adopted and amended administrative rules, began on February 1, 1997.

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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.

OPPORTUNITY TO COMMENT
PROPOSED CONDITIONAL NO FURTHER ACTION
VP VALLEY SERVICE STATION (FORMER)
NYSSA, OREGON

COMMENT DUE: July 31, 2009
PROJECT LOCATION: 518 Main Street, Nyssa
PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a Conditional No Further Action (NFA) determination for former VP Valley Service Station site located at 518 Main Street in Nyssa, Oregon. The site was reportedly built in the 1960s and operated as a service station until 1988.

The Orphan Site Program has reviewed site assessment and remedial activities performed at the site. The site is proposed for a risk-based closure and issuance of a Conditional No Further Action determination. All of the potential exposure concerns are addressed through elimination during development of the site-specific conceptual site model or through institutional controls in the form of an Easement and Equitable Servitude (E&ES). The institutional controls (deed restrictions) for the site will include the following restrictions: no beneficial use of groundwater; no residential use; and the placement of a vapor barrier beneath any buildings constructed on the property.

Additional information concerning site-specific investigations and remedial actions is available in DEQ's Environmental Cleanup Site Information (ECSI) database located on the web at http://www.deq.state.or.us/lq/ecsi/ecsi.htm under Site ID 3910.

Site specific information is also available by contacting Katie Robertson, DEQ's project manager for this site. The Administrative File for this facility is located at DEQ's Pendleton office, and can be reviewed in person by contacting the project manager at the number below to arrange for an appointment.

HOW TO COMMENT: The public comment period will extend from July 1 to 31, 2009. Please address all comments and/or inquiries to the project manager at the following address:

Katie Robertson
Department of Environmental Quality
700 SE Emigrant, Suite 330
Pendleton, OR 97801
(541) 278-4620
robertson.katie@deq.state.or.us

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" determination.

NO FURTHER ACTION DECISION
FOR NEW INDEPENDENCE CIVIC CENTER
INDEPENDENCE, OREGON

PROJECT LOCATION: 400 South Main Avenue, Independence
PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) has issued a no further action (NFA) determination for the new Civic Center site located at 400 South Main Avenue, Independence, Oregon.

HIGHLIGHTS: The Brownfield Program has reviewed site assessment activities performed at the site. DEQ found some solvents above the level of concern for drinking water use. In order to ensure there would be no use of the contaminated groundwater at the site, the City of Independence closed the drinking water supply wells on the site, and will provide city water to the new civic center. To ensure continued safety, DEQ requested the City place a deed restriction prohibiting use of groundwater at the site. The deed restriction was recorded on April 28, 2009 in Polk County. The public comment period ended March 2, 2009 and DEQ received no comments. The DEQ has issued a "No Further Action" determination on June 22, 2009.

PROPOSED CHANGE IN CLEANUP METHOD FOR
SYCAN SHOP/WEYERHAEUSER SITE

COMMENTS DUE: July 30, 2009
PROJECT LOCATION: Beatty, Oregon
PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.320 and Oregon Administrative Rules (OAR) 340-122-100, the Department of Environmental Quality (DEQ) Voluntary Cleanup Program is proposing a record of decision amendment for the Weyerhaeuser Sycan Shop located in the Klamath County community of Beatty. The amendment consists of changing the primary existing remedy from an active groundwater pump and treatment system to the use of monitored natural attenuation (natural or enhanced degradation of contaminants), with a series of institutional and engineering controls both onsite and offsite for long-term management of the site. The proposed amendment meets environmental standards and is protective of human health and the environment. DEQ welcomes comment on this proposal.

HIGHLIGHTS: From 1940 through the early 1990s, Weyerhaeuser conducted locomotive and railcar maintenance in the Sycan shop. Petroleum compounds and chlorinated solvents contaminated soil and groundwater at the site. The company demolished most of the small buildings when the facility closed in 1992.

Weyerhaeuser entered DEQ's Voluntary Cleanup Program in 1996. Approval of a record of decision for the site occurred in April 2000. The remedy included groundwater extraction from the aquifers beneath the site, soil vapor extraction of contaminated site soil, engineering and institutional controls and contingency options.

In July 2007, DEQ completed a Five-Year Remedy Review for the site. The review found the current remedy to be protective of human health and the environment. It also suggested several potential enhancements to the existing system that, if implemented alone or with the existing system, might enhance the cleanup and result in cost savings. The recommendations included using monitored natural attenuation, in conjunction with additional administrative controls.

In May 2009, a focused feasibility study evaluated monitored natural attenuation against the current remedial action and revised remedial action to meet remedial action objectives identified in the record of decision. Monitored natural attenuation was determined to be protective, ranked similarly against the remedy selection factors, showed a preference to treat hotspots and resulted in reduced costs overall while still maintaining the benefit of risk reduction. The proposed record of decision amendment at the site consists of:

- Monitored natural attenuation: Natural or enhanced degradation of petroleum and chlorinated hydrocarbons is already occurring or will be continued at the site;
- Periodic groundwater monitoring: Annual groundwater sampling will occur at the site to evaluate the remedy;
- Offsite engineering controls: Alternative water supplies have been installed on adjacent properties and may be expanded in the future;
- Periodic land and water use review: In conjunction with annual groundwater sampling reporting, a review of land and water use in the vicinity of the site will be completed;
- Onsite and offsite institutional controls: A deed restriction placed on the Killian property to ensure continued safety and provide potential future owners or lessees with knowledge of site conditions. The deed restriction will prohibit the drilling of groundwater wells without prior approval from the DEQ; and
- Contingency plans: Periodic evaluation of performance and additional site characterization will occur during the course of the design and implementation of the amended remedial action. If after evaluation, monitored natural attenuation does not make acceptable progress then a contingency remedial action plan would be prepared for DEQ approval. This contingency could include restart of the existing remedial systems, biological or chemical enhancement of the current systems or expansion of the remedial systems.

HOW TO COMMENT: The full file, including the project documents, are available for review at DEQ's Bend office, 475 NE Bellevue Drive, Suite 110, Bend, OR 97701, (541) 388-6146. Office hours are 8 a.m. to noon and 1 to 5 p.m., Monday through Friday. Questions or concerns regarding DEQ's proposed decision should be sent to the project manager at the Department of Environmental

Quality, Eastern Region, 475 NE Bellevue Drive, Suite 110, Bend, OR 97701, or via e-mail to anderson.david@deq.state.or.us.
THE NEXT STEP: Following the public comment period and consideration of any comments received, DEQ expects to issue a No Further Action determination for the site.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us.

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

A CHANCE TO COMMENT ON PROPOSED CONSENT JUDGMENT FOR A PROSPECTIVE PURCHASER AGREEMENT AT THE FORMER BUCKEROO FORD DEALERSHIP PROPERTY, MOLALLA, OREGON

COMMENTS DUE: July 31, 2009
PROJECT LOCATION: 213 W. Main St, Molalla, Oregon.
PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Judgment for a Prospective Purchaser Agreement (PPA) with the Jaman Enterprises, LLC for the former Buckeroo Ford dealership property located at 213 W. Main St., Molalla, Oregon (the "Property").
HIGHLIGHTS: Jaman Enterprises, LLC (Jaman) is acquiring the Property to allow Jaman to provide beneficial redevelopment of the Property, create new jobs in the Molalla Area and return the Property to productive use. The Property was used historically as a gas station and auto dealership from approximately 1964 until June 2001. During historic operations at the site, petroleum-related products were released to the soil and shallow groundwater at and from the Property. The gasoline-contaminated soil that could be removed without causing structural damage to the on-site building was removed between 1999 and 2001. Some residual petroleum product contamination remains in the soil primarily beneath the building and in the shallow groundwater.

The Consent Judgment will require Jaman to continue to operate and monitor/sample the on-site soil vapor extraction (SVE) system beneath the building and to periodically collect groundwater samples for 1-2 years. Jaman will agree to provide access to the Property for any additional investigation and removal or remedial actions that may be required, and to implement any institutional or engineering controls that may be necessary.

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

The proposed Consent Judgment will provide Jaman with a release from liability for claims by the State of Oregon under ORS §465.255 relating to any historical releases of hazardous substances at or from the Property. The proposed Consent Judgment will also provide Jaman with protection from potential contribution actions by third parties for recovery of remedial action costs associated with any historical releases at or from the Property. DEQ retains all existing rights it may have as to all other parties potentially liable for any releases.
HOW TO COMMENT: Written comments concerning the proposed Consent Judgment should be sent to Charlie Landman at DEQ Headquarters, 811 SW 6th Avenue, Portland, Oregon 97204. Comments must be received by DEQ by 5:00 pm July 31, 2009. Questions may be directed to Mr. Landman at that address or by calling (503) 229-6461. The proposed Consent Judgment and DEQ file on the Property may be reviewed at DEQ's Northwest Region office in Portland by contacting Bill Robertson at (503) 229-6843.

Upon written request by ten or more persons, or by a group having ten or more members, a public meeting will be held to receive verbal comments on the proposed Consent Judgment.
THE NEXT STEP: DEQ will consider all public comments. A final decision concerning the proposed Consent Judgment will be made after consideration of public comments.
Request for Comments

PROPOSED FINAL CLEANUP FOR SAMARITAN HEALTH SERVICES DEVELOPMENT SITE, LEBANON

COMMENTS DUE: 5 pm, July 31 2009
PROJECT LOCATION: Tax Lot 1200, Map 12-2W-3D, Lebanon
PROPOSAL: Per OAR 340-120-0078, a 30-day public comment period is required for a proposed final cleanup action before the action can be approved by the DEQ. Samaritan Health Services development Site in north Lebanon is proposing a final cleanup action to address contaminants in shallow soil originating from historical pesticide use at the site.
HIGHLIGHTS: Samaritan Health Services plans to begin construction of a college campus, commercial/retail space, office space, a research/industrial park, and a hotel/conference center on the subject property. The property was historically used for growing ryegrass and similar crops. The pesticide dieldrin was used during the 1950s to 1970s to control insects at the site. In several areas at the site, residual dieldrin remains in shallow soil at levels considered un-safe for occupational and residential use. The exposure pathway is through incidental ingestion of contaminated dust or contact with contaminated soil.

Dieldrin is a persistent chemical that tends to remain in soil and does not readily dissolve in water and so cleanup can be straight-forward. Commonly, dieldrin or other pesticide-contaminated soil can be excavated and safely placed in areas where there will be very little human contact, such as beneath parking lots or buildings. Samaritan Health Services has prepared a cleanup plan to address the areas of concern by excavating and segregating from human contact the contaminated soil. The cleanup plan will be executed in phases, as new areas of the site are prepared for development.

The proposed cleanup plan consists of excavating contaminated soil and placing the soil under concrete, asphalt, or clean soil on site in designated areas. Those areas will be well-defined and identified on the property deed. A deed restriction will be lodged with the County that identifies those areas and identifies proper long-term management of those areas. The soil removal activity, along with a deed restriction, will be a cost-effective long-term remedy that will make the site safe to use for occupational purposes.
DEQ is soliciting public comment on the proposed cleanup action.
HOW TO COMMENT: A Summary Report presenting details about the site and the proposed cleanup action was prepared by DEQ, which supports the decision to approve the final cleanup action. The summary report is available for review electronically, by contacting the DEQ project manager, Bryn Thoms at 541-687-7424 or at thoms.bryn@deq.state.or.us, or the report can be viewed in person at the DEQ Eugene office by appointment. The Eugene office address and contact information is presented to the right.

Comments on the proposed cleanup need to be received by the Eugene Office, attn: Bryn Thoms, by 5 pm on July 31, 2009. Fax or email comments are acceptable.
THE NEXT STEP: Upon completion of the comment period, the comments will be addressed. Once the comments have been adequately addressed, the DEQ may approve, modify, or deny the proposed cleanup action.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us.

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

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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Board of Naturopathic Examiners
Chapter 850

Rule Caption: Requires additional CE for licensees, with allowances for all OB hours counting towards license renewal.
Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.102
Proposed Amendments: 850-030-0195, 850-035-0230, 850-040-0210
Last Date for Comment: 7-29-09
Summary: Requires 10 additional annual hours of CE for a Naturopathic physician license renewal, with credit for all natural childbirth certification counting towards annual license renewal.
Rules Coordinator: Anne Walsh
Address: Board of Naturopathic Examiners, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0193

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Commission for the Blind
Chapter 585

Rule Caption: Equipment Policy.
Stat. Auth.: ORS 346.150
Other Auth.: ORS 183.341
Stats. Implemented:
Proposed Amendments: 585-020-0010, 585-020-0015, 585-020-0020, 585-020-0025, 585-020-0030, 585-020-0040, 585-020-0045, 585-020-0050, 585-020-0060
Proposed Repeals: 585-020-0055
Last Date for Comment: 7-24-09
Summary: Division 20 — Equipment Policy: Updates language to reflect current practice.
Rules Coordinator: Linda Mock
Address: Commission for the Blind, 535 SE 12th Ave., Portland, OR 97214
Telephone: (971) 673-1588

Department of Administrative Services
Chapter 125

Rule Caption: Emergency Procurements.

Date:	Time:	Location:
7-15-09	11 a.m.	Bid Room, 2nd Floor State Procurement Office 1225 Ferry St. SE Salem, OR 97301

Hearing Officer: Brenda Brown
Stat. Auth.: ORS 279A.065 & 279A.070
Stats. Implemented: ORS 279B.080, 279C.320 & 279C.380(4)
Proposed Amendments: 125-247-0280, 125-249-0150
Proposed Repeals: 125-247-0280(T), 125-249-0150(T)
Last Date for Comment: 7-15-09, 5 p.m.
Summary: The Department of Administrative Services needs permanent emergency procurement rules to replace expiring temporary rules that revise OAR 125-247-0280 for Emergency Procurements and OAR 125-249-0150 for Emergency Contracts (Rules). The permanent Rules will support the 2009 "Go Oregon!" Economic Stimulus Package, Enrolled Senate Bill 338, House Bill 5562 and related economic stimulus measures (Program). In response to the adverse economic circumstances, the Legislature enacted the Program to allow for the emergency procurement of most projects under ORS 279B.080 and the Rules. Prior emergency procurement rules presented obstacles to the Program s quick implementation. The permanent Rules will remove the obstacles and help agencies employ various procurement methods.
Rules Coordinator: Yvonne Hanna
Address: 155 Cottage St. NE, U-90, Salem, OR 97301
Telephone: (503) 378-2349 ext. 325

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Rule Caption: Disposition and Acquisition of Real Property Interests.

Date:	Time:	Location:
7-15-09	10 a.m.	DAS Facilities Wallowa Mt. Conference Rm. 1225 Ferry St., SE Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 270.015(2), 270.100(1) & 270.100(1)(d)
Stats. Implemented: ORS 244.010, 270.010, 270.100, 270.105, 270.110, 270.120, 270.130, 270.135 & 270.140
Proposed Amendments: 125-045-0205, 125-045-0225, 125-045-0235
Proposed Repeals: 125-045-0235(T)
Last Date for Comment: 7-15-09, Close of Hearing
Summary: This amendment changes:

OAR 125-045-0205 by adding a definition for "Clearing House Process" for clarification of Division practice.

OAR 125-045-0225 by adding e-mailed notice and posting notice on the Division s web site as authorized methods for notifying agencies and political subdivisions of intended terminal dispositions or acquisitions.

OAR 125-045-0235(3)(b) deletes the word "minimum" so the sentence reads: "The asking price" instead of "The minimum asking price" to conform to statute and common practice.
Rules Coordinator: Yvonne Hanna
Address: 155 Cottage St. NE, Salem, OR 97301
Telephone: (503) 378-2349 ext. 325

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Department of Administrative Services,
Public Employees' Benefit Board
Chapter 101

Rule Caption: Makes temporary rules, effective 02/24/2009, permanently effective 08/01/2009.

Date:	Time:	Location:
7-23-09	3:30 p.m.	1225 Ferry St. SE, Board Rm. Salem, OR

Hearing Officer: Chérie M. Taylor
Stat. Auth.: ORS 243.061–243.302
Other Auth.: ORS 279
Stats. Implemented: ORS 183, 192, 243 & 292
Proposed Adoptions: 101-030-0026
Proposed Amendments: 101-001-0000, 101-005-0030, 101-005-0040, 101-005-0070, 101-005-0080
Last Date for Comment: 7-23-09, Close of Hearing
Summary: Amends OAR 101-001-0000 to clarify statute requirements and align notice process with current best business practices; amends OAR 101-005-0030 to clarify Definitions; amends OAR 101-005-0040 to clarify procedures used for procurement and renewal of contracts, amends OAR 101-005-0070 to clarify procedures used for amending original contracts; amends OAR 101-005-0080 to clarify the Board s legal authority when considering a change or protest after an established deadline, and; adopts OAR 101-030-0026 to implement Employer Designated Protected Leaves (for example, unpaid furloughs).
Rules Coordinator: Chérie M. Taylor
Address: 1225 Ferry St., S.E., Salem, OR 97301
Telephone: (503) 378-6296

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Department of Agriculture
Chapter 603

Rule Caption: Updates requirements for importing onion vegetative material, disposing of cull onions, and eradicating infected fields.

Date:	Time:	Location:
8-6-09	9 a.m.	Dept. of Agriculture 309 NE 3rd Ave. Ontario, OR 97914-0459

Hearing Officer: Roger Huffman
Stat. Auth.: ORS 561 & 570
Stats. Implemented: ORS 561.190, 561.510–561.600, 570.305, 570.405 & 570.410–570.415
Proposed Amendments: 603-052-0347
Last Date for Comment: 8-6-09
Summary: The proposed amendments update the list of Idaho counties and add an Arizona county from which vegetative propagative material may by imported. Disposal requirements for cull onions imported from outside of the control area were added. The control and eradication methods used should Allium white rot by found on a Malheur County onion field have been updated to reflect recent research on new disease management methods. Adds language for obtaining a Director's Exemption to the control area order and for reviewing the control area order on a regular basis.
Rules Coordinator: Sue Gooch
Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301
Telephone: (503) 986-4583

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Rule Caption: Redraws boundary of Willamette Valley Canola protected districts; redistricts special permits to research.

Date:	Time:	Location:
8-5-09	10 a.m.	Dept. of Agriculture 635 Capitol St. NE Salem, OR 97301

Hearing Officer: Chris Kirby
Stat. Auth.: ORS 561.190 & 570.450
Other Auth.: ORS 561.190
Stats. Implemented: ORS 561.450
Proposed Amendments: 603-052-0850
Last Date for Comment: 8-14-09
Summary: The proposed rule would collapse the boundaries of the Willamette valley Canola Protected District from county lines to a rectangle covering the historical footprint of the specialty seed and vegetable industries. Special permits for growing canola within protected districts would be limited to research including involvement of an accredited university. An application fee of $2.00/acre would be imposed on applications for special permits. A review of the rule would be required after three yeatrs.
Rules Coordinator: Sue Gooch
Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301
Telephone: (503) 986-4583

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Department of Community Colleges and Workforce Development
Chapter 589

Rule Caption: Renumber and repeal OARs in Division 20 regarding the Administration of Statewide and Local Workforce Investment Systems.
Stat. Auth.: ORS 326.370 & 660.318
Stats. Implemented:
Proposed Ren. & Amends: 151-020-0045 to 589-020-0300, 151-020-0060 to 589-020-0310, 151-020-0065 to 589-020-0320, 151-020-0075 to 589-020-0330, 151-020-0100 to 589-020-0340, 151-020-0110 to 589-020-0350
Last Date for Comment: 7-24-09, 5 p.m.
Summary: Federal statutory an administrative responsibility for Administration of Statewide and Local Workforce Investment Systems are under the jurisdiction of the Department of Community Colleges and Workforce Development (CCWD), as directed by the office of the governor.

Six administrative rules are being renumbered and moved from the Office of Education and Workforce Policy to CCWD, which has on file Workforce Investment Act (WIA) Title I and IB policies and procedures that address federal WIA guidance and requirements.
Rules Coordinator: Linda Hutchins
Address: Department of Community Colleges and Workforce Development, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-2456

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

Rule Caption: Establishes an alternate certification process for small wind turbines.

Date:	Time:	Location:
7-21-09	9:30 a.m.	1535 Edgewater St. NW Salem, OR 97304

Hearing Officer: Aeron Teverbaugh
Stat. Auth.: ORS 479.760
Stats. Implemented: ORS 479.760
Proposed Adoptions: 918-311-0080
Last Date for Comment: 7-24-09, 5 p.m.
Summary: The proposed rule establishes a process for certifying small wind turbines. The proposed rule allows for an alternate certification for wind turbines with a capacity of 100 kW or less. To be certified under the proposed rule a manufacturer submits a single turbine for field evaluation and then provides documentation that all other turbines of that particular model are the same as the evaluated one. Existing permitting, licensing, and inspection requirements also apply. The proposed rule would sunset in December 2010.
Rules Coordinator: Shauna M. Parker
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309
Telephone: (503) 373-7438

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

Rule Caption: Repeals rules related to associations of sellers of travel.
Stat. Auth.: 2009 OL Ch. 170, Sec. 4
Stats. Implemented: 2009 OL Ch. 170, Sec. 4

Proposed Repeals: 441-925-0010, 441-925-0020, 441-925-0030, 441-925-0040
Last Date for Comment: 7-31-09, 5 p.m.
Summary: The legislature passed Senate Bill 109 in the 2009 Legislative Session. Senate Bill 109 repealed a voluntary certification program for trade associations representing travel agencies, effective January 1, 2010. As a result of legislative action, the administrative rules that implement the association of sellers of travel program are no longer necessary. This rulemaking activity proposes to repeal these unnecessary provisions effective January 1, 2010 to coincide with the statute.
Rules Coordinator: Shelley Greiner
Address: Department of Consumer and Business Services, Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301
Telephone: (503) 947-7484

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Department of Consumer and Business Services, Insurance Division
Chapter 836

Rule Caption: Elimination of use of guaranty contracts as proof of coverage with Workers' Compensation Division.
Stat. Auth.: ORS 656.419, 656.427, 656.730 & 731.244
Stats. Implemented: ORS 656.427, 656.730 & 737.265
Proposed Amendments: 836-043-0046, 836-043-0056
Last Date for Comment: 7-31-09
Summary: OAR 836-043-0001 to OAR 836-043-0091 govern the operation of the Oregon Workers' Compensation Insurance Plan (WCIP). The WCIP provides workers' compensation coverage for employers who are in good faith entitled to insurance but who are unable to procure coverage in a regular manner. Enrolled Senate Bill 559 (2007 Session) eliminated insurer filing of a guaranty contract as proof of employer coverage with the Workers' Compensation Division effective July 1, 2009. OAR 836-043-0046 and 836-046-0056 include references to the guaranty contract. The Insurance Division must amend the rules to comply with the 2007 legislative changes to the Oregon Workers' Compensation laws.

The Insurance Division proposes to amend PAR 836-043-0046 and 836-043-0056 in response to SB 559. The proposed amendments eliminate references to a guaranty contract and termination of a guaranty contract. Failure to adopt changes will result in the failure of OAR 836-043-0001 to 836-043-0091 governing WCIP to conform to the changes made by SB 559 in 2007.
Rules Coordinator: Sue Munson
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301-3883
Telephone: (503) 947-7272

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

Rule Caption: Proposed changes to Division 1, General Administrative Rules.

Date:	Time:	Location:
7-28-09	9:30 a.m.	Oregon State Capitol Bldg.* 900 Court St. NE Hearing Rm. 50 (lower level) Salem, OR 97301
8-14-09	11 a.m.	Red Oaks Square 1230 Third St., Suite A-115 Bend, OR 97701-4374
8-18-09	9:30 a.m.	Jackson County Juvenile Service Center Large Conference Rm. 609 W 10th St. Medford, OR 97501

*NOTE: In addition to in-person testimony at the July 28th hearing at the State Capitol Building, we will have video streaming. To access the hearing on July 28th go to www.leg.state.or.us and click "Audio/Video" in the top horizontal bar. Then select Capitol Hearing Room "50." This is view and listen only, it is not interactive.
Hearing Officer: Sue Joye
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001–654.295
Proposed Amendments: 437-001-0015, 437-001-0055, 437-001-0057, 437-001-0420
Last Date for Comment: 8-21-09
Summary: Oregon OSHA is proposing changes to the methods used for scheduling safety and health inspections as described within Oregon Administrative Rule, chapter 437, division 1. Under these proposed changes, employers will be selected for inspection from identified lists of industries described under the North American Industry Classification System (NAICS). The changes will use a variety of data that more accurately reflects the risk of injury by industry. The changes are designed to make the best use of Oregon OSHA resources by conducting inspections where the likelihood of finding serious hazards that could cause serious injuries or illness is the greatest. The identified NAICS are considered high hazard industries for scheduling inspections.

After examining the current scheduling system and historical data on inspections it was determined that the system did not adequately focus our resources in industries considered to be the most hazardous. The current method of using workers compensation claims as the prime indicator of where inspections should be conducted is not a reliable indicator of where the risk of injury is the highest.

Primary changes are:
• Definitions are changed.
• Inspection priorities are changed.
• How the safety and health scheduling lists are going to be selected and run.
Scheduling Safety Inspections for Fixed Places of Employment.
Scheduling Health Inspections for Fixed Places of Employment.
• A list of potential exemptions.
• An evaluation paragraph is added.
• Two appendices are added showing the specific NAICS codes for industries in each tier:
Appendix A Safety Inspections for Fixed Places of Employment.
Appendix B Health Inspections for Fixed Places of Employment.
Please visit our web site www.orosha.org
Click 'Rules/Compliance' in the left vertical column and view our proposed, adopted, and final rules.
Rules Coordinator: Sue C. Joye
Address: Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, 350 Winter St. NE , Salem, OR 97301-3882
Telephone: (503) 947-7449

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Rule Caption: Proposed changes to the Worker Protection Standard in agriculture, general industry, and forest activities.

Date:	Time:	Location:
7-29-09	9:30 a.m.	Labor & Industries Bldg. Basement — Conference Rm. F 350 Winter St. NE Salem, OR 97301

Hearing Officer: Sue Joye
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001–654.295
Proposed Adoptions: 437-002-0170
Proposed Amendments: 437-004-6000, 437-007-0010
Last Date for Comment: 8-3-09
Summary: Oregon OSHA proposes to amend OAR 437-004-6000 in Division 4/W, Agriculture/Worker Protection Standard, with changes as they appeared in the Federal Registers (FR) listed below.

Per 73 FR 75598 (Corrections and technical amendments), EPA reviewed its pesticide regulations contained in 40 CFR Part 170, and made non-substantive technical changes in a number of areas to correct errors and cross-references, and to improve presentation and

format. The final federal rule was published in the Federal Register December 12, 2008 and became effective February 10, 2009.

Per 72 FR 35663 (Correction), § 170.112, paragraph (a)(1) was corrected to read as follows: "170.112 Entry restrictions. (a) * * * (1) After the application of any pesticide on an agricultural establishment, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired, except as provided in this section." Revised as of July 1, 2007.

Per 71 FR 35546 (Technical amendments), the EPA's Office of Pesticide Programs (OPP) notified all those affected concerning a change of address. OPP has relocated to new offices in Arlington, VA. EPA revised references throughout its pesticide regulations to reflect these address changes. Final rule was effective on June 21, 2006.

Oregon OSHA proposes to amend Division 2, Subdivision Z — Toxic and Hazardous Substances by adopting a new rule to clarify that all parts of the Worker Protection Standard (WPS) apply to General Industry, and are a part of Division 2 in addition to, and not instead of, any other part of Division 2. Should any part of the WPS conflict with other parts of Division 2, the employer must comply with the part offering the most protection to workers.

Oregon OSHA also is amending OAR 437-007-0010 Worker Protection Standard in Division 7, Forest Activities, to clarify the reference to WPS in Agriculture.

Please visit our web site www.orosha.org

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

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

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Amendments regarding harvest of game birds, season dates, open areas, and bag limits.

Date:	Time:	Location:
8-7-09	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 498.002
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 498.002
Proposed Amendments: Rules in 635-008, 010, 045, 051, 052, 053, 054, 060
Last Date for Comment: 8-7-09
Summary: Amend rules regarding the harvest of game birds including 2009–2010 season dates, open areas, regulations and bag limits and proposed 2010–2015 Upland Game Bird Frameworks.
Rules Coordinator: Therese Kucera
Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303
Telephone: (503) 947-6033

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Rule Caption: Adopt Regulations Pertaining to Commercial Harvest of Bait Fish in Inland Waters.

Date:	Time:	Location:
8-7-09	8 a.m.	Commission Room Dept. of Fish & Wildlife 3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.129
Proposed Adoptions: Rules in 635-004, 635-006
Proposed Amendments: Rules in 635-004, 635-006
Proposed Repeals: Rules in 635-004, 635-006
Last Date for Comment: 8-7-09
Summary: Adopt rules relating to commercial harvest of bait fish in Oregon inland waters.

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

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

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Rule Caption: Amend rules related to 2010 Oregon Sport Fishing Regulations.

Date:	Time:	Location:
8-7-09	8 a.m.	3406 Cherry Ave. NE Salem, OR 97303

Hearing Officer: Fish & Wildlife Commission
Stat. Auth.: ORS 496.138, 496.146, 496.162, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.138, 496.146, 496.162 & 506.129
Proposed Adoptions: Rules in 635-008, 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039
Proposed Amendments: Rules in 635-008, 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039
Proposed Repeals: Rules in 635-008, 635-011, 635-013, 635-014, 635-016, 635-017, 635-018, 635-019, 635-021, 635-023, 635-039
Last Date for Comment: 8-7-09
Summary: Amended rules to adopt sport fishing regulation for finfish, shellfish, and marine invertebrates for 2010.

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

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

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

Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
7-21-09	8:30 a.m.	500 Summer St. NE, Rm. 255 Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.005, 418.015 & 419B.005–419B.050
Proposed Amendments: 413-015-0470
Last Date for Comment: 7-22-09, 5 p.m.
Summary: OAR 413-015-0470 about the disposition notifications the Department provides as a result of a Child Protective Services (CPS) assessment is being amended to state that written notification is required for all CPS assessment dispositions unless supervisory approval for an exception is obtained. This rule also is being amended to state that when the perpetrator is the parent or caregiver of the victim, the notice must indicate whether the Department will provide services as a result of the CPS assessment. This rule also is being amended to require the Department to document that notification was attempted or made within five business days of supervisory approval of the CPS assessment.

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

Rules Coordinator: Annette Tesch

Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 500 Summer St. NE, E-48, Salem, OR 97301-1066
Telephone: (503) 945-6067

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

Rule Caption: Amend OVRS standards for provision of services and rates of payments; amend vendor selection policies.

Date:	Time:	Location:
7-21-09	9–11 a.m.	McKenzie Center 2885 Chad Dr. Eugene, OR 97408 (Room: see staff)
7-24-09	9 a.m.–12 p.m.	DHS Bldg. 500 Summer St. NE Salem, OR 97301 (Room: see reception)
7-24-09	1–2:30 p.m.	Midland Library 805 SE 122nd Portland, OR 97233 (Room: see staff)

Hearing Officer: Mark Masthoff, Travis Wall
Stat. Auth.: ORS 344.540
Stats. Implemented: ORS 344.511–344.690 & 344.710–344.730
Proposed Amendments: 582-070-0010, 582-070-0020, 582-080-0010, 582-080-0020, 582-080-0030, 582-080-0040, 582-085-0004
Last Date for Comment: 7-27-09, Close of Business
Summary: These proposed rules revise the OVRS agency process for selecting and contracting with qualified providers of vocational rehabilitation services. The revisions maximize existing DHS resources involved in the OVRS vendor selection process, implement a system of performance-based contracting in order to improve employment outcomes, promote vendor efficiency in service delivery, and provide consumers and counselors greater flexibility in the selection of vendors based on client need and choice.
Rules Coordinator: Mark Masthoff
Address: Department of Human Services, Children, Adults and Families Division: Vocational Rehabilitation Services, 500 Summer St. NE, E-87, Salem, OR 97301
Telephone: (503) 945-6253

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

Rule Caption: January 1, 2009 – December 21, 2010 Health Services Commission's Prioritized List of Health Services with April 1, 2009 modifications and expanded definitions, practice guidelines and condition treatment pairs funded through line 503.
Stat. Auth.: SB 163 (2007), 2007 OL Ch. 798, ORS 409.010 & 409.050
Stats. Implemented: ORS 414.065, 414.727, 414.050, 414.010, 192.527 & 192.528
Proposed Amendments: 410-141-0520
Proposed Repeals: 410-141-0520(T)
Last Date for Comment: 7-16-09
Summary: The Oregon Health Plan (OHP — division 141) — DMAP temporarily amended 410-141-0520, effective retroactively to January 1, 2009, to incorporate by reference the Centers for Medicare and Medicaid Services approved biennial January 1, 2009–December 31, 2010 Oregon Health Services Commission's Prioritized List of Health Services.

DMAP then temporarily amended this rule retroactively to April 1, 2009 to reference the January 1, 2009 – December 31, 2010 Oregon Health Services Commission's Prioritized List of Health Services with interim modification and technical changes effective April 1, 2009.

DMAP then needed to temporarily amend this rules to reinsert the text that the Prioritized list (as referenced above) includes expanded definitions, practice guidelines and condition treatment pairs funded through line 503.

This Notice will serve to permanently amend the rules as written to include all Temporary action stated above.
Rules Coordinator: Darlene Nelson
Address: Department of Human Services, Division of Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301
Telephone: (503) 945-6927

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

Rule Caption: Children's Intensive In-Home services, Behavior Program.

Date:	Time:	Location:
7-20-09	11 a.m.	Human Services Bldg. 500 Summer St. NE, Rooms 137CD Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 409.050 & 417.346
Stats. Implemented: ORS 417.340–417.355, 427.005, 427.007 & 430.215
Proposed Adoptions: 411-300-0155, 411-300-0205
Proposed Amendments: 411-300-0100, 411-300-0110, 411-300-0120, 411-300-0130, 411-300-0140, 411-300-0150, 411-300-0170, 411-300-0190, 411-300-0200, 411-300-0210, 411-300-0220
Proposed Repeals: 411-300-0160, 411-300-0180
Last Date for Comment: 7-22-09, 5 p.m.
Summary: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is proposing to update the children's in-home services, behavior program rules in OAR chapter 411, division 300 to meet Medicaid waiver requirements, provide clearer definitions, revise eligibility criteria, include a complaint process, update the hearing process, clarify references to service budgets, and provide general housekeeping changes.
Rules Coordinator: Christina Hartman
Address: Department of Human Services, Seniors and People with Disabilities Division, 500 Summer St. NE, E-10, Salem, OR 97301
Telephone: (503) 945-6398

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Department of Revenue
Chapter 150

Rule Caption: Notice of manufactured park closure; Claim for refund; Nonresident income allocation.

Date:	Time:	Location:
7-21-09	10 a.m.	Fishbowl Conference Rm. 955 Center St. NE Salem, OR

Hearing Officer: Staff
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 90.650, 305.270 & 316.127
Proposed Adoptions: 150-90.650
Proposed Amendments: 150-305.270(3)-(A), 150-316.127-(A)
Last Date for Comment: 7-21-09
Summary: OAR 150-90.650 is adopted pursuant to ORS 90.650(3), which requires the Department of Revenue to provide by rule a sample form for owners of closing manufactured dwelling parks to include on a closure notice to tenants.

OAR 150-305.270(3)-(A) explains criteria the department will consider in determining what constitutes a valid claim for refund.

OAR 150-316.127-(A) is amended to further clarify how nonresidents may allocate income when services are performed within and without Oregon, including when services are performed for only part of a day in this state.
Rules Coordinator: Debra L. Buchanan

Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301-2555
Telephone: (503) 945-8653

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Rule Caption: ORMAP grants; central assessment; Board of Property Tax appeals; Forest Products Harvest Tax.

Date:	Time:	Location:
7-21-09	10 a.m.	Fishbowl Conference Rm. 955 Center St. NE Salem, OR

Hearing Officer: Staff
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.132, 308.550, 309.026 & 321.005
Proposed Amendments: 150-306.132, 150-308.550(2)-(G), 150-309.026(2)-(A), 150-321.005(9)
Last Date for Comment: 7-21-09
Summary: 150-306.132 is amended to clarify rules and criteria associated with the ORMAP grant process. The ORMAP Advisory Committee approved general policy in November 2006 to determine whether grant requests met the requirements for ORMAP grant funding and to determine how to prioritize the qualifying grants when available fund are less than the dollars requested by the counties.

150-308.550(2)-(G) is amended to provide an alternative method of allocating property of a centrally assessed communication company whose unit of property crosses state boundaries. The alternative method is needed is a company is unable to provide information for three variables currently used: original cost; operating revenue; and net operating income.

150-309.026(2) guides local boards of property tax appeals (BOPTA) in how to apply their jurisdiction to requests submitted by petitioners. The rule further clarifies ORS 309.026, which states that BOPTA hears petitions for reduction of real market value (RMV), specially assessed value (SAV), maximum assessed value (MAV), or assessed value (AV). The purpose of the rule is to allow an element of flexibility in how BOPTA can act on submitted petitions. It allows the petitioner to request an increase in one component (land or improvement) or real market value so long as the total value will not be increased. It also allows the board to increase a component on its own volition if the petitioner has not specified how the request for reduction should be applied.

150-321-005(9) is amended to change the order for establishing the identity of the taxpayer responsible for paying the Forest Products Harvest Tax (FPHT). The current rule provides a sequential list of criteria used by the department to determine the person responsible for the harvest tax. The party holding title to timber at the time of harvest pays the tax. The best evidence of title is identified by written agreement. The rule currently lists "The party holding title to timber as evidenced in a written agreement" as the fourth criteria and the proposed amendment would list this as the first criterion to be considered.
Rules Coordinator: Debra L. Buchanan
Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301-2555
Telephone: (503) 945-8653

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Rule Caption: Dry Cleaner assessment; apportionment and transit tax.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 267.385, 465.200, 465.512, 465.517 & 465.992
Proposed Repeals: 150-267.385(5), 150-465.200(1), 150-465.517(2), 150-465.517(3), 150-465.517(5), 150-465.992
Last Date for Comment: 7-21-09
Summary: 150-267.385(5) is obsolete and is proposed for repeal.

150-465.200(1); 150-465.517(2); 150-465.517(3); 150-465.517(5) and 150-465.992 are repealed because the Dry Cleaner program is now administered by the Department of Environmental Quality. These rules are no longer applicable.
Rules Coordinator: Debra L. Buchanan
Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301-2555
Telephone: (503) 945-8653

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Rule Caption: Tax election ballots; supplemental budgets; war veteran's surviving spouse; omitted property; maximum assesses value reduction.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 280.075, 294.480, 307.250, 308.156 & 308.146
Proposed Amendments: 150-280.075, 150-294.480, 150-307.250(1)(c), 150-308.156(5)-(C), 150-308.146(5)(a)
Last Date for Comment: 7-21-09
Summary: 150-280.075 clarifies the requirements for tax election ballot measure language, so the resulting tax levies conform to law. Ballot Measure 56 (2008) added a new constitutional provision, Article XI, section 11k, which, in effect, removes the "double majority" requirements in all election in November or May. The other election dates, in March and September still require at least 50 percent voter turnout and a majority voting in favor to pass a property tax ballot measure.

150-294.480 clarifies requirements for supplemental budgets. The amendments are needed to (a) conform the language of the rule to statute; (b) remove a requirements in excess of the requirements of statute; (c) remove redundant language; (d) explain terms; (e) clarify notice contents; and (f) revise example.

150-307.250(1)(c) is amended to comply with HB 2007, passed by the 2007 Legislature and effective February 1, 2008. The amendments expand the definitions in rule that contain the term "spouse" to include a registered domestic partner.

150-308.156(5)-(C) describes how the addition of omitted property affects maximum assessed value. The rule contains references to the addition of omitted property for tax years prior to 1997–98, the first year of Measure 50. The references are no longer relevant.

150-308.146(5)(a) provides methodology for reducing MAV for property destroyed or damaged by fire or act of God. It includes provisions for the calculation of the MAV reduction where the destruction or damage occurred after July 1, 1995 and before July 1, 1997. Those provisions are obsolete and removed.
Rules Coordinator: Debra L. Buchanan
Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301-2555
Telephone: (503) 945-8653

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Rule Caption: Estimated tax; interest waiver; elderly rental assistance; reforestation credit.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 310.630, 315.104 & 316.587
Proposed Amendments: 150-316.587(5)(d), 150.316587(8)-(B), 150-310.360(8)(a)-(O), 150-315.104(1), 150-315.104(10)
Proposed Repeals: 150-315.104(9)
Last Date for Comment: 7-21-09
Summary: 150-316.587(5)(d) is amended to delete a phrase that is obsolete as the department will refund interest paid on underpayment of estimated tax if the taxpayer qualifies for an exception to paying that interest.

150-316.587(8)-(B) is amended to update examples.

150-310.630(8)(a)-(O) relates to the Elderly Rental Assistance program. The rule in amended to update the name of an agency and to update terms for better readability and understanding.

150-315.104(1) relates to the qualified reforestation tax credit. The rule is amended to delete obsolete language relating to dates.

150-315.104(10) which relates to the qualified reforestation tax credit, is amended to correct the reference to a Department of Forestry rule from OAR 629-023-0410 to OAR 629-023-0420. The rule is also amended to correct a date.

150-315.104(9) is obsolete and repealed.

Rules Coordinator: Debra L. Buchanan
Address: Department of Revenue, 955 Center St. NE, Salem, OR 97301-2555
Telephone: (503) 945-8653

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

Rule Caption: Relating to Compliance with U.S. Standards for Vehicle Safety and Emissions.
Stat. Auth.: ORS 184.616, 184.619, 802.010 & 803.045
Other Auth.: 40 CFR part 86 & 49 CFR Part 571
Stats. Implemented: ORS 803.045
Proposed Amendments: 735-022-0090
Last Date for Comment: 7-21-09
Summary: DMV has seen an increase in the number of applications to title and register motorcycles and mopeds that are manufactured abroad and imported to the United States for sale. DMV has determined that a number of these vehicles do not comply with federal vehicle standards.

Non-compliant vehicles that are not manufactured to comply with federal vehicle safety and emissions standards are not eligible to receive Oregon title and registration. DMV believes that some manufacturers or distributors of imported vehicles are falsifying the Manufacturers Certificate of Origin (MCO) by including a statement that the vehicle complies with federal vehicle standards, when in fact the vehicle does not comply. Purchasers of these non-compliant vehicles are then able to obtain title and registration which allows them to be used on Oregon highways in violation of state and federal law. This alarming trend could put vehicle consumers and other users of the road at risk of personal injury and contribute to air pollution and greenhouse gas emissions.

In order to keep these non-compliant vehicles off Oregon roads, DMV has adopted a policy which includes new procedures for verifying proof of compliance with federal vehicle standards. The policy, which became effective May 1, 2009, specifies that before issuing title and registration DMV will conduct visual inspections of some vehicles. To implement this policy, DMV proposes to amend OAR 735-022-0090 (Proof of Compliance with Federal Vehicle Standards) to clarify that DMV will not issue title and registration if DMV has reason to believe the vehicle is non-compliant. DMV proposes to implement this rule amendment retroactively to May 1, 2009, the effective date of the policy.

Text of proposed and recently adopted ODOT rules can be found at web site http://www.oregon.gov/ODOT/CS/RULES/
Rules Coordinator: Lauri Kunze
Address: Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301
Telephone: (503) 986-3171

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Rule Caption: Determination of Ownership for Financial Responsibility Purposes.
Stat. Auth.: ORS 184.616, 184.619, 802.010, 806.010 & 2007 Ol Ch. 99, Sec. 3
Stats. Implemented: ORS 806.010
Proposed Amendments: 735-050-0000
Last Date for Comment: 7-21-09
Summary: OAR 735-050-0000 establishes when a person is considered an owner of a vehicle for the requirements of the financial responsibility laws, ORS Chapter 806 (financial responsibility). DMV amended OAR 735-050-0000 effective January 1, 2008 to implement Oregon Laws 2007, chapter 99, related to domestic partnerships. In amending the rule, DMV inadvertently changed language in Section (5) to eliminate an exemption from financial responsibility for persons listed as joint owners of a vehicle who do not live together, for example a parent and a child who attends college. DMV proposes to amend OAR 735-050-0000(5) to clarify that an exemption from financial responsibility is available to persons who are not married or in a domestic partnership and do not live together. Other changes are made for clarity and to make terms consistent.

Text of proposed and recently adopted ODOT rules can be found at web site http://www.oregon.gov/ODOT/CS/RULES/
Rules Coordinator: Lauri Kunze
Address: Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301
Telephone: (503) 986-3171

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Education and Workforce Policy Advisor,
Office of Education and Workforce Policy
Chapter 151

Rule Caption: Repealed outdated OARs.
Stat. Auth.: ORS 183.341 & 660.312
Stats. Implemented:
Proposed Repeals: 151-020-0020, 151-020-0030, 151-020-0042, 151-020-0090, 151-020-0120
Last Date for Comment: 7-24-09, 5 p.m.
Summary: The Office of Education and Workforce Policy is repealing five administrative rules for division 20 because they are not in alignment with current statewide efforts to implement workforce integration services to Oregonians.
Rules Coordinator: James Sager
Address: Education and Workforce Policy Advisor, Office of Education and Workforce Policy, 255 Capitol St. NE, Suite 126, Salem, OR 97310-1338
Telephone: (503) 378-3921

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Oregon Housing and Community Services Department
Chapter 813

Rule Caption: Amends the definition of lending institution to be consistent with ORS 317.097 and 706.008.

Date:	Time:	Location:
7-21-09	9:30 a.m.	725 Summer St. NE, 124A Salem, OR 97301-1266

Hearing Officer: Carol Kowash
Stat. Auth.: ORS 317.097 & 456.515–456.720
Stats. Implemented: ORS 317.097
Proposed Amendments: 813-110-0010
Proposed Repeals: 813-110-0010(T)
Last Date for Comment: 7-21-09, 5 p.m.
Summary: 813-110-0010(8) Amends the definition of "Lending Institution" to be consistent with the definition contained in ORS 317.097 and 706.008.
Rules Coordinator: Sandy McDonnell
Address: Oregon Housing and Community Services Department, 725 Summer St. NE, Suite B, Salem, OR 97301
Telephone: (503) 986-2012

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Oregon State Lottery
Chapter 177

Rule Caption: Establishes when winning raffle ticket numbers become official and final.

Date:	Time:	Location:
7-22-09	2–2:30 p.m.	Oregon Lottery 500 Airport Rd. SE Salem, OR

Hearing Officer: Larry Trott
Stat. Auth.: ORS 461
Other Auth.: Oregon Constitution, Article XV, Sec. 4(4)
Stats. Implemented: ORS 461.210, 461.220, 461.230, 461.240, 461.250 & 461.260
Proposed Amendments: 177-069-0030, 177-069-0040, 17-069-0050
Last Date for Comment: 7-22-09, 2:30 p.m.
Summary: The proposed amendments establish when winning raffle ticket numbers become official and final.

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

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Oregon University System,
Oregon State University
Chapter 576

Rule Caption: Faculty Records Rule.

Date:	Time:	Location:
7-15-09	3:30–4 p.m.	MU 206 Oregon State University Corvallis, OR

Hearing Officer: Barbara Melton
Stat. Auth.: ORS 351.065 & 351.070
Other Auth.: OAR 580-022-0060 – 580-022-0125
Stats. Implemented: ORS 351.065
Proposed Adoptions: 576-003-0000, 576-003-0005, 576-003-0010, 576-003-0020, 576-003-0040, 576-003-0050, 576-003-0060, 576-003-0070, 576-003-0080, 576-003-0090, 576-003-0100, 576-003-0110, 576-003-0120
Proposed Repeals: 576-003-0000(T), 576-003-0005(T), 576-003-0010(T), 576-003-0020(T), 576-003-0040(T), 576-003-0050(T), 576-003-0060(T), 576-003-0070(T), 576-003-0080(T), 576-003-0090(T), 576-003-0100(T), 576-003-0110(T), 576-003-0120(T)
Last Date for Comment: 8-4-09, 5 p.m.
Summary: This Faculty Records Rule ensures the continued confidentiality of faculty personnel records, which is provided for under ORS 351.065. The rule is modeled after the Oregon State Board of Higher Education Faculty Records Rule, which Oregon State University has historically relied upon to protect faculty records for approximately 30 years. Because of ambiguities in the statutory language, Oregon State University, out of an abundance of caution, is adopting its own, independent Faculty Records Rule to ensure continued confidentiality.
Rules Coordinator: Barbara Melton
Address: Office of Gen. Counsel, 638 Kerr Administration, Corvallis, OR 97331-2128
Telephone: (541) 737-6262

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Oregon University System,
Portland State University
Chapter 577

Rule Caption: Amends Portland State university's Code of Student Conduct and Responsibility.
Stat. Auth.: ORS 351
Stats. Implemented: ORS 351
Proposed Adoptions: 577-031-0138, 577-031-0139, 577-031-0144
Proposed Amendments: 577-031-0125, 577-031-0130, 577-031-0131, 577-031-0132, 577-031-0133, 577-031-0135, 577-031-0136, 577-031-0137, 577-031-0140, 577-031-0141, 577-031-0142, 577-031-0143, 577-031-0145, 577-031-0146, 577-031-0147, 577-031-0148
Last Date for Comment: 8-6-09
Summary: The proposed amendments to Portland State University's procedural rules governing the University's Code of Conduct and Responsibility are a result of the required review and revision of the Student Code of Conduct that takes place every three years. These revisions clarify definitions and jurisdiction, revise potential violations, clarify procedures for complaints arising in University Housing, clarify the emergency authority of the Dean of Students, and provide a schedule of fees. A copy of the notice of Proposed Rulemaking, Statement of Need and Fiscal Impact and the text of the proposed rules can be found at http://www.pdx.edu/fadm
Rules Coordinator: Diane Kirk
Address: Oregon University System, Portland State University, PO Box 751, Portland, OR 97207
Telephone: (503) 725-2656

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Rule Caption: Amends Portland State University's Parking Rules and Regulations.
Stat. Auth.: ORS 351.070 & 352.360
Stats. Implemented: ORS 352.360
Proposed Amendments: 577-070-0005, 577-070-0010, 577-070-0015, 577-070-0020, 577-070-0025, 577-070-0030, 577-070-0035, 577-070-0040, 577-070-0045, 577-070-0050
Last Date for Comment: 8-6-09
Summary: The proposed amendments to Portland State University's procedural rules governing the University's Parking Rules and Regulations are of a housekeeping nature. A copy of the Proposed Rulemaking, Statement of Need and Fiscal Impact and the text of the proposed rules can be found at http://www.pdx.edu/fadm
Rules Coordinator: Diance Kirk
Address: Oregon University System, Portland State University, PO Box 751, Portland, OR 97207
Telephone: (503) 725-2656

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Rule Caption: Adoption of Rule by Portland State University Requiring Certain Disbursements by Electronic Fund Transfer.
Stat. Auth.: ORS 293.525 & 351
Stats. Implemented: ORS 293.525
Proposed Adoptions: 577-072-0030
Last Date for Comment: 8-6-09
Summary: The proposed new rule would require certain disbursements by Portland State University to persons or entities doing business with Portland State University to be by Electronic Fund Transfer. The rule would not generally apply to payments to employees or students. A copy of the Notice of Proposed Rulemaking, Statement of Need and Fiscal Impact and the text of the proposed rules can be found at http://www.pdx.edu/fadm
Rules Coordinator: Diane Kirk
Address: Oregon University System, Portland State University, PO Box 751, Portland, OR 97207
Telephone: (503) 725-2656

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Oregon University System,
Southern Oregon University
Chapter 573

Rule Caption: Repeal, adopt, and amend Student Code of Conduct and Rights and Responsibilities.
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Proposed Adoptions: 573-076-0000 – 573-076-0130
Proposed Amendments: 573-075-0200
Proposed Repeals: 573-075-0000 – 573-075-0110, 573-075-0130 – 573-075-0190, 573-075-0210, 573-075-0220
Last Date for Comment: 7-30-09
Summary: Current SOU code of student conduct is primarily comprised of outdated information that is, in some places, irrelevant to current procedures, designations, technology, and terminology. Further, new procedures for student conduct hearings and hearings boards are in-line with current trends in higher education/student affairs. The current code is also repetitive in places, and has been deemed by those who participated in our vetting process as "legalistic" and "difficult to follow." Efforts have been made in the revision to make a departure from legal terms altogether, and to create a more comprehensive document that lends itself to greater "ease of use" for students accused of conduct violations, as well as hearings board members.
Rules Coordinator: Treasa Sprague

Address: Oregon University System, Southern Oregon University, 1250 Siskiyou Blvd., Ashland, OR 97520
Telephone: (541) 552-6319

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Oregon University System,
Western Oregon University
Chapter 574

Rule Caption: Revisions to special course fees and general services fees, code of student responsibility and judicial structure.
Stat. Auth.: ORS 351.070 & 351.072
Stats. Implemented: ORS 351.070 & 351.072
Proposed Amendments: 574-031-0000, 574-031-0030, 574-031-0040, 574-032-0020, 574-032-0030, 574-032-0040, 574-032-0120, 574-032-0150, 574-050-0005
Last Date for Comment: 7-21-09
Summary: Amendments will allow for increases, additions, and revisions of special course fees and general services fees, revisions to code of student responsibility and judicial structure.
Rules Coordinator: Debra L. Charlton
Address: Oregon University System, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361
Telephone: (503) 838-8597

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Parks and Recreation Department
Chapter 736

Rule Caption: Rules governing confidentiality and inadmissibility of mediation communications being adopted.

Date:	Time:	Location:
9-17-09	10 a.m.	Best Western Rama Inn 1200 Highland Ave. Enterprise, OR

Hearing Officer: Jim Parr, OPRD Commission Chair
Stat. Auth.: ORS 36.224 & 390.124
Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232
Proposed Adoptions: 736-140-0010, 736-140-0020
Last Date for Comment: 9-17-09, 5 p.m.
Summary: These rules govern the Confidentiality and Inadmissibility of Mediation Communications and have been provided as model rules by the Office of the Attorney General to state agencies with a recommendation to adopt as authorized by ORS 36.224. These rules were temporarily adopted on May 21, 2009 by the OPRD Commission and are proposed for permanent adoption.
Rules Coordinator: Joyce Merritt
Address: Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301
Telephone: (503) 986-0756

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Rule Caption: OAR 736-009 being amended to designate categories and process for establishing Oregon Scenic and Oregon Regional Trails.

Date:	Time:	Location:
7-15-09	4–5:30 p.m.	Metro Regional Center 600 NE Grand Ave. Portland, OR 97232
7-17-09	5–6:30 p.m.	Bend Park & Recreation District 799 SW Columbia St. Bend, OR 97702

Hearing Officer: Rocky Houston
Stat. Auth.: ORS 390.971(8)
Stats. Implemented: ORS 390.971(8) & 390.950–390.995
Proposed Adoptions: 736-009-0006, 736-009-0021, 736-009-0022
Proposed Amendments: 736-009-0020, 736-009-0025, 736-009-0030
Proposed Repeals: 736-009-0005, 736-009-0010, 736-009-0015
Last Date for Comment: 7-24-09, 5 p.m.
Summary: The rules in chapter 736, division 009, Oregon Recreation trails, are being amended to include the categories and processes for establishing Oregon Scenic Trails, and Oregon Recreational trails in accordance with the Oregon Recreation Trails Act.
Rules Coordinator: Joyce Merritt
Address: Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301
Telephone: (503) 986-0756

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Rule Caption: Amendment of OAR 736-018-0045 to adopt the Nehalem Bay State Park Master Plan.

Date:	Time:	Location:
7-22-09	6 p.m.	Nehalem Bay State Park Meeting Hall (south of registration booth) 9500 Sandpiper Ln. Nehalem, OR

Hearing Officer: Ron Campbell
Stat. Auth.: ORS 390.180
Stats. Implemented: ORS 390.180(1)
Proposed Amendments: 736-018-0045
Last Date for Comment: 8-21-09
Summary: ORS 390.180(1) authorizes the Director of the Oregon Parks and Recreation Department (OPRD) to adopt administrative rules that establish a master plan for each state park. Accordingly, OPRD is adopting a new master plan for Nehalem Bay State Park. Master plans for state parks are adopted as state rules under OAR 736-018-90045. The purpose of amending OAR 736-018-0045 is to adopt the new master plan as state rule.

The master plan responds to the most current information on park resource conditions and public recreation needs as they pertain to this park. The plan was formulated though OPRD's mandated master planning process involving meetings with the general public, and advisory committee, recreation user groups environmental advocacy groups, affiliated Tribes, and affected state and federal agencies and local governments.
Rules Coordinator: Joyce Merritt
Address: Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301
Telephone: (503) 986-0756

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Real Estate Agency
Chapter 863

Rule Caption: Amend rules for licensed real estate brokers and escrow agents based on 2009 legislation.

Date:	Time:	Location:
11-16-09	10 a.m.	Real Estate Agency 1177 Center St. NE Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 696.385 & (2009) SB 140, SB 141 & HB 2910
Stats. Implemented: ORS 696.022, 696026, 696.200, 696.241, 696.255, 696.511, 696.527, 696.530, 696.578 & 2009 SB 140, SB 141 & HB 2910
Proposed Adoptions: Rules in 863-049, 863-014-0090
Proposed Amendments: 863-014-0000, 863-014-0003, 863-014-0005, 863-014-0010, 863-014-0015, 863-014-0030, 863-014-0038, 863-014-0042, 863-014-0055, 863-014-0063, 863-014-0085, 863-014-0095, 863-014-0100, 863-015-0000, 863-015-0003, 863-015-0125, 863-015-0150, 863-015-0186, 863-015-0188, 863-015-0250, 863-015-0255, 863-015-0260, 863-024-0003, 863-024-0015, 863-024-0030
Proposed Ren. & Amends: 863-050-0033 to 863-049, 863-050-0035 to 863-049, 863-050-0150 to 863-049, 863-050-0240 to 863-049
Last Date for Comment: 11-16-09, 5 p.m.
Summary: The new rules and amendments are in response to 2009 legislation, including SB 140, SB 141 and HB 2910. SB 140 will require an amendment to existing rules relating to depositing client funds with a licensed escrow agent. SB 140 requires the agency to

adopt rules for licensing escrow agents and a new chapter 863, division 049 will be established for this purpose. HB 2910 requires amendments to a significant number of rules to eliminate sole practitioners as a type of broker. HB 2910 will require a new rule (863-014-0090) that allows a broker with three years of active experience to supervise other brokers for a sole principal real estate broker for a period not to exceed 90 days.
Rules Coordinator: Laurie Skillman
Address: Real Estate Agency, 1177 Center St. NE, Salem, OR 97301
Telephone: (503) 378-4630

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Secretary of State,
Archives Division
Chapter 166

Rule Caption: Update Divisions of OAR 166 regarding Archives storage, procedures and fees.

Date:	Time:	Location:
7-20-09	9 a.m.	Oregon State Archives 800 Summer St. NE Salem, OR 97310

Hearing Officer: Connor Edmonds
Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005–192.170 & 357.805–357.895
Proposed Amendments: Rules in 166-005, 166-010, 166-017, 166-020, 166-025, 166-030, 166-500-0015
Last Date for Comment: 7-21-09
Summary: It was determined that rules related to Secretary of State Archives public records storage policies, procedures and fee structures needed to be updated. This update takes into account changes in records storage technology and the increased cost for the storage and maintenance of public records.
Rules Coordinator: Julie Yamaka
Address: Secretary of State, Archives Division, 800 Summer St. NE, Salem, OR 97310
Telephone: (503) 378-5199

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Secretary of State,
Elections Division
Chapter 165

Rule Caption: Adoption of Amendments to the 2008 Campaign Finance Manual.
Stat. Auth.: ORS 246.150, 260.046, 260.049, 260.156 & 260.200
Stats. Implemented: ORS 260.005, 260.007, 260.035, 260.037, 260.038, 260.039, 260.041, 260.042, 260.043, 260.044, 260.045, 260.046, 260.049, 260.054, 260.055, 260.056, 260.057, 260.076, 260.078, 260.083, 260.085, 260.102, 260.112, 260.118, 260.156 & 260.232
Proposed Amendments: 165-012-0005
Last Date for Comment: 7-27-09
Summary: This amendment revises the *2008 Campaign Finance Manual* by adopting updated penalties for filing late or insufficient transactions. It applies to all civil penalties for violations that occurred after July 1, 2007. The amendment creates a new maximum civil penalty of 10% of the late or insufficient transaction amount. It provides that no penalty may be imposed if a change is made to the amount of a previously reported expenditure made by an agent. It clarifies that liability for payment of civil penalties rests with the treasurer of record, along with the candidate, if applicable, even if the transaction was filed by an Alternate Transaction Filer. The amendment states that no violation will be found if the late or insufficient case penalty is less than $50, and defines "case" for purposes of this calculation.
Rules Coordinator: Brenda Bayes
Address: Secretary of State, Elections Division, 255 Capitol St. NE, Suite 501, Salem, OR 97310
Telephone: (503) 986-1518

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Travel Information Council
Chapter 733

Rule Caption: Amend FOOD Logo sign criteria to allow car-hop service.
Stat. Auth.: ORS 377.700–377.840
Stats. Implemented: ORS 183.310–183.550
Proposed Amendments: Rules in 733-030
Last Date for Comment: 7-31-09
Summary: The Travel Information Council held a quarterly meeting on June 5, 2009. The Council proposed a rule change to amend highway sign rules to accommodate car-hop services by allowing a minimum of 10 drive-in service stalls.
Rules Coordinator: Diane Cheyne
Address: Travel Information Council, 229 Madrona Ave. SE, Salem, OR 97302
Telephone: (503) 378-4508

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Veterinary Medical Examining Board
Chapter 875

Rule Caption: Clarifies requirements for on-the-job experience eligibility for VTNE, application process, and fees.
Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.350 & 686.370
Proposed Amendments: 875-030-0010, 875-030-0020, 875-030-0025
Last Date for Comment: 7-15-09
Summary: Requires employment W-2 forms as proof of experience for on-the-job applicants for the Veterinary Technician National Exam.

Deletes reference to Board administering the Veterinary Technician National Exam; adds reference to American Association of Veterinary State Boards' (AAVSB) administration of Veterinary Technician National Exam. Deletes reference to Interstate Reporting Service.

Deletes reference to veterinarian's letter certifying work experience for applicants for Veterinary Technician National Exam. Clarifies VTNE application process (Board screens VTNE applications; candidates may apply directly to AAVSB).
Rules Coordinator: Lori V. Makinen
Address: Veterinary Medical Examining Board, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0224

Board of Architect Examiners
Chapter 806

Rule Caption: Board's 2009–2011 Biennial Budget.
Adm. Order No.: BAE 3-2009
Filed with Sec. of State: 5-22-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 2-1-2009
Rules Amended: 806-001-0003
Subject: This rule adopts the 2009–2011 biennial budget for the Oregon Board of Architect Examiner, with an expenditure limit of $846,500.
Rules Coordinator: Carol Moeller—(503) 763-0662, ext. 23

806-001-0003
Biennial Budget

Pursuant to the provisions of ORS 182.462, the Board adopts by reference the Oregon State Board of Architect Examiners' 2009-2011 Biennial Budget of $846,500 covering the period July 1, 2009, through June 30, 2011. The Board Administrator will amend budgeted accounts as necessary, within the approved budget of $846,500, for the effective operation of the Board. The Board will not exceed the approved budget amount without amending this rule, notifying holders of licenses, and holding a public hearing. Copies of the budget are available from the Board's office.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 671.120, 671.125, 182.462 & 183.705
Stats. Implemented: ORS 671.125 & 182.462
Hist.: AE 1-1997(Temp), f. & cert. ef. 7-25-97; AE 3-1997, f. & cert. ef. 12-11-97; BAE2-1998, f. & cert. ef. 6-22-98; BAE 2-1999, f. & cert. ef. 5-25-99; BAE 2-2001, f. 6-6-01, cert. ef. 7-1-01; BAE 2-2003, f. 4-11-03 cert. ef. 7-1-03; BAE 1-2005, f. 3-14-05, cert. ef. 7-1-05; BAE 1-2007, f. 5-8-07, cert. ef. 7-1-07; BAE 2-2009, f. & cert. ef. 5-14-09; BAE 3-2009, f. 5-22-09, cert. ef. 7-1-09

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Board of Clinical Social Workers
Chapter 877

Rule Caption: Amends and repeals rule adoption, client records, complaint process, and impairment program rules.
Adm. Order No.: BCSW 1-2009
Filed with Sec. of State: 6-15-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 4-1-2009
Rules Amended: 877-001-0005, 877-030-0100, 877-035-0000, 877-035-0010, 877-035-0012, 877-035-0013, 877-035-0015, 877-040-0000, 877-040-0003, 877-040-0010, 877-040-0015, 877-040-0045, 877-040-0050, 877-040-0055
Rules Repealed: 877-001-0000, 877-001-0010, 877-035-0005, 877-040-0020
Subject: The rule proposal: (1) Eliminates duplicative rule notice and rule making requirements already provided for in other statutes and rules; (2) Adopts the most current version of model rules for state agencies applicable to rule making; (3) Specifies rules addressing retention of client records; (4) Amend Impaired Professional Program rules; and (5) Amends Complain Process Rules with special emphasis on updating rules to reflect authority to delegate some complaint process functions to the staff level.
Rules Coordinator: Martin Pittioni—(503) 373-1163

877-001-0005
Model Rules of Procedure

The board adopts the model rules applicable to rulemaking, OAR 137-001-0005 to 137-001-0100, effective on January 1, 2008.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Board of Clinical Social Workers.]
Stat. Auth: ORS 183
Stats. Implemented: ORS 183
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 1-1995, f. 6-26-95, cert. ef. 7-1-95; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

877-030-0100
Retention of Client Records; Disposition of Client Records in Case of Death or Incapacity of Licensee

(1) In this rule, "client record" means information maintained in a written or electronic form regarding treatment or billing of a client.

(2) A licensee who serves clients outside of an agency setting must ensure that a client record is maintained for each such client and that all client records are legible and are kept in a secure, safe, and retrievable condition. At a minimum, a client record must include an assessment of the client, a treatment or intervention plan, and progress notes of therapy sessions, all of which should be recorded concurrently with the services provided.

(3) Retention of records. A licensee must retain a client record for seven years from the date of the last session with the client.

(4) A Licensed Clinical Social Worker in private practice must make necessary arrangements for the maintenance of and access to client records that ensure the clients' right to confidentiality in the event of the death or incapacity of the licensee. In regard to this requirement:

(a) The licensee must name a qualified person to intercede for client welfare and to make necessary referrals, when appropriate.

(b) Licensee must keep the board notified of the name of the qualified person.

(c) The board will not release the name of the qualified person except in the case of the death or incapacity of the licensee, or if the license of the licensee is inactive and a former client is unable to locate the licensee.

(5) To be a qualified person under this rule a person must be a Licensed Clinical Social Worker or other licensed mental health professional licensed under Oregon law.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.595
Hist.: BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

877-035-0000
Establishment of Program for Impaired Clinical Social Workers

(1) The board is required by ORS 675.600(1)(c) to: "Establish a program for impaired clinical social workers to assist licensed clinical social workers to regain or retain their certification or licensure and impose the requirement of participation as a condition to reissuance or retention of the certificate or license;" The board's program is described in this division of rules.

(2) *Impaired clinical social worker* is defined in ORS 675.510(4) as "a person unable to perform the practice of clinical social work by reason of mental illness, physical illness or alcohol or other drug abuse."

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 1-1990, f. & cert. ef. 4-20-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

877-035-0010
Identification and Rehabilitation

(1) A Licensed Clinical Social Worker or Clinical Social Work Associate knowing of a Licensed Clinical Social Worker or a Clinical Social Work Associate whose behavior or practice fails to meet professional standards for the level at which the social worker is certified or licensed, must report the social worker to the person in the work setting who has authority to institute corrective action. In the event that the Licensed Clinical Social Worker has no direct supervisor, this report must be made to the Board of Clinical Social Workers.

(2) Any Licensed Clinical Social Worker or Clinical Social Work Associate who has knowledge or concern that the Licensed Clinical Social Worker or Clinical Social Work Associate's behavior or practice presents potential for or actual danger to the public health, safety, and welfare, must report or cause a report to be made to the Board of Clinical Social Workers. Failure of any Licensed Clinical Social Worker or Clinical Social Work Associate to comply with this reporting requirement may in itself constitute a violation of clinical social work standards.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.583
Hist.: BCSW 1-1990, f. & cert. ef. 4-20-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

877-035-0012
Confidentiality of Information Supplied to the Board

The records and proceedings compiled by the board in regard to an impaired clinical social worker, including the record of treatment received by the clinical social worker, are confidential and shall not be disclosed to the public as required by ORS 676.175 and other applicable law; provided, however, all such information may be disclosed when the disclosure is made consistently with 676.175, 676.177, and other applicable law.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 1-1990, f. & cert. ef. 4-20-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

877-035-0013
Criteria which Disqualify People from Program

Criteria which disqualify Licensed Clinical Social Workers or Clinical Social Work Associates from involvement in the Impaired Professional Program are:

(1) Criminal history involving injury/endangerment;

(2) Sale or manufacture of illegal substances;

(3) Sexual offenders;

(4) Three previous disciplines from the board.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

877-035-0015
Procedure for Evaluation of Possible Impairment

(1) On its own motion or upon complaint by any person the board may require a person licensed or certificated under ORS 675.510 et seq. to undergo evaluation to determine if the person is an impaired clinical social worker.

(2) In order to determine whether a clinical social worker is impaired, the board may require the person:

(a) To cooperate with an evaluation ordered by the board.

(b) To enter a rehabilitation program or ongoing monitoring recognized by the board.

(c) To sign a release allowing the board to fully communicate with the rehabilitation program regarding the clinical social worker's progress or lack thereof.

(d) To complete a rehabilitation program or participate in monitoring required by the board.

(3) The evaluation referred to in section (1) of this rule will be performed by a drug and evaluation center or professional of the board's choosing. The evaluator shall have access to all material regarding the clinical social worker in the board's files and will have additional authority to contact all persons who have previously communicated to the board regarding the alleged impaired status of the Clinical Social Work Associate or Licensed Clinical Social Worker.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900
Stats. Implemented: ORS 675.510 - 675.600 & 675.900
Hist.: BCSW 1-1990, f. & cert. ef. 4-20-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-30-06; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

877-040-0000
Management of Complaints

(1) The board intends to provide fair, expeditious response to complaints.

(2) A board member who is unable to render an impartial, objective decision regarding a complaint must abstain from participating in the preparation, hearing, deliberation and disposition of the complaint. An abstention is effective at the time a board member announces a decision not to participate.

(3) A board member who is a complainant or respondent in a complaint is disqualified from participating in the preparation, hearing, deliberation and disposition of the complaint.

(4) The board may initiate a complaint.

(5) The Consumer Protection Committee oversees investigations of complaints received by the board. The committee may conduct investigations, prepare reports, and negotiate proposed agreements and may perform other duties prescribed by the board. In carrying out these duties, the committee may assign to the board's staff the duties of conducting investigations and preparing reports. Subject to the approval of the committee, the board Administrator may assist in negotiating a proposed agreement with a respondent.

(6) If the complainant is a client or former client of the respondent, the complainant must sign a waiver of confidentiality granting the board and its counsel access to records and other materials that are the ethical and legal responsibility of the respondent. Refusal by a complainant to comply with this requirement may result in the dismissal of the complaint.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595(2)
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

877-040-0003
Definitions

The following definitions apply in this division of rules:

(1) "Complainant" —A person or group of persons who files a complaint.

(2) "Complaint" — A mandatory report or an allegation that a person regulated by the board has committed an act that would subject the person to discipline under ORS 675.540. A complaint should specifically describe the conduct complained of to the best of the ability of the complainant

(3) "Consumer Protection Committee" — A committee of one or more board members assigned by the board to fulfill specified functions related to complaints.

(4) "Respondent" — A person regulated by the board against whom a complaint is filed.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595
Hist.: BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

877-040-0010
Form of Complaints

(1) Any person may file a complaint alleging a violation of ORS 675.510 to 675.600 or of the rules of the board. A complaint must be in writing and may be submitted on a form provided by the board for complaints.

(2) A complaint must identify the complainant and the respondent.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595(11)
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

877-040-0015
Notification to Respondent

(1) The Consumer Protection Committee may send a letter to the respondent stating the nature of the investigation and, if appropriate, an authorization to release confidential records. The committee will ask the respondent to provide a written reply within 30 days together with documents the respondent considers relevant.

(2) If the respondent replies to the request of the board, the reply is reviewed by the Consumer Protection Committee. The committee may ask for additional or more specific information.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595(11)
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

877-040-0045
Stipulated Agreement

In the event the Consumer Protection Committee submits a proposed stipulated agreement to the board for consideration, the board may:

(1) Determine that approval is warranted and authorize the Chair or the board's designee to sign the agreement on behalf of the board;

(2) Determine that approval is not warranted;

(3) Direct the Consumer Protection Committee to renegotiate the agreement; or

(4) Take any other action authorized by law.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595
Hist.: BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

877-040-0050
Contested Case Hearing

When the board takes disciplinary action, the board will place notice of this action in the Directory of Clinical Social Work Associates and Licensed Clinical Social Workers and will provide information about the action for publication to the official newspaper of the county where the person disciplined practices and in Marion County. The board will also provide notice of the action to the Oregon Chapter of the National Association of Social Workers (NASW) and to the Association of Social Work Boards (ASWB) Disciplinary Action Reporting System (DARS).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595
Hist.: BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1995, f. 6-26-95, cert. ef. 7-1-95; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

877-040-0055
Request for Hearing

(1) To request a contested case hearing, a respondent, or an attorney on behalf of the respondent, must submit a written hearing request and answer to the board within the time specified in the notice of proposed action.

(2) An answer must include the following:

(a) An admission or denial of each factual matter alleged in the notice of proposed action.

(b) A short and plain statement of each relevant affirmative defense the respondent may have to the allegations in the notice of proposed action.

(3) Except for good cause:

(a) Factual matters alleged in the notice of proposed action and not denied in the answer are presumed admitted.

(b) Failure to raise a particular defense in the answer constitutes a waiver of the defense.

(c) New matters alleged in the answer, including affirmative defenses, are presumed denied by the board.

(d) Evidence may not be taken on an issue not raised in the notice of proposed action or the answer.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990
Stats. Implemented: ORS 675.595(11)
Hist.: BCSW 1-1995, f. 6-26-95, cert. ef. 7-1-95; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09

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Rule Caption: Amends and repeals rule adoption, client records, complaint process, and impairment program rules.
Adm. Order No.: BCSW 2-2009
Filed with Sec. of State: 6-15-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 4-1-2009
Rules Adopted: 877-020-0060
Subject: This rule proposal reduces licensing renewal fees and continuing education for those licensees who have been licensed a minimum of 20 years, have not been disciplined by a licensing authority during the past 15 years, and seek to maintain an active part-time practice of no more than 500 hours per year.
Rules Coordinator: Martin Pittioni—(503) 373-1163

877-020-0060
Reduced Requirements

(1) A person described in section (2) of this rule is subject, upon written request submitted to and approved by the board, to the following requirements for continuing education and renewal fees:

(a) Continuing education:

(A) The number of hours required by OAR 877-025-0011(1) is reduced to 20.

(B) Continuing education described in OAR 877-025-0006(1) or (6) only is authorized.

(C) Carryover of hours, addressed in OAR 877-025-0016(4), is not authorized.

(D) This rule does not change the continuing education hours required for a supervisor or the continuing education requirement for ethics training.

(b) The fee for renewal of a license, described in OAR 877-020-0020, is reduced by half.

(2) The requirements described in section (1) of this rule are applicable to a licensed clinical social worker who:

(a) Has practiced clinical social work under the authority of a license for twenty years;

(b) Has not been disciplined by a licensing authority during the prior 15 years of social work practice; and

(c) Engages in the practice of social work for not more than 500 hours a year.

(3) A person subject to the provisions of section (1) of this rule may not apply for an inactive license.

(4) In this rule, "the practice of social work" means the application of social work theory, knowledge, methods, and ethics to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities.

Stat. Auth.: ORS 675.510 - 675.600
Stats. Implemented: ORS 675.510 - 675.600
Hist.: BCSW 2-2009, f. 6-15-09, cert. ef. 7-1-09

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Board of Examiners for Speech-Language Pathology and Audiology
Chapter 335

Rule Caption: Increases fees; amends unprofessional conduct, professional development, SLPA supervision requirements, and licensing procedures.
Adm. Order No.: SPA 1-2009
Filed with Sec. of State: 6-9-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 335-005-0010, 335-005-0020, 335-005-0025, 335-060-0010, 335-060-0020, 335-070-0055, 335-070-0060, 335-070-0075, 335-070-0080, 335-070-0085, 335-095-0010, 335-095-0030, 335-095-0050, 335-095-0060
Subject: Adds and clarifies definitions of unprofessional conduct.

Clarifies need for timely reporting of home and business addresses and SLPA supervision changes.

Increases licensing fees.

Changes professional development hours required for renewal and re-activation.

Adds professional development requirement for initial licensure

Clarifies SLPA supervision requirements.

Allows Board to exempt school districts in critical shortage areas from certain SLPA supervision requirements based upon an application and approval process.

Changes miscellaneous text for clarity.
Rules Coordinator: Sandy Leybold—(971) 673-0220

335-005-0010
Definitions

(1) Misrepresentation includes any untrue statements or statements that are likely to mislead. Misrepresentation also includes the failure to state any information that is material and that reasonably ought to be considered.

(2) Unprofessional Conduct means:

(a) Failure or refusal of an applicant for a license from the Board or of a licensee of the Board to cooperate fully in any investigation conducted by the Board.

(b) Making a false statement to the Board.

(c) Attempting to obtain a license from the Board by means of fraud, misrepresentation, or concealment of material facts.

(d) Sexual misconduct with a client.

(e) Any act of theft, dishonesty or misrepresentation involving a client, another practitioner, third party providers, or a government agency.

(f) Habitual or excessive use of intoxicants, drugs or controlled substances.

(g) Assisting or permitting any person to practice speech-language pathology or audiology without a license.

(h) Practicing speech-language pathology or audiology when impaired by drugs, alcohol or any other substance.

(i) Verbal or physical abuse of a client.

(j) Sexual harassment: Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(A) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(B) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(C) Such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

(k) Violating an employer's ethics or conduct policy.

(l) Conviction of a crime or admitting to an act that even in the absence of a conviction would constitute a crime.

(m) Failing to immediately report to this Board a criminal conviction, indictment, Information of Misdemeanor, or any other charging instrument having been filed where the maximum penalty is incarceration.

(n) Failing to immediately report to the Board any adverse action taken against a license or certificate holder by a state or federal agency; or another state speech-language pathology or audiology licensing agency; or professional association.

Stat. Auth.: ORS 681
Stat. Implemented: ORS 681.330
Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2008, f. & cert ef. 4-10-08; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

335-005-0020
Professional Competence

(1) Individuals shall engage in only those aspects of the professions that are within the scope of their competence, considering their level of education, training, and experience.

(2) Individuals shall continue their professional development throughout their careers.

(3) Individuals who supervise shall prohibit any of their professional staff from providing services that exceed the staff member's competence, considering the staff member's level of education, training, and experience.

(4) Individuals shall ensure that all equipment used in the provision of services is in proper working order and is properly calibrated.

(5) Individuals shall prohibit anyone under their supervision from engaging in any practice that violates the Professional and Ethical Standards.

(6) Individuals shall not provide professional services without exercising independent professional judgment, regardless of referral source or prescription.

(7) Individuals shall not discriminate in their relationships with colleagues, students, and members of allied professions on the basis or race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

(8) Licensees will provide current home and business addresses and telephone numbers within thirty (30) days of the effective date of change.

(9) Individuals shall cooperate fully with the Board in every matter related to these Professional and Ethical Standards.

(10) Speech-Language Pathology Assistants shall report a change in supervisor within thirty (30) days of the effective date of change.

Stat. Auth.: ORS 681
Stats. Implemented: ORS 681.330
Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 2-2008, f. & cert ef. 4-10-08; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

335-005-0025
Accurate Representation

(1) Individuals shall not misrepresent their credentials, competence, education, training, or experience.

(2) Individuals shall not misrepresent the credentials of assistants and shall inform those they serve professionally of the name and professional credentials of persons providing services.

(3) Individuals shall not transfer to a noncertified individual any responsibility which requires the unique skills, knowledge, and judgment that is within the scope of practice of that professional.

(4) Individuals shall not misrepresent diagnostic information, services rendered, or products dispensed or engage in any scheme or artifice to defraud in connection with obtaining payment or reimbursement for such services or products.

(5) Individuals' statements to the public shall provide accurate information about the nature and management of communication disorders, about the professions, and about professional services.

(6) Individuals' statements to the public advertising, announcing, and marketing their professional services, reporting research results, and promoting products shall adhere to prevailing professional standards and shall not contain misrepresentations.

(7) Individuals shall not engage in any scheme or enter into any arrangement whereby clients are referred to or from any person or business entity in return for any remuneration of any kind, including referrals back to the person or business entity.

(8) Individuals shall not engage in dishonesty, fraud, misrepresentation, or any form of conduct that adversely reflects on the individual's fitness to serve persons professionally.

(9) Individuals' statements to colleagues about professional services, research results, and products shall contain no misrepresentations.

(10) Audiology licensees may not consult with, contract with, or be employed by a business that dispenses hearing aids if the business holds itself out as having an audiologist on staff or providing audiology services unless audiology licensees provide audiological services as follows:

(a) The licensee, in combination with other audiology licensees or alone, performs audiology evaluations or hearing fitting services or both at each of the business locations that is advertised as having an audiologist on staff or providing audiology services;

(b) The licensee, or the licensee and other licensees, are physically present for at least 30 hours per month at each of the business locations that is advertised as having an audiologist on staff or providing audiology services; and

(c) The licensee keeps a record of the hours he or she spends at each of the business locations that is advertised as having an audiologist on staff or providing audiology services.

(11) (a), (b), (c) above does not apply if audiologist licensees are the sole providers of hearing aids at a business location.

(12) Except as described in section 13 of this rule, a licensee shall not sign, or authorize anyone else to sign on the licensee's behalf, letters or reports purporting to describe the function or condition of any person unless the licensee has personally performed testing of the person.

(13) If support personnel or a student in supervised practicum provide services, the name of the assistant or the student and a description of duties performed must be clearly referenced in any formal documents (e.g. letters, treatment plans, reports) signed by the licensee.

Stat. Auth.: ORS 681
Stats. Implemented: ORS 681.330
Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2004, f. & cert. ef. 2-6-04; SPA 2-2004, f. & cert. ef. 5-26-04; SPA 1-2005, f. & cert. ef. 9-13-05; SPA 1-2006, f. & cert. ef. 5-8-06; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

335-060-0010
Fees

In accordance with the provisions of ORS 681.340 and 681.360, the following fees, where applicable, are payable to the Board by check, money order, or electronic payment if available:

(1) All Applicants except those listed in (1)(d):

(a) Application fee shall be $200, non-refundable.

(b) Delinquent fee shall be $200.

(c) The Board may provide for waiver of the license or certificate fee where the license or certificate is issued less than 45 days before the date on which it will expire.

(d) Speech-language pathologists applying for permission to supervise speech-language pathology assistants in schools shall pay an annual application fee of $125.

(2) Speech-Language Pathologists and Audiologists:

(a) Biennial license fee and renewal thereof shall be $275.

(b) Biennial inactive license fee and renewal thereof shall be $50.

(c) Conditional license fee and renewal thereof shall be $125.

(3) Speech-Language Pathology Assistants:

(a) Biennial certificate fee and renewal thereof shall be $150.

(b) Biennial inactive certificate fee and renewal thereof shall be $20.

Stat. Auth.: ORS 681.340, 681.360, 681.420 & 681.460
Stats. Implemented: ORS 681.340(1), 681.360(2)(b) & 681.360(3)(b)
Hist.: SPA 2-1993(Temp), f. 12-8-93, cert. ef. 12-10-93; SPA 1-1994, f. & cert. ef. 6-10-94; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2002(Temp), f. 11-8-02, cert. ef. 12-1-02 thru 5-1-03; SPA 1-2003, f. & cert. ef. 5-7-03; SPA 1-2005, f. & cert. ef. 9-13-05; SPA 3-2008, f. & cert. ef. 4-10-08; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

335-060-0020
Application; Abandonment of Application

(1) Application for licensure shall be made to the board on the application form prescribed by the Board and shall be accompanied by the application fee payable with a certified check, postal money order, personal check, or electronic payment if available payable to the Oregon Board of Examiners for Speech-Language Pathology and Audiology or another bank-recognized name for this Board. This application fee is to cover the costs of administration and shall in no case be refundable.

(2) It is the applicant's responsibility to inquire as to the status of their application to the Board. Failure to complete all forms and provide all information required shall be just cause for the application to be rejected by the board.

(3) If all application materials are not received within 6 months of the receipt of the application form, the application shall be considered abandoned and a new application, including the application payment, must be submitted before licensure may be granted.

Stat. Auth.: ORS 681.340, 681.420 & 681.460
Stat. Implemented: ORS 681.270
Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

335-070-0055
Active Licensees

Required professional development for renewal of an active license is:

(1) Speech-Language Pathology and Audiology: Thirty (30) clock hours of documented and approved professional development;

(2) Dual licenses: Thirty (30) clock hours of documented and approved professional development in audiology and thirty (30) clock hours of documented and approved professional development in speech-language pathology. A maximum of fifteen (15) hours may be applied to both licenses if the topic is applicable to both types of licenses. A CPR or universal health precaution class may be only counted once;

(3) Speech-Language Pathology Assistants: Fifteen (15) clock hours of documented and approved professional development;

(4) Licensees shall complete the required professional development hours within the two year period prior to license renewal, that is, 24 months prior to Jan. 30 of each even numbered year.

Stat. Auth.: ORS 681
Stats. Implemented:
Hist.: SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

335-070-0060
New Licensees

New licensees are those individuals who have never been licensed by this board or who have held a conditional license issued by this Board.

(1) Prior to licensure, new licensees must submit evidence of current professional development. To satisfy this requirement, applicants must:

(a) Submit proof of completion of 100% of the professional development hours currently required for an active license of their type within the

twenty-four (24) month period immediately preceding the date on which the application is submitted; or

(b) Agree to submit proof of completion of one-third of the professional development hours required for an active license of their type within 12 months of the date they are issued the active license. These hours may be counted towards the professional development hours required at first license renewal; or

(c) Have completed their required clinical training within the last 12 months.

(2) Professional development for new licensees will be required at their first license renewal, according to the following scale:

(a) Licensed prior to July of even-numbered years -- report 100% of the professional development hours required for an active license of their type.

(b) Licensed from August 1st of even-numbered years through July of odd-numbered years — report 50% of the professional development hours required for an active license of their type.

(c) Licensed after July 31st of odd-numbered years — if licensed under 335-070-0060(1)(a) or 335-070-0060(1)(c), no report is required; if licensed under 335-070-0060(1)(b), one-third of the professional development hours required for an active license of their type is required.

Stat. Auth.: ORS 681.420(5) & 681.460
Stats. Implemented: ORS 681.320(1)(a)
Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2003, f. & cert. ef. 5-7-03; SPA 1-2004, f. & cert. ef. 2-6-04; SPA 2-2004, f. & cert. ef. 5-26-04; SPA 1-2005, f. & cert. ef. 9-13-05; SPA 2-2006, f. & cert. ef. 5-8-06; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

335-070-0075
Speech-Language Pathology Assistants

Each applicant for renewal of a certificate shall complete fifteen (15) clock hours of documented and approved professional development to be reported at renewal on January 30 of each even-numbered year. Approved professional development hours completed in excess of the requirement shall not be carried over to the subsequent renewal period.

Stat. Auth.: ORS 681.375 & 681.460
Stats. Implemented: ORS 681.360(3)(c)
Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

335-070-0080
Inactive Status License

Professional development requirements may be waived for a licensee on inactive status during the period they remain inactive. However, if at any time the inactive licensee applies to the board to return to active status, the licensee must submit proof of completion of thirty (30) professional development hours (15 hours for speech-language pathology assistants) within the twenty-four (24) month period immediately preceding the date on which the application is submitted.

Stat. Auth.: ORS 681.420(5) & 681.460
Stats. Implemented: ORS 681.320(1)(a)
Hist.: SPA 2-1996, f. & cert. ef. 7-22-96; SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2005, f. & cert. ef. 9-13-05; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

335-070-0085
Expired Status

Professional development requirements do not affect those licenses with expired status. However, if at any time after the expiration date, the person whose license is in the expired status wishes to activate their license, the person must:

(1) Submit proof of completion of 100% of the professional development hours currently required for an active license of their type within the twenty-four (24) month period immediately preceding the date on which the application is submitted; or

(2) Agree to submit proof of completion of one-third of the professional development hours required for an active license of their type within 12 months of the date they are issued the active license. These hours may be counted towards the professional development hours required at next license renewal.

Stat. Auth.: ORS 681.420(5) & 681.460
Stats. Implemented: ORS 681.320(1)(a)
Hist.: SPA 1-2001, f. & cert. ef. 3-12-01; SPA 1-2005, f. & cert. ef. 9-13-05; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

335-095-0010
Definitions

(1) Approved Training Program: A post secondary training program that has approval by the Oregon Board of Examiners for Speech-Language Pathology & Audiology to offer specific coursework and practica leading to licensure as a speech-language pathology assistant.

(2) Assessment: A qualitative and quantitative process, conducted by a licensed SLP, that measures the degree of communication impairment conducted by a licensed SLP including, but not limited to, screening, norm and criterion referenced testing, behavioral observations, and clinical interview.

(3) Clinical Interaction: Interaction where the speech-language pathology assistant (SLPA) or practicum student is actively involved by participating in or leading a therapy session.

(4) Direct Supervision: On-site, within sight and/or sound, or live videoconference observation and guidance by a speech-language pathologist while a speech-language pathology assistant performs a clinical interaction.

(5) Indirect Supervision: Those activities other than direct observation and guidance conducted by a speech-language pathologist that may include consultation, record review, lesson planning, and review and evaluation of audio-or videotaped sessions. Indirect supervision may be done in person or via telephone or electronic communication modes.

(6) Speech-Language Pathology Assistant: A person who provides speech-language pathology services under the direction and supervision of a speech-language pathologist licensed under ORS 681.250.

Stat. Auth.: ORS 681.205, 681.360, 681.370, 681.375, 681.420 & 681.460
Stats. Implemented: ORS 681.360, 681.370 & 681.375
Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 3-2006, f. & cert. ef. 5-8-06; SPA 3-2008, f. & cert. ef. 4-10-08; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

335-095-0030
Certification of Speech-Language Pathology Assistants

Applicants must submit all of the following to be eligible for certification.

(1) Official transcripts showing 45 quarter hours or 30 semester hours of speech-language pathology technical course work; and

(2) Official transcripts showing 45 quarter hours or 30 semester hours of general education credit, and

(3) Written evidence of 100 clock contact hours of clinical interaction.

(a) Clinical interaction must be face to face interaction with clients and supervised 100% of the time. Activities may include speech and hearing screenings and individual or small group and classroom sessions over a recommended 8-12-week period.

(b) Tasks such as clerical tasks, passive observations, materials preparation and meetings with the supervisor may not be included in the 100 hours.

(c) Clinical interaction documentation must show the date, clinical activity, amount of time and the supervisor's initials and signature. While the practicum student is in training, the supervisor for the clinical interaction must be licensed or have a permit to supervise assistants from this Board if the clinical interaction takes place in Oregon, or hold the ASHA Certificate of Clinical Competency if the clinical interaction takes place outside of Oregon.

(d) The supervising speech-language pathologist and the applicant will complete the Board's Competency Checklist upon completion of 100 hours. If there is more than one clinical interaction supervisor, each supervisor must complete and sign a Board Competency Checklist.

(e) Applicants presenting transcripts showing practicum course(s) with the required number of clock contact hours of clinical interaction are not required to submit the completed Board Competency Checklist.

Stat. Auth.: ORS 681.360, 681.375, 681.420 & 681.460
Stat. Implemented: ORS 681.360 & 681.375
Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 1-2004, f. & cert. ef. 2-6-04; SPA 2-2004, f. & cert. ef. 5-26-04; SPA 3-2006, f. & cert. ef. 5-8-06; SPA 3-2008, f. & cert. ef. 4-10-08; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

335-095-0050
Requirements for Supervising Licensed Speech-Language Pathology Assistants

(1) The amount and type of supervision required will be based on the skills and experience of the speech-language pathology assistant.

(a) For the first 90 calendar days of licensed employment, with a given employer, a minimum of 30% of all the time an assistant is providing clinical interaction must be supervised. A minimum of 20% of hours spent in clinical interaction must be *directly* supervised.

(b) Subsequent to the *first* 90 calendar days of licensed employment with a given employer, a minimum of 20% of all the time an assistant is providing clinical interaction must be supervised. A minimum of 10% of hours spent in clinical interaction must be *directly* supervised.

(c) The supervising speech-language pathologist must be able to be reached throughout the work day. A temporary supervisor *may* be designated as necessary.

(d) If the supervising speech-language pathologist is on extended leave, an interim supervising speech-language pathologist who meets the requirements stated in 335-095-0040 must be assigned.

(e) The caseload of the supervising speech-language pathologist must allow for administration, including speech-language pathology assistant supervision, evaluation of clients and meeting times. Speech-language

pathology assistants may not have a caseload; therefore, all clients are considered part of the supervising speech-language pathologist's caseload. The supervising speech-language pathologist is responsible to make all diagnostic and treatment related decisions for all clients on the caseload.

(f) Supervision requirements must be met for all clients on the caseload who receive treatment from the speech-language pathology assistant.

(2) The supervising speech-language pathologist may not supervise more than the equivalent of two full-time speech-language pathology assistants.

(3) The supervising speech-language pathologist must co-sign each page of records.

(4) Supervision of speech-language pathology assistants must be documented.

(a) Documentation must include the following elements: date, activity, time spent, and direct or indirect supervision level. Each entry should be initialed by the supervising speech-language pathologist. Each page of documentation should include the supervising speech-language pathologist's signature and license number issued by this Board. Supervision documentation must be retained by the speech-language pathology assistant for four (4) years.

(b) Documentation must be available for audit requests from the Board.

(5) In remote geographic areas of the state or in other situations with severe shortages of licensed personnel, where Direct Supervision requirements cannot be met by an on-site Speech-Language Pathologist, educational facilities may apply for a one year exemption from certain requirements for supervision of certified Speech-Language Pathology Assistants.

(a) This exemption allows educational facilities to use the review and evaluation of audio- or video-taped records or live audio- or video-conferencing of clinical interactions, or a combination thereof, to provide a portion of the required Direct Supervision hours, up to a maximum of 75% of the required Direct Supervision hours.

(b) During the exemption period, a licensed Speech-Language Pathologist may supervise up to four full-time equivalent certified Speech-Language Pathology Assistants.

(c) This exemption will expire on July 31st of the year in which it is granted. An exemption shall only be granted for a maximum of two years out of each consecutive five year period.

Stat. Auth.: ORS 681.360, 681.370, 681.375, 681 420 & 681.460
Stat. Implemented: ORS 681.360, 681.370 & 681.375
Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07; SPA 3-2008, f. & cert. ef. 4-10-08; SPA 4-2008(Temp), f. & cert. ef. 8-13-08 thru 2-8-09; Administrative correction 2-18-09; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

335-095-0060
Scope of Duties for the Speech-Language Pathology Assistant

(1) A speech-language pathology assistant may conduct the following tasks under supervision of the licensed Speech-Language Pathologist:

(a) Conduct speech and language screenings without interpretation, utilizing screening protocols specified by the supervising speech-language pathologist.

(b) Provide direct treatment assistance, excluding dysphasia (as opposed to feeding for nutritional purposes), to patients/clients identified by the supervising SLP by following written treatment plans or protocols developed by the supervising SLP.

(c) Document patient/client progress, without interpretation of findings, toward meeting established objectives as stated in the treatment plan, and report this information to the supervising speech-language pathologist.

(d) Assist the speech-language pathologist in collecting and tallying of data for assessment purposes, without interpretation.

(e) Act as second-language interpreters during assessments.

(f) Assist the speech-language pathologist with informal documentation during an intervention session (collecting and tallying data as directed by the speech-language pathologist), prepare materials, and assist with other clerical duties as specified by the supervising speech-language pathologist.

(g) Schedule activities and prepare charts, records, graphs, or other displays of data.

(h) Perform checks and maintenance of equipment.

(i) Participate with the speech-language pathologist in research projects, in-service training, and public relations programs.

(j) Initial each clinical entry and sign each page of records.

(2) The speech-language pathology assistant may not perform the following tasks:

(a) May not conduct swallowing screening, assessment, and intervention protocols, including modified barium swallow studies.

(b) May not administer standardized or non-standardized diagnostic tests, formal or informal evaluations, or interpret test results.

(c) May not participate in parent conferences, case conferences, Individualized Education Plan (IEP) meetings, Individualized Family Services Plan (IFSP) meetings or any interdisciplinary team without the presence of the supervising speech-language pathologist.

(d) May not write, develop, or modify a patient/client's treatment plan in any way.

(e) May not provide intervention for patients/clients without following the treatment plan prepared by the supervising speech-language pathologist.

(f) May not sign any formal documents (e.g. treatment plans, reimbursement forms, individualized education plans (IEPs), individualized family services plans (IFSPs), determination of eligibility statements or reports.)

(g) May not select patients/clients for services.

(h) May not discharge patients/clients from services.

(i) May not disclose clinical or confidential information either orally or in writing to anyone not designated by the speech-language pathologist.

(j) May not make referral for additional service.

(k) May not communicate with the patient/client, family, or others regarding any aspect of the patient/client status or service without the specific consent of the supervising speech-language pathologist.

(l) May not represent him/herself as a speech-language pathologist.

(m) May not write a formal screening, diagnostic, or discharge report.

Stat. Auth.: ORS 681.360, 681.370, 681.375, 681.420 & 681.460
Stat. Implemented: ORS 681.370 & 681.375
Hist.: SPA 1-2003, f. & cert. ef. 5-7-03; SPA 4-2006, f. & cert. ef. 11-3-06; SPA 1-2007, f. & cert. ef. 2-1-07; SPA 3-2008, f. & cert. ef. 4-10-08; SPA 1-2009, f. 6-9-09, cert. ef. 7-1-09

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Board of Geologist Examiners
Chapter 809

Rule Caption: Adoption of the Board's 2009–2011 Operating Budget with a spending limit of $483,975.00.
Adm. Order No.: BGE 1-2009
Filed with Sec. of State: 6-15-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 809-010-0025
Subject: This Administrative Rule revision will adopt the 2009–2011 biennial budget of the Board with a spending limit of $483,975.00. The April 2009 Board newsletter discusses the Board's deliberation on this budget. The newsletter is posted on the Board's website. A Public Hearing on the budget was held June 5, 2009. There are neither no new fees nor any fee increases. Individuals may view a copy of the budget on the Board's web page or may request a copy of the budget by contacting the Board staff.
Rules Coordinator: Susanna Knight—(503) 566-2837

809-010-0025
Operating Budget

The Oregon State Board of Geologist Examiners hereby adopts by reference the 2009–2011 Biennial Budget of $483,975 covering the period from July 1, 2009, and ending June 30, 2011. With Board approval, the Administrator of the Board may amend budgeted accounts as necessary within the approved budget of $483,975 for the effective operation of the Board. The Board will not exceed the approved 2009–11 Biennium Budget unless registrants are noticed, a public hearing is convened, and this rule is amended as required by ORS Chapter 182.462(1)(2). Copies of the budget are available from the Board's office.

Stat. Auth.: ORS 670.310, 672.705 & 182.462
Stats. Implemented: ORS 672.705 & 1999 OL Ch. 1084
Hist.: BGE 1-1999, f. & cert. ef. 6-17-99; BGE 1-2001, f. & cert. ef. 3-23-01; BGE 2-2003, f. 6-13-03, cert. ef. 7-1-03; BGE 1-2005, f. & cert. ef. 8-15-05; BGE 2-2007, f. 6-25-07, cert. ef. 7-1-07; BGE 1-2009, f. 6-15-09, cert. ef. 7-1-09

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Board of Optometry
Chapter 852

Rule Caption: Adopts budget for 2009–2011 Biennium; Revises Continuing Education definition and COPE and COE approval conditions.
Adm. Order No.: OPT 1-2009
Filed with Sec. of State: 6-10-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 852-005-0005, 852-070-0005, 852-070-0055, 852-070-0060

Subject: 852-005-0005 — Adopts the Board's 2009–2011 Biennium Budget.

852-070-0005 — Changes the definition of continuing optometric education.

852-070-0055(4) — Changes the time increments allowed for COE course approval.

852-070-0060(3)(a), (4) — Specifies which of the COE approved categories of continuing education are accepted by the Board.

Rules Coordinator: David W. Plunkett—(503) 399-0662, ext. 23

852-005-0005
Budget

The Oregon Board of Optometry hereby adopts by reference the Oregon Board of Optometry 2009–2011 Biennium Budget of $648,125 covering the period from July 1, 2009 through June 30, 2011. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of $648,125 for the effective operation of the Board. The Board will not exceed the approved 2009–2011 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1) & (2). Copies of the budget are available from the Board's office and are also posted on the Board's website.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 182.462(1) & (2)
Hist.: OPT 1-1999, f. 6-4-99, cert. ef. 7-1-99; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09

852-070-0005
Definitions

"Hour" means clock hour of sixty minutes of instruction time, plus or minus ten minutes. "Half-hour" means thirty minutes of instruction time, plus or minus five minutes.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.210 & 182.466
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09

852-070-0055
Continuing Optometric Education Provided by Others

(1) All continuing optometric education provided by other organizations shall be submitted to the Board for approval. Approval or denial of the continuing optometric education shall be based on course:

(a) Relevance to modern optometric practice;

(b) Provision of skills or information which can translate to improved patient care;

(c) Content being recognized and accepted as sound scientific thought;

(d) Provision of heightened content standards needed by optometric physicians; and

(e) Presenter(s) credentials.

(2) The Board may accept continuing optometric education courses that have been approved by other organizations. This acceptance shall be in accordance with the standards set by the Board.

(3) Presenter(s) of continuing optometric education must provide the Board with a Curriculum Vitae and have an academic degree corresponding to the O.D. degree or a combination of academic achievement and special expertise.

(4) The minimum credit the Board will grant for continuing optometric education credit is one half- hour. Additional credits must be in half-hour increments.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.140, 683.210 & 182.466
Hist.: OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 2-1999, f.12-29-99, cert. ef.1-1-00; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09

852-070-0060
COPE Approved Continuing Optometric Education Courses

(1) The Oregon Board of Optometry accepts courses related to the maintenance or advancement of professional skills and clinical abilities approved by COPE (Council on Optometric Practitioner Education). If such a course has been COPE approved, the Board shall accept the course as meeting its continuing education requirements for license renewal excepting Category D. as indicated in (4) below.

(2) COPE course category A. — Clinical Optometry which includes Contact Lenses (CL), Functional Vision/Pediatrics (FV), General Optometry (GO), and Low Vision (LV).

(3) COPE course categories B. — Ocular Disease and C. —Related Systemic Disease are approved as meeting the Board's nine (9) hours per license year requirement of continuing optometric education in the area of diagnosis, treatment and management of ocular disease.

(a) Category B. — Ocular Disease includes Glaucoma (GL), Peri-Operative Management of Ophthalmic Surgery (PO), Refractive Surgery Management (RS), Treatment and Management of Ocular Disease: Anterior Segment (AS), and Treatment and Management of Ocular Disease: Posterior Segment (PS).

(b) Category C. — Related Systemic Disease includes Neuro-Optometry (NO), Pharmacology (PH), Principles of Diagnosis (PD), and Systemic/Ocular Disease (SD).

(4) COPE course category D. which includes Practice Management (PM) and Ethics/Jurisprudence (EJ) are not approved by the Oregon Board of Optometry, unless it is an acceptable ethics course. Ethics courses are approved by the Board individually to determine whether it is an acceptable course.

(5) It is the responsibility of the licensee to make sure that any continuing optometric education coursework submitted for credit has been approved by the Board or COPE.

(6) The Oregon Board of Optometry will review the COPE criteria for course category definitions to determine if the process and categories are within the standards it has set. Those COPE category definitions not acceptable to the Board will be identified to COPE and listed in the Board's administrative rules.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.140, 683.210 & 182.466
Hist.: OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OP 2-1996, f. 10-30-96, cert. ef. 11-1-96; OPT 2-1999, f.12-29-99, cert. ef.1-1-00; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2003, f. 9-15-03, cert. ef. 1-1-04; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09

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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 10-2009
Filed with Sec. of State: 6-9-2009
Certified to be Effective: 6-10-09
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 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).

(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 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

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Commission for the Blind
Chapter 585

Rule Caption: Criminal Records Check and Fitness Determination Rules.
Adm. Order No.: CFTB 2-2009
Filed with Sec. of State: 6-11-2009
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Rules Adopted: 585-005-0015, 585-005-0020, 585-005-0025, 585-005-0030, 585-005-0035, 585-005-0040, 585-005-0045, 585-005-0050, 585-005-0055, 585-005-0060, 585-005-0065, 585-005-0070, 585-005-0075
Subject: Division 5: Criminal Records Check and Fitness Determination Rules — These rules control the Commission for the Blind's (OCB) acquisition of information about a subject individual's (SI) criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to OCB as an employee, volunteer, or contractor. The fact that OCB approves a subject individual as fit does not guarantee the individual a position as an OCB employee, Volunteer, or contractor.
Rules Coordinator: Linda Mock—(971) 673-1588

585-005-0015
Statement of Purpose and Statutory Authority

"Purpose" These rules control the Oregon Commission for the Blind's (OCB) acquisition of information about a subject individual's (SI) criminal history through criminal records checks or other means and its use of that information to determine whether the subject individual is fit to provide services to OCB as an employee, volunteer, or contractor. The fact that OCB approves a subject individual as fit does not guarantee the individual a position as an OCB employee, volunteer, or contractor.

Stat. Auth.: ORS 346-300
Stats. Implemented: ORS 181.534(9)
Hist.: CFTB 2-2009, f. & cert. ef. 6-11-09

585-005-0020
Definitions

As used in OAR chapter 585, division 5, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Approved" means that, pursuant to a preliminary fitness determination fitness, an authorized designee (AD) has determined that the subject individual is fit to be an employee, volunteer, or contractor in a position covered by OAR 585-005-0030.

(2) "Authorized Designee" means an OCB employee authorized to obtain and review criminal offender information and other relevant information about a subject individual through criminal records checks and other means, and to conduct a fitness determination in accordance with these rules.

(3) "Conviction" or "Convicted of" means that a court of law has entered a final judgment on a verdict or a finding of guilty, a plea of guilty, or a plea of nolo contendere (no contest) against a subject individual in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(4) "Criminal Offender Information" means records and related data as to physical description and vital statistics, fingerprints received and compiled by the Oregon Department of State Police (DSP) Bureau of Criminal Identification for purposes of identifying criminal offenders and alleged offenders, records of arrests and the nature and disposition of criminal charges, including conviction, pleas, sentencing, confinement, probation, parole, and release.

(5) "Crime Relevant to a Fitness Determination" means a crime listed or described in OAR 585-005-0050.

(6) "Criminal Records Check and Fitness Determination Rules" or "These Rules" means OAR chapter 585, division 5.

(7) "Criminal Records Check" or "CRC" means one or more of the following three processes undertaken to check the criminal history of a subject individual:

(a) A name-based check of criminal offender information and motor vehicle registration and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by the Oregon Department of State Police, in accordance with the rules adopted and procedures established by the Oregon Department of State Police (LEDS Criminal Records Check);

(b) A check of Oregon criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police at OCB's request (Oregon Criminal Records Check); or

(c) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by the Oregon Department of State Police through the Federal Bureau of Investigation or otherwise at OCB's request (Nationwide Criminal Records Check).

(8) "Denied" means that, pursuant to a preliminary fitness determination under OAR 585-005-0035 or a final fitness determination under OAR 585-005-0045, an authorized designee has determined that the subject individual is not fit to be an employee, volunteer, or contractor in a position covered by OAR 585-005-0030.

(9) " OCB" means the Oregon Commission for the Blind or any subdivision thereof. "OCB" does not include a criminal justice agency as defined in ORS 181.534(1)(a)(B).

(10) "False Statement" means that, in association with an activity governed by these rules, a subject individual either:

(a) Provided OCB with materially false information about his or her criminal history, such as, but not limited to, materially false information about his or her identity or conviction record; or

(b) Failed to provide to OCB information material to determining his or her criminal history.

(11) "Fitness Determination" means a determination made by an authorized designee pursuant to the process established in OAR 585-005-0035 (preliminary fitness determination) or 585-005-0045 (final fitness determination) that a subject individual is or is not fit to be an OCB employee in a position covered by 585-005-0030.

(12) "Family Member" means a spouse, domestic partner, natural parent, foster parent, adoptive parent, stepparent, child, foster child, adopted child, stepchild, sibling, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(13) "Subject Individual" means an individual identified as someone from whom OCB may require fingerprints for the purpose of conducting a criminal records check.

Stat. Auth.: ORS 181.534 & 346.300
Stats. Implemented: ORS 181.534(9)
Hist.: CFTB 2-2009, f. & cert. ef. 6-11-09

585-005-0025
Subject Individual

"Subject Individual" means a person from whom OCB may require fingerprints for the purpose of conducting a criminal records check because the person:

(1)(a) Is applying for employment with OCB; or

(b) Provides services or seeks to provide services to OCB as a volunteer, paid agent, or contractor; and

(2) Is, or will be, working or providing services in a position in which the person:

(a) Is providing information technology services and has control over, or access to, information technology systems that would allow the person to harm the information technology systems or the information contained in the systems;

(b) Has access to information, the disclosure of which is prohibited by state or federal laws, rules or regulations or information that is defined as confidential under state or federal laws, rules or regulations; or

(c) Has access to personal information about employees or members of the public including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal history information.

Stat. Auth.: ORS 181.534 & 346.300
Stats. Implemented: ORS 181.534(9)
Hist.: CFTB 2-2009, f. & cert. ef. 6-11-09

585-005-0030
Criminal Records Check Process

(1) Disclosure of Information by Subject Individual:

(a) Preliminary to a criminal records check, a subject individual, if requested, shall complete and sign the OCB Criminal Records Request form and, if requested by OCB, a fingerprint card. The Criminal Records Request form shall require the following information: name, Social Security Number, driver's license or identification card number, prior residency in other states, and any other identifying information deemed necessary by the authorized designee. The OCB Criminal Records Request form may also require details concerning any circumstance listed in OAR 585-005-0035(3)(a)–(f);

(b) A subject individual shall complete and submit to OCB the OCB Criminal Records Request form and, if requested, a fingerprint card within three business days of receiving the forms. An authorized designee may extend the deadline for good cause;

(c) OCB shall not request a fingerprint card from a subject individual under the age of 18 years unless OCB also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Failure to consent, however, may be construed as a refusal to consent under OAR 585-005-0045(3)(d)(B);

(d) Within a reasonable period of time as established by an authorized designee, a subject individual shall disclose additional information as requested by OCB in order to resolve any issue(s) hindering the completion of a criminal records check.

(2) When a Criminal Records Check is Conducted. An authorized designee may conduct, or request that a criminal records check be conducted when:

(a) An individual meets the definition of "subject individual;" or

(b) Required by federal law or regulation, or as a condition of federal funding, by state law or administrative rule, or by contract or written agreement with OCB.

(3) Which Criminal Records Check(s) is Conducted. When an authorized designee determines under subsection (2) of this rule that a criminal records check is needed, the authorized designee shall proceed as follows:

(a) LEDS Criminal Records Check. The authorized designee shall conduct or request a LEDS criminal records check as part of any fitness determination conducted in regard to a subject individual.

(b) Oregon Criminal Records Check. The authorized designee may request that the Oregon Department of State Police conduct an Oregon criminal records check when:

(A) The authorized designee determines that an Oregon criminal records check is warranted after review of the information provided by the subject individual, the results of a LEDS criminal records check, or review of any other information deemed relevant to the inquiry; or

(B) The authorized designee requests a nationwide criminal records check.

(c) Nationwide Criminal Records Check. The authorized designee may request that the Oregon Department of State Police conduct a nationwide criminal records check when:

(A) A subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years;

(B) Information provided by the subject individual or the results of a LEDS or Oregon criminal records check provide reason to believe, as determined by an authorized designee, that the subject individual has a criminal history outside of Oregon;

(C) As determined by an authorized designee, there is reason to question the identity of, or information provided by, a subject individual. Reasonable grounds to question the information provided by a subject individual include, but are not limited to: the subject individual fails to disclose a Social Security Number; the subject individual discloses a Social Security Number that appears to be invalid; or the subject individual does not have an Oregon driver's license or identification card; or

(D) A check is required by federal law or regulation, by state law or administrative rule, or by contract or written agreement with OCB.

Stat. Auth.: ORS 181.534 & 346.300
Stats. Implemented: ORS 181.534(9)
Hist.: CFTB 2-2009, f. & cert. ef. 6-11-09

585-005-0035
Preliminary Fitness Determination

(1) An authorized designee may conduct a preliminary fitness determination if OCB is interested in hiring or appointing a subject individual on a preliminary basis, pending a final fitness determination.

(2) If an authorized designee elects to make a preliminary fitness determination about a subject individual, pending a final fitness determination, the authorized designee shall make that preliminary fitness determination based on information disclosed by the subject individual and a LEDS criminal records check.

(3) The authorized designee shall approve a subject individual as fit on a preliminary basis if the authorized designee has no reason to believe that the subject individual has made a false statement and the information available to the authorized designee does not disclose that the subject individual:

(a) Has pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or comparable disposition) of, or has a pending indictment for a crime listed under OAR 585-005-0050;

(b) Has been arrested for or charged with a crime listed under; OAR 585-005-0050;

(c) Is being investigated for, or has an outstanding warrant for a crime listed under OAR 585-005-0050.

(d) Is currently on probation, parole, or any form of post-prison supervision for a crime listed under OAR 585-005-0050;

(e) Has a deferred sentence or conditional discharge or is participating in a diversion program in connection with a crime listed under OAR 585-005-0050; or

(f) Has been adjudicated in a juvenile court and found to be within the court's jurisdiction for an offense that would have constituted a crime listed in OAR 585-005-0050 if committed by an adult.

(4) If the information available to the authorized designee discloses one or more of the circumstances identified in section (3), the authorized designee may nonetheless approve a subject individual as fit on a preliminary basis if the authorized designee concludes, after evaluating all available information, that hiring or appointing the subject individual on a preliminary basis does not pose a risk of harm to OCB, its client entities, the State, or members of the public.

(5) If a subject individual is either approved or denied on the basis of a preliminary fitness determination, an authorized designee thereafter shall conduct a fitness determination under OAR 585-005-0045.

(6) A subject individual may not appeal a preliminary fitness determination, under the processes provided under OAR 585-005-0060 or otherwise.

Stat. Auth.: ORS 181.534 & 346.300
Stats. Implemented: ORS 181.534(9)
Hist.: CFTB 2-2009, f. & cert. ef. 6-11-09

585-005-0040
Hiring or Appointing on a Preliminary Basis

(1) OCB may hire or appoint a subject individual on a preliminary basis if an authorized designee has approved the subject individual on the basis of a preliminary fitness determination under OAR 585-005-0035.

(2) A subject individual hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by OCB.

(3) A subject individual hired or appointed on a preliminary basis is deemed to be on trial service and, if terminated before completion of a final fitness determination under OAR 585-005-0045, may not appeal the termination under the processes provided under 585-005-0060.

(4) If a subject individual hired or appointed on a preliminary basis is denied upon completion of a final fitness determination, then OCB shall immediately terminate the subject individual's employment in or appointment to a position covered by 585-005-0030.

Stat. Auth.: ORS 181.534 & 346.300
Stats. Implemented: ORS 181.534(9)
Hist.: CFTB 2-2009, f. & cert. ef. 6-11-09

585-005-0045
Final Fitness Determination

(1) If OCB elects to conduct a criminal records check, an authorized designee shall make a fitness determination about a subject individual based on information provided by the subject individual under OAR 585-005-0030(1), the criminal records check(s) conducted, if any, and any false statements made by the subject individual.

(2) In making a fitness determination about a subject individual, an authorized designee shall also consider the factors in subsections (a)–(f) in relation to information provided by the subject individual under OAR 585-005-0030(1), any LEDS report or criminal offender information obtained through a criminal records check, and any false statement made by the subject individual. To assist in considering these factors, the authorized designee may obtain any other information deemed relevant from the subject individual or any other source, including law enforcement and criminal justice agencies or courts within or outside of Oregon. To acquire other relevant information from the subject individual, an authorized designee may request to meet with the subject individual, to receive written materials, or both. The subject individual shall meet with the authorized designee if requested and provide additional information within a reasonable period of time, as established by the authorized designee. The authorized designee will use all collected information in considering:

(a) Whether the subject individual has been arrested, pled nolo contendere (or no contest) to, been convicted of, found guilty except for insanity (or a comparable disposition) of, or has a pending indictment for a crime listed in OAR 585-005-0050;

(b) The nature of any crime identified under subsection (a);

(c) The facts that support the arrest, conviction, finding of guilty except for insanity, or pending indictment;

(d) The facts that indicate the subject individual made a false statement;

(e) The relevance, if any, of a crime identified under subsection (a) or of a false statement made by the subject individual to the specific requirements of the subject individual's present or proposed position, services or employment; and

(f) Intervening circumstances, to the extent that they are relevant to the responsibilities and circumstances of the services or employment for which the fitness determination is being made, including, but not limited to, the following:

(A) The passage of time since the commission or alleged commission of a crime identified under subsection (a);

(B) The age of the subject individual at the time of the commission or alleged commission of a crime identified under subsection (a);

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another crime listed in OAR 585-005-0050;

(E) Whether a conviction identified under subsection (a) has been set aside or pardoned, and the legal effect of setting aside the conviction or of a pardon; and

(F) A recommendation of an employer.

(3) Possible Outcomes of a Final Fitness Determination:

(a) Automatic Approval. An authorized designee shall approve as fit a subject individual if the information described in sections (1) and (2) shows none of the following:

(A) Evidence that the subject individual has pled nolo contendere (or no contest) to, been convicted of, or found guilty except for insanity (or comparable disposition) of a crime listed in OAR 585-005-0050;

(B) Evidence that the subject individual has a pending indictment for any crime listed in OAR 585-005-0050;

(C) Evidence that the subject individual has been arrested for any crime listed in OAR 585-005-0050;

(D) Evidence of the subject individual having made a false statement; or

(E) Any discrepancy between the criminal offender information and other information obtained from the subject individual.

(b) Evaluative Approval. If a fitness determination under this rule shows evidence of any of the factors identified in paragraphs (3)(a)(A)–(E) of this rule, an authorized designee may approve as fit the subject individual only if, in evaluating the information described in sections (1) and (2), the authorized designee determines (i) that the evidence is not credible; or (ii) that the subject individual acting in the position for which the fitness determination is being conducted would not pose a risk of harm to OCB, its client entities, the State, or members of the public;

(c) Restricted Approval:

(A) If an authorized designee approves as fit a subject individual, the authorized designee may restrict the approval to specific activities or locations;

(B) An authorized designee shall complete a new criminal records check and fitness determination under this rule on the subject individual prior to removing a restriction.

(d) Denial:

(A) If a fitness determination under this rule shows credible evidence of any of the factors identified in paragraphs (3)(a)(A)–(E) of this rule and, after evaluating the information described in sections (1) and (2) of this rule, an authorized designee concludes that the subject individual acting in the position for which the fitness determination is being conducted would pose a risk of harm to OCB, its client entities, the State, or members of the public, the authorized designee shall deny the subject individual as not fit for the position;

(B) Refusal to Consent. If a subject individual refuses to submit or consent to a criminal records check including fingerprint identification, the authorized designee shall deny the subject individual as not fit without further assessment under the fitness determination process;

(C) If a subject individual is denied as not fit, the subject individual may not be employed by or provide services as a volunteer or contractor to OCB.

(4) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules on the basis of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

(5) Final Fitness Determination. A completed final fitness determination is final unless the affected subject individual appeals by requesting a contested case hearing as provided by OAR 585-005-0060.

Stat. Auth.: ORS 181.534 & 346.300
Stats. Implemented: ORS 181.534(9)
Hist.: CFTB 2-2009, f. & cert. ef. 6-11-09

585-005-0050
Crimes Relevant to a Fitness Determination

(1) Active Warrants.
(2) Restraining Orders.
(3) Sex Offender Registration.
(4) Any Felony Conviction.
(5) Any Sex Offense Conviction.
(6) Any Controlled Substance Conviction within the past five years.
(7) Any Violent Crimes against Persons within the past ten years.

Stat. Auth.: ORS 181.534 & 346.300
Stats. Implemented: ORS 181.534(9)
Hist.: CFTB 2-2009, f. & cert. ef. 6-11-09

585-005-0055
Incomplete Fitness Determination

(1) OCB will close a preliminary or final fitness determination as incomplete when:

(a) Circumstances change so that a person no longer meets the definition of a "subject individual" under OAR 585-005-0030;

(b) The subject individual does not provide materials or information under OAR 585-005-0030 (1) within the timeframes established under that rule;

(c) An authorized designee cannot locate or contact the subject individual;

(d) The subject individual fails or refuses to cooperate with an authorized designee's attempts to acquire other relevant information under OAR 585-005-0045 (2);

(e) OCB determines that the subject individual is not eligible or not qualified for the position of employee, volunteer, or contractor for a reason unrelated to the fitness determination process; or

(f) The position is no longer open.

(2) A subject individual does not have a right to a contested case hearing under OAR 585-005-0060 to challenge the closing of an incomplete fitness determination.

Stat. Auth.: ORS 181.534 & 346.300
Stats. Implemented: ORS 181.534(9)
Hist.: CFTB 2-2009, f. & cert. ef. 6-11-09

585-005-0060
Appealing a Fitness Determination

(1) Model Rules of Procedure. In addition to the Model Rules of Procedure adopted by the Attorney General, the procedures set forth in this rule shall apply.

(2) Process:

(a) A subject individual may appeal a final fitness determination by submitting a written request for a contested case hearing to the address provided in the final fitness determination. Any such request for a hearing must be received by OCB within 14 calendar days of the date of the notice;

(b) When a timely request is received by OCB under subsection (a), a contested case hearing shall be conducted by a hearing officer appointed by the Attorney General.

(3) Time and Place of Hearings. The time and place of hearing will be set by the hearing officer. Notice of the hearing shall be served on the Director of Human Resources and interested parties at least ten days in advance of the hearing date.

(4) Discovery. OCB or the hearing officer may protect information made confidential by ORS 181.534(15) or other applicable laws and rules.

(5) Disclosure of LEDS Information. Information obtained through LEDS shall be disclosed only in a manner consistent with Oregon State Police rules and regulations.

(6) No Public Attendance. Contested case hearings on fitness determinations are closed to non-participants.

(7) Proposed Order, Exceptions and Default:

(a) Proposed Order. After a hearing, the person appointed by the Attorney General shall issue a proposed order;

(b) Exceptions. Exceptions, if any, shall be filed within 14 calendar days after service of the proposed order. The proposed order shall provide an address to which exceptions must be sent;

(c) Default. A completed final fitness determination made under OAR 585-005-0045 becomes final:

(A) Unless the subject individual makes a timely request for hearing; or

(B) When a party withdraws a hearing request, notifies the agency or the hearing officer that the party will not appear, or fails to appear for the hearing.

(8) Remedy. The only remedy that may be awarded is a determination that the subject individual is fit, or fit with restrictions pursuant to OAR 585-005-0045(3)(c), and that, at the request of the subject individual, the subject individual's employment application will be kept on file. OCB shall not be required to place a subject individual in any position or to enter into a contract or otherwise accept services.

(9) Challenging Criminal Offender Information. A subject individual may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or agencies reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation:

(a) To challenge the accuracy or completeness of information identified in this subsection (9), a subject individual may use any process made available by the agency that provided the information;

(b) If the subject individual successfully challenges the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation, or an agency reporting information to the Oregon Department of State Police or the Federal Bureau of Investigation, the subject individual may request that OCB conduct a new criminal records check and re-evaluate the original fitness determination made under OAR 585-005-0045 by submitting a new OCB Criminal Records Request form.

(10) Appealing a fitness determination under subsection (2) of this rule, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check and re-evaluation of the original fitness determination under subsection (9) of this rule, will not delay or postpone OCB's hiring process or employment decisions except when the authorized designee in consultation with the Human Resources Section decides that a delay or postponement should occur.

Stat. Auth.: ORS 181.534 & 346.300
Stats. Implemented: ORS 181.534(9)
Hist.: CFTB 2-2009, f. & cert. ef. 6-11-09

585-005-0065
Recordkeeping and Confidentiality

(1) LEDS Reports.

(a) Confidentiality. All LEDS reports are confidential and must be maintained by the authorized designee in accordance with applicable Oregon State Police requirements in ORS Chapter 181 and the rules adopted pursuant thereto.

NOTE: See OAR Chapter 257, Division 15.

(A) Authorized Designee Access. LEDS reports are confidential and may only be shared with another authorized designee if there is a need to know consistent with these rules.

(B) Subject Individual Access. The subject individual may not inspect or receive copies of the LEDS report.

NOTE: Photocopies of the LEDS report should not be made under any circumstances.

(b) Retention. LEDS reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.

(2) National (FBI) Information.

(a) Confidentiality and Dissemination. National criminal information provided by the FBI is confidential and may not be disseminated by the OCB with following exceptions:

(A) If a fingerprint-based criminal history check was conducted on the subject individual, the subject individual will be provided a copy of the records if requested.

(B) If requested by the subject individual, the state and national criminal offender information shall be provided as exhibits during the contested case hearing.

(b) Retention. FBI reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

(3) OCB Forms and Other Documentation.

(a) Confidentiality. All completed OCB Criminal History Request forms must be kept confidential and disseminated only on a need-to-know basis.

(b) Retention.

(A) OCB forms and other records documenting the criminal history check and used in the fitness determination must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.

(B) Documentation must be retained by the qualified entity to demonstrate that the fitness determination was completed pursuant to these rules.

(5) An authorized designee shall document a preliminary or final fitness determination, or the closing of a fitness determination due to incompleteness, in writing.

(6) Other Records:

(a) OCB shall treat all criminal offender information received or created under these rules that concern the criminal history of a subject individual, other than records covered under section (2) of this rule, including Department of Justice Criminal Records Request forms and fingerprint cards, as confidential pursuant to ORS 181.534(15);

(b) Within OCB, only authorized designees shall have access to the records identified under subsection (a);

(c) An authorized designee shall have access to records identified under subsection (a) only if the authorized designee has a demonstrated and legitimate need to know the information contained in the records;

(d) Except as otherwise provided by law, a subject individual shall have access to records identified under subsection (a) pursuant to and only to the extent required by the terms of the Public Records Law.

Stat. Auth.: ORS 181.534 & 346.300
Stats. Implemented: ORS 181.534(9)
Hist.: CFTB 2-2009, f. & cert. ef. 6-11-09

585-005-0070
Authorized Designees

(1) Appointment:

(a) OCB or their designee shall designate the positions that include the responsibilities of an authorized designee;

(b) Appointments shall be made by OCB or their designee at his or her sole discretion.

(2) Conflict of Interests. An authorized designee shall not participate in a fitness determination or review any information associated with a fitness determination for a subject individual if either of the following is true:

(a) The authorized designee is a family member of the subject individual; or

(b) The authorized designee has a financial or close personal relationship with the subject individual. If an authorized designee is uncertain of whether a relationship with a subject individual qualifies as a financial or close personal relationship under this subsection (b), the authorized

designee shall consult with his or her supervisor prior to taking any action that would violate this rule if such a relationship were determined to exist.

(4) Termination of Authorized Designee Status:

(a) When an authorized designee's employment in a designated position ends, his or her status as an authorized designee is automatically terminated;

(b) An authorized designee shall immediately report to his or her supervisor if he or she is arrested for or charged with, is being investigated for, or has an outstanding warrant or pending indictment for a crime listed in OAR 585-005-0050. Failure to make the required report is grounds for termination of the individual's appointment to a designated position and thereby termination of his or her status as an authorized designee.

Stat. Auth.: ORS 181.534 & 346.300
Stats. Implemented: ORS 181.534(9)
Hist.: CFTB 2-2009, f. & cert. ef. 6-11-09

585-005-0075
Fees

OCB may charge a fee for acquiring criminal offender information for use in making a fitness determination. In any particular instance, the fee shall not exceed the fee(s) charged OCB by the Oregon Department of State Police and the Federal Bureau of Investigation to obtain criminal offender information on the subject individual.

Stat. Auth.: ORS 181.534 & 346.300
Stats. Implemented: ORS 181.534(9)
Hist.: CFTB 2-2009, f. & cert. ef. 6-11-09

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Department of Agriculture, Oregon Blueberry Commission
Chapter 670

Rule Caption: Reduces the maximum assessment cap to one percent based on gross price collected on blueberries.
Adm. Order No.: OBC 1-2009
Filed with Sec. of State: 6-15-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 6-1-2009
Rules Amended: 670-010-0005, 670-010-0010, 670-010-0011
Rules Repealed: 670-010-0006
Subject: Reduces maximum assessment cap to one percent based on the total annual gross sales of the raw product of the berries delivered to the handler(s) during the reporting year. Removes three-year price averaging requirement.
Rules Coordinator: Lisa Ostlund—(503) 364-2944

670-010-0005
Definitions

(1) "Person" means any individual, corporation, association, partnership or joint stock company.

(2) "Commission" means the Oregon Blueberry Commission.

(3) "First Purchaser" means any person who buys blueberries from the producer in the first instance, or handler who receives the blueberries in the first instance from the producer for resale or processing.

(4) "Producer" means a person or other legal entity producing blueberries in Oregon, for market, whether as a landowners, landlord, tenant, sharecropper or otherwise.

(5) "Handler" means any producer, processor, distributor or other person engaged in handling or marketing of or dealing in blueberries, whether as owner, agent, employee, broker or otherwise.

(6) "Blueberries" means blueberries that belong to the genus Vaccinium (including but not limited to the cultivars "high bush", "rabbit-eye" and "low-bush" or "wild") grown commercially in the State of Oregon. All blueberry cultivars sold commercially for whatever purpose are subject to these rules.

(7) "Casual Sales" means any sales of blueberries made by the producer directly to the consumer where the total accumulated sales during the fiscal year are not more than 500 pounds.

(8) "Reporting Year" means a calendar year beginning May 1 and ending April 30.

Stat. Auth.: ORS 576.305 - 576.325(1)(c)
Stats. Implemented: ORS 576.325
Hist.: OBC 1-1986, f. 5-28-86, ef. 6-1-8; OBC 1-1994, f. & cert. ef. 5-17-94; OBC 1-2003, f. 10-15-03, cert. ef. 11-1-03; OBC 1-2009, f. 6-15-09, cert. ef. 7-1-09

670-010-0010
Assessments

(1) Any producer, handler or first purchaser shall deduct and withhold an assessment of four-tenths of a cent ($.004) per pound or $8 per ton after June 1, 2001 for all blueberries grown in Oregon (See definition of "First Purchaser.)

(2) The maximum assessment for a reporting year (670-010-0005(8)) will be one percent of the total annual gross sales of the raw product of the berries delivered to the handler(s) during the reporting year.

Stat. Auth.: ORS 576
Stats. Implemented: ORS 576.325 & 576.335
Hist.: OBC 1-1986, f. 5-28-86, ef. 6-1-86; OBC 1-1990, f. 5-23-90 & cert. ef. 6-1-90; OBC 2-2001, f. 5-8-01, cert. ef. 6-1-01; OBC 1-2003, f. 10-15-03, cert. ef. 11-1-03; OBC 1-2009, f. 6-15-09, cert. ef. 7-1-09

670-010-0011
Challenge Process

(1) Pursuant to ORS 576.370 and OAR 603-043-0040, a producer may file a challenge by obtaining a Commission Assessment Challenge Form from the commission. The producer must file the completed Challenge Form with a US Postmark dated no later than 60 days from April 30th of each year.

(2) In calculating whether a producer has paid an assessment that exceeds one percent of the total dollar amount received by the producer for the raw commodity during the assessment period the producer must use the assessment period as defined by 670-010-0005(8).

Stat. Auth.: ORS 576
Stats. Implemented: ORS 576
Hist.: OBC 1-2003, f. 10-15-03, cert. ef. 11-1-03; OBC 1-2009, f. 6-15-09, cert. ef. 7-1-09

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

Rule Caption: Updates, clarifies and streamlines rules regulating consumer finance loans and lenders.
Adm. Order No.: FCS 3-2009
Filed with Sec. of State: 6-2-2009
Certified to be Effective: 6-2-09
Notice Publication Date: 2-1-2009
Rules Adopted: 441-730-0165, 441-730-0271, 441-730-0272
Rules Amended: 441-730-0010, 441-730-0015, 441-730-0025, 441-730-0030, 441-730-0050, 441-730-0070, 441-730-0080, 441-730-0100, 441-730-0110, 441-730-0120, 441-730-0150, 441-730-0170, 441-730-0180, 441-730-0200, 441-730-0205, 441-730-0210, 441-730-0250, 441-730-0255, 441-730-0275, 441-730-0280, 441-730-0310, 441-730-0320
Rules Repealed: 441-730-0270
Subject: In 2007, the Legislature adopted HB 2871 revising allowable interest and fees for both conventional consumer finance loans and short-term loans made by payday and title lenders. The proposed rules remove provisions that are now addressed in statute and make changes to reflect the new laws. They also include updates to address internet-based activities, clarify consumer protections, address revisions requested by the consumer finance industry, and correct duplicative rules within the section.
Rules Coordinator: Shelley Greiner—(503) 947-7484

441-730-0010
Definitions

(1) "Annual percentage rate" or "APR" means the annual percentage rate that every licensee is required by Regulation Z of the Federal Truth in Lending Act (Title I of the Consumer Credit Protection Act) to disclose to each of its credit customers.

(2) "Borrower" means a natural person.

(3) "Charges" means any one or more of the fees, premiums or other charges described by ORS 725.340(2)(a), (3) and (4), and other items charged to a borrower's account; but the term does not include interest or deferral charges.

(4) "Consumer finance licensee" means a person in the business of making loans for periods of more than 60 days that have periodic payments.

(5) "Deferral charges" means the additional charge assessed by a consumer finance licensee made for deferring all unpaid installments as provided by ORS 725.340(2)(b). Deferral charges do not apply to loans with a single payment payback feature.

(6) "Director" means the Director of the Department of Consumer and Business Services.

(7) "Extension" has the same meaning as "renewal" as defined in section (18) of this rule.

(8) "Finance charge" means the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the con-

sumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(9) "Formalized grading system" means a formula or computer program that determines the creditworthiness of individual borrowers based on information regarding the borrower's financial condition, such as the borrower's income, assets, debts and financial obligations, and the nature and value of any collateral used to secure the loan.

(10) "Fully amortized" means characterized by periodic payments, that if made as scheduled, result in full repayment of the principal and interest owed on a loan by the end of the loan term.

(11) "License" means a consumer finance license or a short-term personal loan license issued under ORS 725.140.

(12) "Legally qualified in this state" means a business is qualified to conduct business in this state, having made the appropriate filings with the Secretary of State.

(13) "Licensee" means a person licensed as a consumer finance licensee or a short-term personal loan licensee.

(14) "Loan" means a loan that is subject to the Oregon Consumer Finance Act.

(15) "Loan underwriting" means a written or otherwise documented evaluation of the assumption of risk preceding the granting of a loan to a specific borrower, and may be fulfilled through use of a formalized grading system. Loan underwriting may be based on one or more of the following:

(a) Credit information furnished by the borrower, such as employment history, income, and outstanding obligations;

(b) A financial statement that includes income, assets and debts;

(c) Publicly available information concerning the borrower, that may include the borrower's credit report;

(d) The borrower's credit needs and willingness and ability to pay, including the nature and value of any collateral used to secure the loan.

(16) "Periodic payments" means loan repayments scheduled for monthly or more frequent periods of time.

(17) "Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, limited liability company or cooperative.

(18) "Renewal" of a loan means granting a borrower the right to postpone repayment of a short-term personal loan.

(19) "Roll-over" has the same meaning as "renewal" as defined in section (18) of this rule.

(20) "Same day transaction" means a short-term personal loan made on the same day that a previous short-term personal loan is paid-off and will be treated as a "renewal" defined in section (18) of this rule.

(21) "Short-term personal loan" means:

(a) A payday loan as defined in ORS 725.600;

(b) A title loan as defined in ORS 725.600; or

(c) Any other loan made by a person in the business of making short-term personal loans designated by rule or order of the director.

(22) "Short-term personal loan licensee" means a person issued a license under ORS 725.140 who engages in the business of making payday loans or title loans as defined in 725.600.

Stat. Auth.: ORS 725.320 & 725.505
Stats. Implemented: ORS 725.110, 725.140, 725.340, 725.360 & 725.600
Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0007; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0015
Licensee Lending Characteristics and Practices

(1) A consumer finance licensee, making loans under that license, shall make a determination of the creditworthiness of a borrower based on the information about the borrower's financial condition, such as his or her income, assets, debts, and financial obligations, and the nature and value of any collateral used to secure the loan for the majority of loans made under a consumer finance license.

(2) A consumer finance licensee shall ensure that the majority of secured or unsecured loans made under a consumer finance license have:

(a) Periodic payments;

(b) Terms longer than 60 days;

(c) Loan underwriting; and

(d) Full amortization.

(3) A consumer finance licensee shall not:

(a) Disguise any loan as an open-ended loan authorized under ORS 725.345 or 725.347 as a device or subterfuge to evade the requirements and prohibitions of this rule;

(b) Retain the title to the vehicle used as security on a loan for more than thirty business days before submitting the application to be recorded as a lien-holder on the title or taking other commercially reasonable steps to be added as a security interest holder of the vehicle;

(c) Unreasonably withhold documents on a loan secured by a borrower's vehicle for more than three business days if the loan is paid by certified or guaranteed funds; or

(d) Require a borrower, as a condition of making a loan under its consumer finance license, to provide a postdated check or debit authorization for one or more future payments. However, if permitted by the lender and at the discretion of the borrower, one or more postdated checks or debit authorizations may be delivered to a consumer finance licensee to facilitate timely future payments.

(4) A short-term personal loan licensee is limited to making payday loans or title loans or both under the short-term personal loan license, as stated on the license.

(5) A person is permitted to apply for, hold, and make appropriate loans under either a consumer finance license or a short-term personal loan license, or both licenses.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.110, 725.140(1) & 725.330
Hist.: FCS 2-2000, f. & cert. ef. 2-15-00; Renumbered from 441-730-0005, FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2007(Temp), f. & cert. ef. 8-10-07 thru 12-27-07; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0025
License Applications

(1) For purposes of the investigation described in ORS 725.140(1), an applicant for a consumer finance or short-term personal loan license must submit the application form prescribed by the director, signed by an authorized owner or officer of the applicant.

(2)(a) An applicant, including a person that currently has a consumer finance or short-term personal loan license, must provide the employment history for the proposed manager of the licensed office for the five years immediately preceding the date of the application. A licensee employing a new manager may submit a resume to meet the requirements of this section.

(b) The employment history for a consumer finance license applicant's proposed manager must demonstrate verifiable recent experience in traditional lending, including but not limited to, experience obtained in banking, consumer finance, or mortgage lending. For purposes of this rule, "recent" means no less than three years out of the five years immediately preceding the date of application. Short-term lending experience alone is not a sufficient substitute for the required experience.

(c) At the request of the applicant and in the sole discretion of the director, education, extensive training, or other business experience may be substituted for the three out of five years of traditional lending experience. Factors that the director may consider include relevance of the education, or the number, complexity and types of transactions handled in the substituted business experience. Short-term lending experience alone is not a sufficient substitute for the required experience.

(3) A person that is not currently licensed with the Director to make consumer finance or short-term personal loans must submit:

(a) The employment history for all executive officers, owners, directors, or managing partners. At least one-half of the executive officers, owners, directors, or managing partners must have verifiable recent lending experience in banking, consumer finance, or mortgage lending;

(b) A business plan, including but not limited to:

(A) Financial and operational history of the applicant, if any;

(B) Copies of any loan documents proposed to be used;

(C) A description of the types of loans and the percentage of the different types of loans the applicant proposes to make, the length of the loans the applicant proposes to make, the interest rates or range of rates the applicant proposes to charge and any other business activities the licensee will engage in at the location;

(D) The process by which the applicant will determine that loans to be made comply with requirements in OAR 441-730-0015(1); and

(E) Funding sources for the loans, including third-party financial institutions.

(4) For purposes of ORS 725.140 and this rule, the date of filing an application is the date the application is complete. An application shall be deemed complete on the date:

(a) All required fees have been paid; and

(b) All fully completed documents that are part of an application or required to be submitted by this rule have been received.

(5) An application for licensing is deemed abandoned if:

(a) The director has had one or more incomplete documents as part of an application for a minimum of 60 days; and

(b) The applicant has not responded within 30 days following a written notice from the director requesting submission of all fees, documents, or information necessary to make the application complete.

(6) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.120 & 725.140
Hist.: FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0030
Fees, Charges Licensees Pay the Director

(1) Effective February 1, 2009, the license fee under ORS 725.185:

(a) For conventional lender applicants or licensees, is:

(A) $600 for an initial application for each location to be licensed; and

(B) $600 for renewal for each licensed location, due and payable on January 1 of each calendar year;

(b) For short-term lender applicants or licensees, is:

(A) $750 for an initial application for each location to be licensed; and

(B) $750 for renewal for each licensed location, due and payable on January 1 of each calendar year.

(2) The rate of charge payable by a licensee is $75 an hour per person payable by the licensee for the Director and each examiner and other division employee used in an examination conducted under ORS 725.312 and for extra services provided a licensee under ORS 725.185(2).

(3) Notwithstanding the rate of charge fixed by section (2) of this rule:

(a) If an examiner from the division or the Director is required to travel out of state in conducting the examination or providing the extra services, the rate of charge payable by the licensee is $75 an hour per person, plus actual cost of travel; actual travel costs include air fare, lodging, food, car usage out of state, mileage to the Oregon airport and return, and travel time beginning from the departure time and ending at the departure time at the destination city;

(b) If the extra services or examination is performed by a consultant hired by contract for the particular service or examination, the charge payable by the licensee is the actual cost to the division of the contract consultant.

(4) As used in this rule, "extra services" means any attention other than an examination given under ORS 725.310.

(5) In addition to the charges fixed by sections (2) and (3) of this rule, the Director will collect from a licensee any additional costs directly attributable to extra services given the licensee under ORS 725.185 or a special examination given the licensee under ORS 725.310.

(6) The director may by order reduce the fees assessed for any specific year.

Stat. Auth.: ORS 725.185
Stats. Implemented: ORS 725.185
Hist.: FID 8-1985, f. & ef. 12-31-85; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-075-0015; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; FCS 1-2001, f. 1-22-01, cert. ef. 2-1-01; FCS 4-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 4-2004, f. 11-1-04, cert. ef. 1-1-05; FCS 3-2005, f. & cert. ef. 9-6-05; FCS 1-2008, f.& cert. ef. 1-28-08; FCS 2-2009, f. & cert. ef. 2-3-09; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0050
Notes and Agreements Must Comply with ORS Chapter 725

(1) All forms of notes and agreements pertaining to loans and security for loans used by a licensee shall be so worded that they comply with all provisions of ORS Chapter 725 and these rules.

(2) Any forms or agreements required or authorized by federal statute or regulations and in compliance with those statutes or regulations are considered in compliance with and authorized by ORS Chapter 725.

Stat. Auth.: ORS 725.505 & 725.625
Stats. Implemented: ORS 725.120 & 725.320
Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0030; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0070
Advertising Regulations

(1) A licensee or other person shall not, in any advertisement printed, displayed, published, distributed, or broadcasted, including on the Internet, by the licensee or on the licensee's behalf include any reference to the supervision of the business of the licensee by this state or any department or official of this state, except the phrase "licensed under the Oregon Consumer Finance Act" or "subject to state regulation" or both.

(2) A licensee or other person shall not, in any advertisement printed, displayed, published, distributed, broadcast, including on the Internet, by the licensee or on the licensee's behalf, use any name other than the name under which the license is issued.

(3) A licensee shall retain a copy of all advertising for the period beginning with the date of the last examination in a designated licensed office, or with the prior approval of the Director, at another location until an examiner has reviewed the material.

(4) Notwithstanding the provisions of sections (1) and (2) of this rule:

(a) A licensee that makes and closes the majority of loans in a licensed location shall prominently post their license in a manner conspicuous to the public; or

(b) If a licensee makes and closes the majority of loans electronically, they must prominently post their license on their website and at their licensed location in a manner conspicuous to the public.

(5) The posted license shall state that the business is licensed and regulated by the Department of Consumer and Business Services, and will include the Department's toll-free telephone number for public inquiries or complaints.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.060
Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0045; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0080
Qualifications of Person in Charge of Licensed Office

(1) A loan licensee shall not place any person in charge of a licensed office unless the person has a thorough understanding of ORS chapter 725 and these rules.

(2) A consumer finance licensee must place the experienced person as described in OAR 441-730-0025(2) in its licensed office.

(3) Notwithstanding section (2) of this rule, if the consumer finance licensee holds a license for more than one location or if the experienced person described in OAR 441-730-0025(2) is employed outside of Oregon, the licensee may place a qualified person with no less than one year's traditional lending experience in charge of each licensed office provided the experienced person described in OAR 441-730-0025(2) supervises the lending operations of each location.

(4) At the request of the applicant and in the sole discretion of the director, education, extensive training or other business experience may be substituted for the one year of relevant lending experience required in section (3) of this rule.

(5) Unless a consumer finance licensee requires all loan underwriting decisions be forwarded to an experienced person at another location or uses a formalized grading system, a licensee must employ or place a qualified person as described in this rule at each licensed office to be in charge of and oversee the lending operations of the office. A licensee must provide the director with a current resume for any new manager employed or placed at a licensed office within 30 days of the date of their employment.

Stat. Auth.: ORS 725.505 & 725.625
Stats. Implemented: ORS 725.140, 725.310 & 725.330
Hist.: BB 14, f. & ef. 11-15-76; Renumbered from 805-075-0050; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0100
Licensee Officers and Directors

(1)(a) A consumer finance lender may add a new executive officer, owner, director, or managing partner at any time after the lender has been granted a license if after the addition at least one-half of the executive officers, owners, directors, or managing partners can demonstrate verifiable recent lending experience in banking, consumer finance, or mortgage lending as required by OAR 441-730-0025.

(b) If a consumer finance licensee adds a new executive officer, director, partial owner, or managing partner under this section, the licensee must provide a current resume for such new persons demonstrating verifiable recent lending experience in banking, consumer finance, or mortgage lending to the Director within 30 days of their appointment or selection.

(2) If an existing or new executive officer, director, partial owner, or managing partner of the consumer finance licensee gains a controlling interest in the company after the license has been granted, the licensee must notify the Director within 30 days.

(3) An officer or director of a licensee addressed in an order issued by the licensing authority under ORS 725.315 or 725.317 may, within 30 days after the date the order is issued and served, request a hearing on the order as provided for contested cases by 183.310 to 183.500, and the rules of the Director adopted pursuant thereto.

(4) A person who is suspended or removed under ORS 725.315 or 725.317 shall not conduct any of the business of the licensee or have access to the books, records, or assets of the licensee either as an officer, director, partner, stockholder, or employee without receiving permission from the Director:

(a) During the period of the suspension; or

(b) After the effective date of the removal.

(5) A licensee subject to an order of suspension under the provisions of ORS 725.230(2) may, within 90 days after the date the order is issued or served, request a hearing on the order as provided for contested cases by 183.310 to 183.500 and the rules of the Director adopted pursuant thereto.

Stat. Auth.: ORS 725.505

Stats. Implemented: ORS 725.315 & 725.317
Hist.: BB 3-1978, f. 5-16-78, ef. 7-1-78; Renumbered from 805-075-0057; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0110
Accounting Records of Licensee

(1) The accounting records of a licensee shall reflect a complete segregation of the loan transactions from any other business in which the licensee may be engaged.

(2) The licensee shall maintain separate control accounts or other acceptable records to reflect such segregation for:

(a) Loans receivable;

(b) Charges; and

(c) Repossessed property and sales of repossessed property.

(3) The receipt and disbursement of all charges charged or collected shall be fully accounted for.

(4) Each licensee shall maintain a log of:

(a) Loans made, listing each loan in sequence by number or date of loan and showing:

(A) The amount of the loan;

(B) The type of security taken;

(C)The rate of interest charged; and

(D) The types of insurance for which premium charges have been made in connection with the loan and which are payable by the borrower.

(b) Loans prepaid in full by credit life insurance showing for each loan so paid;

(A) The borrower's name and account number;

(B) The date of death of the borrower;

(C) The date proof of death was received by the licensee; and

(D) The disposition of the insurance proceeds with substantiating documents.

(c) Any litigation initiated by the licensee showing for each proceeding:

(A) The borrower's name and account number;

(B) The court where the proceeding is filed;

(C) The date of filing; and

(D) When applicable, the date, and terms of any disposition of the matter.

(d) Information on files sent to a collection agency showing, for each file:

(A) The borrower's name, the account number;

(B) The original date of the loan, the due date of the loan, or last renewal or extension;

(C) The date the loan was sent to the collection agency;

(D) The name of the collection agency; and

(E) The date and amount of monies received from the collection agency.

(F) A separate log of files sent to a collection agency need not be maintained provided the information is available in existing records at the time of examination.

(5) Any public or private sale of repossessed property by a consumer finance licensee shall be made in good faith and in a commercially reasonable manner. If there is no recognized market for the property, such as a motor vehicle auction house or similar sales process that is commonly used to sell property of the kind repossessed by the licensee, prior to a private sale of repossessed property, the licensee shall obtain, from persons who are not directly or indirectly related to the licensee, sufficient written bids to establish market value. The written bid must contain sufficient information to identify the property being bid on.

(6) When a judgment is entered in a court proceeding initiated by a licensee on a loan, the licensee forthwith shall place in the related loan file either:

(a) A copy of the judgment entered in the proceeding; or

(b) A statement verified by a representative of the licensee, detailing the essential provisions of the judgment.

(7) Short-term personal loan licensees who make both title and payday loans must maintain separate logs for each type of loan.

Stat. Auth.: ORS 725.320 & 725.505
Stats. Implemented: ORS 725.330
Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0060; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0120
Account Record to Be Maintained for Each Loan

(1) The licensee shall maintain a separate individual account record for each loan made to any borrower. The record shall show:

(a) The loan number;

(b) The date of the loan;

(c) The name and address of the borrower;

(d) A brief description of the security, if any;

(e) The agreed interest rate or rates and the amount of each charge, if any;

(f) The terms of repayment, including the expiration date of the loan, and any modifications of the terms.

(g) The amount of each payment made on the loan and in accordance with sections (2) and (3) of this rule, how the payment is allotted to principal, interest and charges;

(h) The date of the final entry when the loan is paid in full or otherwise finally settled or closed; and

(i) A clear, brief explanation of any other entries that result in the reduction or addition to the principal balance or interest.

(2) The account record for a daily interest loan shall show, for each loan payment received:

(a) The amount, if any, applied to interest;

(b) The date to which the interest is paid;

(c) If payment is insufficient to pay interest to date, the dollar amount short;

(d) The amount applied to principal, if any; and

(e) The unpaid principal balance of the loan, if any.

(3) The account record for a precomputed-interest loan may comply with section (2) of this rule or it shall show, for each loan payment received:

(a) The amount of the payment applied to installments, identifying which installments;

(b) The amount applied to any default charges; and

(c) The unpaid balance of the loan and charges, if any.

(4) When a licensee makes advances to perform covenants, the account record shall specify:

(a) The amount of the advance which is added to the principal of the loan.

(b) A brief description of what the advance is paying; and

(c) When the advance is to purchase insurance coverage, the type and extent of coverage.

(5) The account record for a short-term personal loan shall show the date each loan is renewed, the amount of the charge the borrower paid and the new due date of the loan.

(6) All entries to the account record made by the licensee must be accurate and entered on the day the transaction occurred. However, a licensee may establish a reasonable time of day after which payments received that day will be posted on the following business day. If the licensee is unable to post a transaction as required by this section, the posting when made must reflect the actual date of the transaction.

Stat. Auth.: ORS 725.320 & 725.505
Stats. Implemented: ORS 725.330
Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0065; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0150
Consolidating Sales Financing into Direct Loans

(1) A licensee shall not make a direct loan to pay off a retail installment contract owned by or assigned to the licensee if the loan bears a higher APR than that borne by the contract unless the loan is of substantial benefit to the borrower. A substantial benefit would exist in circumstances including, but not limited to one or more of the following:

(a) The retail installment contract is in default two installments or more;

(b) The amount of the individual installments payable on the direct loan will be lower than the amount of the individual installment being paid on the contract;

(c) The direct loan pays off one or more obligations in addition to the retail installment contract;

(d) The principal amount of the direct loan exceeds the sum of the unpaid installments on the retail installment contract by not less than 20 percent of the sum of the unpaid installments, or by $200, whichever is less.

(2) As used in this rule, "retail installment contract" has the meaning given the term by ORS 83.010 and 83.510.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.320
Hist.: BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0103; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0165
Unfair or Deceptive Practices

A short-term personal loan licensee shall not disguise the terms or provisions of any loan as a device or subterfuge to evade the requirements and fees and interest authorized under ORS Chapter 725. Such conduct

shall be deemed a violation of 725.340, 725.600, and 725.615, and dishonest, fraudulent, or illegal practices under 725.145.

Stat. Auth. ORS 725.320 & 725.505
Stats. Implemented ORS 725.145 & 725.340
Hist.: FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0170
Precomputed Interest

(1) When a loan contract is repayable in substantially equal and consecutive monthly installments of principal and interest combined, interest may be precomputed and added to the principal. Interest may be precomputed even though the first installment period is more or less than one month.

(2) If the first installment period exceeds one month, the amount of the agreed monthly interest charge shall be reduced for the first period by 1/30th of the amount for each extra day in the first period. If the first installment period is less than one month the amount of the agreed monthly interest charge shall be reduced for the first period by 1/30th of the amount for each day that the first installment period is less than one month.

(3) Short-term personal loans which have a single payment payback feature are not precomputed interest loans.

Stat. Auth.: ORS 725.320 & 725.505
Stats. Implemented: ORS 725.340
Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0110; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0180
Deferred Payment on Precomputed Loan

(1) When unpaid installments are deferred as provided by ORS 725.340(2)(b), the licensee shall give the borrower written evidence of the agreed deferral showing:

(a) The amount of the deferral charge;

(b) The new due date of the first deferred installment; and

(c) The new due date of the final deferred installment of the loan.

(2) The licensee shall also note the due date of the final deferred installment and the amount of the deferral charge on the borrower's account record.

(3) The provisions of this rule do not apply to short-term personal loans.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.340(2)
Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0120; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0200
Action on Precomputed Loan; Rebate Required

(1) When a lender brings an action against a borrower on a precomputed loan, if the action comes to judgment prior to the due date of the final installment, the lender shall tender a rebate to the borrower of interest unearned as of the date of the judgment. The rebate shall be computed in accordance with ORS 725.340(2)(c) as if the loan were prepaid in full on the date of the judgment.

(2) Rebate of any deferral charge shall be determined on the US Actuarial Rule.

(3) Lenders may collect prejudgment interest awarded by the court, but may not estimate interest based upon an estimate of the judgment date.

Stat. Auth.: ORS 725.320 & 725.505
Stats. Implemented: ORS 725.340
Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0130; FCS 12-1988, f. 7-20-88, cert. ef. 8-1-88; FCS 2-2000, f. & cert. ef. 2-15-00; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0205
Limitation on Charging a Prepayment Penalty by Consumer Finance Licensees

A consumer finance licensee may not charge a penalty for prepayment of all or part of the unpaid balance of a loan where:

(1) A licensee refinances a loan they own.

(2) The licensee has repossessed any collateral offered for the loan, sold the collateral and applied the proceeds of the sale towards the unpaid balance of the loan.

(3) The licensee forecloses on property and applies any proceeds realized as a result of the foreclosure toward the unpaid balance of the loan.

(4) The licensee exercises an option contained in the loan agreement to require immediate repayment of all or part of the unpaid balance of the loan.

(5) All or part of the loan balance is repaid with insurance benefits resulting from the death of the borrower.

(6) The licensee demands repayment of all or part of the unpaid balance of the loan.

(7) The loan is a home equity line of credit or an unsecured line of credit.

Stat. Auth.: ORS 725.320 & 725.505
Stats. Implemented: ORS 725.360
Hist.: FCS 2-2000, f. & cert. ef. 2-15-00; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0210
Recomputation of Interest on Delinquent Precomputed Loan

If two or more installments of a precomputed loan are delinquent, the licensee may elect to recompute interest and other charges. A recomputation shall be made at the agreed interest rate, or at the APR, from the date the loan was made, on actual unpaid balances, until the date the loan is paid in full. When such an election is made, the licensee shall recompute the interest charges from the date of the loan to the date of the election by applying every payment received prior to the election first to interest and then to the unpaid principal as of the date the payment was received. Recomputed interest so received is in lieu of the precomputed interest, including any deferral charges, and default charges which accrued prior to the date of the election.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.340
Hist.: BB 14, f. & ef. 11-15-76; BB 3-1978, f. 5-16-78, ef. 7-1-78; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0135; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0250
Receipt to Be Furnished to Borrower Upon Request

(1) When the borrower requests a receipt for a payment on a loan for which interest is to be computed on a daily basis, the receipt shall specify:

(a) The amount applied to interest, if any;

(b) The date to which the interest is paid, or the dollar amount short, if payment is insufficient to pay interest to date;

(c) The amount applied to principal, if any; and

(d) The unpaid principal of such loan, if any.

(2) When a borrower requests a receipt for a payment on a loan that is contracted for interest to be precomputed, the receipt shall specify:

(a) The amount of the payment applied to the loan and any default charges; and

(b) The amount of the unpaid balance of the loan and charges, if any.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.360
Hist.: BB 14, f. & ef. 11-15-76; BB 5-1982, f. 9-1-82, ef. 9-15-82; Renumbered from 805-075-0175; FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0255
Payoff Information to be Furnished to Borrower Upon Request

(1) When a borrower requests the payoff information on a loan and specifies a payoff date, the lender shall promptly, but in no case later than three business days, provide the requested information.

(2) When a borrower does not specify a payoff date, the lender must calculate the payoff amount for a date no later than 10 days after the date of the request, and the amount must be provided within three business days of the borrower's request. When a lender provides a payoff amount, it must also advise the borrower, verbally or in writing, that interest will continue to accrue past the payoff date if the loan is not paid in full.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.360
Hist.: FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0271
Conditions Applicable to Short-Term Personal Loans

(1) Interest shall not be compounded.

(2) The loan agreement shall have the following information displayed prominently in bold print on the first page of the agreement:

(a) The APR;

(b) The amount of the loan;

(c) The amount of interest or finance charge if paid when the loan is due;

(d) The total amount due on the due date; and

(e) The due date. Compliance with the disclosure requirements of Truth In Lending, 15 U.S.C. 1601 et seq., and Regulation Z, 12 C.F.R. Part 226, will satisfy the requirements of this section.

(3) If a borrower is permitted to renew a loan after the due date, the renewal shall be effective on the due date of the loan.

(4) If the lender does not deliver the note to the borrower marked "Paid or Renewed," in compliance with ORS 725.360(4)(d), they must state that the borrower's canceled check will evidence payment of the loan in the loan agreement. In such cases, the lender must retain the note marked "Paid" or "Renewed" in the file. An electronic transmission may fulfill the requirements of this section if the loan is made using an electronic medium and the consumer has consented to use of electronic transmission.

(5) If the lender does not cash the borrower's check, the note must be returned marked "Paid" and the requirements of subsection (4) of this rule would not apply. The lender must also mark the check "Void" and return it to the borrower with the note marked "Paid".

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.360, 725.505, 725.605, 725.615 & 725.622
Hist.: FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0272
Conditions Applicable to Short-Term Personal Loan Lenders

(1) A short-term personal loan licensee:

(a) Must calculate daily interest based upon a 365/day year.

(b) Must comply with the Equal Credit Opportunity Act, 15 USC 1691 et seq., and shall provide the applicant with a written notice of the reason for declining a loan. The notice may be provided to the applicant at the time the loan is declined or the notice may be mailed to the applicant. A copy of the notice must be retained in the borrower's files. There are specific Equal Credit Opportunity Act exceptions to providing such notice.

(c) Must prominently post the APR inside their office where customers can easily see it and the APR must be prominently posted on the lender's website so that it will be viewed by any Oregon consumer prior to applying for a loan.

(2) After any payment made, in full or in part, on any loan, a short-term personal loan lender shall:

(a) Give the person making payment a signed, dated receipt showing the amount paid to principal, the amount paid to interest, and the balance due on the loan; or

(b) An electronic receipt, a canceled check, or other written instrument approved by the Director as a substitute for the receipt requirements of subsection (a).

(3) If a short-term personal loan licensee does not give a borrower the note marked "Paid or Renewed" in compliance with ORS 725.360(4)(d), the loan agreement must state that the borrower's canceled check will be evidence of payment of the loan. The lender must mark the note "Paid" or "Renewed" and retain the note in the file. An electronic transmission may fulfill the requirements of this section if the loan is made using an electronic medium and the consumer has consented to use of electronic transmission.

(4) A short-term personal loan licensee may not make a loan to an applicant without forming a good faith belief that the applicant has the ability to repay the loan. A licensee will be presumed to have complied if the licensee:

(a) Requires the applicant to provide evidence of a source of funds to repay the loan such as pay stubs, bank statements or similar record or evidence of employment or income;

(b) Establishes the amount of salary or earnings of the applicant and the date of the month on which the applicant receives compensation or funds;

(c) Solicits the applicant for information on the number, amounts and dates of maturity on outstanding loans on which the applicant is the payor or guarantor;

(d) Does not lend more than 25% of the consumer's monthly net income to an applicant that earns $60,000 a year or less. This limitation does not apply to loans made to applicants who have a net income in excess of $60,000 a year. If a loan is based upon anticipated receipt of funds from other sources, the licensee must so note in the file and may lend no more than 25% of the total anticipated funds received by the applicant during the loan period.

(e) Solicits information on the number, amount and dates of maturity of existing outstanding loans.

(5) At the time application is made, a short-term personal loan licensee must provide the borrower with a written statement, in a form approved by the director, clearly describing the results of any default or late payment.

(6) In compliance with ORS 725.615 and 725.622, a short-term personal loan licensee may not renew a loan more than two times and may not make a new loan to a borrower within seven days of the day that a previous payday loan expires.

Example: A borrower borrows $300 for 31 days on July 3 at 36% interest and a $30 origination fee. Unable to pay off the loan on August 3, the borrower pays the $30 origination fee and $9.17 interest ($300 x 0.36 divided by 365 x 31) and renews the loan with a new due date of September 3. Unable to repay the loan on September 3, the borrower again pays $9.17 interest and renews the loan with a new due date of October 4. If the borrower is unable to repay the loan on October 4, no further renewals are allowed, and the lender may not make a new loan to the borrower until October 11.

(7) If the Short-term personal loan licensee has a preexisting business relationship with the borrower in which the licensee has entered into a loan or loans within the previous 12 months that have been satisfactorily repaid in full, the lender may rely on that preexisting relationship to form the good faith belief required under ORS 725.605.

(8) For purposes of the investigation described in ORS 725.140(1), an applicant for a short-term personal loan license must authorize an investigative consumer report as defined in the Fair Credit Reporting Act, 15 USC 1681 et. seq.

(9) No short-term personal loan license shall be issued or renewed unless the applicant or licensee is legally qualified to conduct business in this state by making appropriate filings with the secretary of state.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.360, 725.505, 725.605, 725.615 & 725.622
Hist.: FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0275
Conditions Applicable to Title Loans Made by Short-Term Personal Loan Licensees

(1) Title loan contracts may not provide for the continuation of interest or other charges after repossession.

(2) For loans in default, lenders must send a written notice by first class mail, in a form approved by the Director, to the borrower's last known address 10 days prior to repossession.

(a) The notice must be dated the day it is mailed;

(b) A dated copy of the notice must be placed in the borrower file; and

(c) Repossession may not occur until the 11th day from the date of the notice.

(3) Unless an auctioneer conducts the sale at a public or dealer auction, the lender must obtain at least three bids on the vehicle prior to the sale of a vehicle. The bids must be in writing and contain the identity of the vehicle, the amount of the bid, and the name and address of the bidder.

(4) Lenders may not sell a vehicle to an agent, affiliate, subsidiary, or employee of the licensee.

(5) If a vehicle is sold, the borrower must receive all proceeds, exceeding the debt and reasonable costs associated with the repossession and sale. The lender must deliver the proceeds no later than three business days after they receive the proceeds of the sale. If the vehicle was paid for by a check, the lender may deliver the proceeds within three days after the check has cleared.

(6) The borrower may not be charged any storage charge, regardless of how long the vehicle is held prior to sale, if the vehicle is stored on property owned, leased, or otherwise controlled by the lender.

(7) If more than one person holds title to a vehicle, the vehicle may not be repossessed unless all such persons have signed the necessary loan documents.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.360, 725.505, 725.605 & 725.615
Hist.: FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2004, f. & cert. ef. 8-5-04; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0280
Prohibited Provisions in Loan Contract Provisions

A consumer finance or short-term personal loan licensee may not use a contract evidencing a loan that contains any of the following provisions:

(1) A hold harmless clause;

(2) A confession of judgment or other waiver of the right to notice and the opportunity to be heard in the event of suit or process;

(3) A provision in which the consumer agrees not to assert any claim or defense arising out of the contract against the licensee or any holder in due course.

(4) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the loan.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.360
Hist.: FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 4-2001, f. & cert. ef. 3-27-01; FCS 6-2001(Temp), f. 6-29-01, cert. ef. 7-1-01 thru 12-25-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0310
Refund of Unearned Interest and Charges and Prohibition on Prepayment Penalty

(1) If a borrower pays off a short-term personal loan licensee prior to the due date, the licensee must refund all unearned interest and charges.

(2) For purposes of this rule, the short-term personal loan licensee shall calculate earned interest and charges by multiplying the loan amount by the interest rate and dividing by 365 to find daily interest then multiply that quotient by the number of days from the date the loan was made to the date of pay-off counting the day after the loan was made as the first day.

Example: A borrower gets a loan of $200 on the 5th day of the month at 36% interest and comes on the 25th of the month to pay off the loan. The interest is calculated as follows: $200 x 0.36 = $72 divided by 365 = $0.20 per day x 20 days = $4.00 interest. If the borrower gave you a check on the 5th for the full 31 day term ($206.12), the unearned interest of $2.12 must be refunded. There is no minimum interest amount.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.340 & 725.360

Hist.: FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 13-2001, f. & cert. ef. 12-27-01; FCS 2-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 12-27-07; FCS 3-2009, f. & cert. ef. 6-2-09

441-730-0320
Licensee Reporting

Licensees are required to file their annual reports by June 30 of each year for calendar year 2009. Beginning in calendar year 2010 and thereafter, licensees are required to file their annual report by March 31 of each year. Licensees must also provide known information on any felony conviction, or any conviction involving theft or fraud, of any executive officer, director, managing partner, or the manager of any office location that occurred during the period covered by the report. The report shall cover operations for the period of the previous calendar year. For purposes of this rule, "operations for the period of the previous calendar year" includes any of the following that has not previously been brought to the attention of the director in writing:

(1) A new qualified person or office manager;

(2) A new experienced person;

(3) Material changes in business plan; or

(4) Any criminal conviction entered against any person named in the application.

Stat. Auth.: ORS 725.505
Stats. Implemented: ORS 725.190
Hist.: FCS 2-2001, f. 1-22-01, cert. ef. 3-22-01; FCS 5-2006, f. & cert. ef. 12-21-06; FCS 3-2009, f. & cert. ef. 6-2-09

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

Rule Caption: Adopt changes to Personal Protective Equipment (PPE) rules in general industry, construction, and maritime.
Adm. Order No.: OSHA 5-2009
Filed with Sec. of State: 5-29-2009
Certified to be Effective: 5-29-09
Notice Publication Date: 4-1-2009
Rules Amended: 437-002-0005, 437-002-0080, 437-002-0120, 437-002-0180, 437-002-0360, 437-003-0001, 437-005-0001, 437-005-0002, 437-005-0003
Subject: In this rulemaking, Oregon OSHA is amending its standards to add language clarifying that the personal protective equipment (PPE) and training requirements impose a compliance duty to each and every employee covered by the standards and that noncompliance may expose the employer to liability on a per-employee basis. The amendments consist of new paragraphs added to the introductory sections of the affected rules and changes to the language of some existing respirator and training requirements.

These Federal OSHA changes are in general industry, construction, and maritime and were published in the December 12, 2008 Federal Register.

Please visit OR-OSHA's web site at www.orosha.org
Rules Coordinator: Sue C. Joye—(503) 947-7449

437-002-0005
Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following Federal rules as printed in the **Code of Federal Regulations, 29 CFR 1910**, revised as of 7/1/98, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.1, Purpose and scope; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(2) 29 CFR 1910.2, Definitions; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(3) 29 CFR 1910.3, Petitions for the issuance, amendment, or repeal of a standard; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(4) 29 CFR 1910.4, Amendments to this part; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(5) 29 CFR 1910.5, Applicability of standards; published 6/27/74, Federal Register, vol. 39, no. 125, pp. 23503 23504; amended 6/30/93, FR vol. 58, no. 124, p. 35308.

(6) 29 CFR 1910.6, Incorporation by reference; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23504; amended 2/10/84, FR vol. 49, no. 29, p. 5321; 3/7/96, FR vol. 61, no. 46, p. 9230; 3/23/99, FR vol. 64, no. 55, p. 13908; 9/13/05, FR vol. 70, no. 176, p. 53925; 2/14/07, FR vol. 72, no. 30, p. 7136; 12/14/07, FR vol. 72, no. 240, p. 71061.

(7) 29 CFR 1910.7, Definition and requirements for a Nationally Recognized Testing Laboratory; published 4/12/88, Federal Register, vol. 53, no. 70, pp. 12120-12125; and amended 5/11/88, FR vol. 53, no. 91, p. 16838.

(8) 29 CFR 1910.9, Compliance duties owed to each employee; published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

These standards are on file at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: APD 17-1988, f. & ef. 11-10-88; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 4-2005, f. & cert. ef 12-14-05; OSHA 4-2007, f. & cert. ef. 8-15-07; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 5-2009, f. & cert. ef. 5-29-09

437-002-0080
Adoption by Reference

In addition to and not in lieu of any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1910**, revised as of 7/1/02, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.94 Ventilation, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 5/28/75, FR vol. 40, p. 24522; 6/9/75, FR vol. 40, p. 24522; 10/24/78, FR vol. 43, p. 49746; 2/10/84, FR vol. 49, p. 5322; 8/6/90, FR vol. 55, no. 151, p. 32015; 6/30/93, FR vol. 58, no. 124, p. 35308; 3/7/96, FR vol. 61, no. 46, p. 9236; 1/8/98, FR vol. 63, no. 5, p. 1269; 3/23/99, FR vol. 64, no. 55, p. 13909; amended with AO 3-2003, removed (c), and Oregon note added, f. and ef. 4/21/03; 12/14/07, FR vol. 72, no. 240, p. 71061.

(2) 29 CFR 1910.95 Occupational Noise Exposure, published 6/27/74, Federal Register, vol. 30, p. 23502; amended 1/16/81, FR vol. 46, p. 4161; 12/29/81, FR vol. 46, p. 62845; 3/8/83, FR vol. 48, p. 9776; 6/28/83, FR vol. 48, p. 29687; 6/7/89, FR vol. 54, p. 24333; 3/7/96, FR vol. 61, no. 46, p. 9236; 4/3/06, FR vol. 71, no. 63, p. 16669; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

NOTE: 29 CFR 1910.96 Ionizing radiation, has been redesignated to 29 CFR 1910.1096.

(3) 29 CFR 1910.97 Nonionizing radiation, published 6/27/74, Federal Register, vol. 39, p. 23502; 3/7/96, FR vol. 61, no. 46, p. 9236.

(4) 29 CFR 1910.98 Effective dates, published 6/27/74, Federal Register, vol. 39, p. 23502.

(5) 29 CFR 1910.99 Sources of standards, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 5/28/75, FR vol. 40, p. 23073; 6/11/82, FR vol. 47, p. 25323; 3/7/96, FR vol. 61, no. 46, p. 9236.

(6) 29 CFR 1910.100 Standards organization, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 4/18/75, FR vol. 40, p. 18426; 6/30/93, FR vol. 58, no. 124, p. 35309; 3/7/96, FR vol. 61, no. 46, p. 9236.

NOTE: These standards are on file with the Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 2-1992, f. 2-6-92, cert. ef. 5-1-92; OSHA 4-1993, f. 4-1-93, cert. ef. 5-1-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 3-2003, f. & cert. ef. 4-21-03; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 5-2009, f. & cert. ef. 5-29-09

437-002-0120
Adoption by Reference

In addition to and not in lieu of any other health and safety codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1910**, revised as of 7/1/03, and any subsequent amendments published in the Federal Register and listed below:

(1) 29 CFR 1910.132 General requirements, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 6/30/93, FR vol. 58, no. 124, p. 35306; 4/6/94, FR vol. 59, no. 66, p. 16360; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01; 11/15/07, FR vol. 72, no. 220, p. 64342.

(2) 29 CFR 1910.133 Eye and face protection, published 6/27/74, Federal Register, vol. 39, p. 23502; 4/6/94, FR vol. 59, no. 66, p. 16360; 3/7/96, FR vol. 61, no. 46, p. 9236; 5/2/96, FR vol. 61, p. 19547.

(3) 29 CFR 1910.134 Respiratory protection, published 1/8/98, Federal Register, vol. 63, no. 5, p. 1270; 4/23/98, FR vol. 63, no. 78, p. 20098; 8/4/04, FR vol. 69, p. 46986; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(4) 29 CFR 1910.135 Occupational head protection, published 4/6/94, Federal Register, vol. 59, no. 66, p. 16362; 3/7/96, FR vol. 61, no. 46, p. 9238; 5/2/96, FR vol.61, p. 19547.

(5) 29 CFR 1910.136 Occupational foot protection, published 4/6/94, Federal Register, vol. 59, no. 66, p. 16362; 3/7/96, FR vol. 61, no. 46, p. 9238; 5/2/96, FR vol. 61, p. 19547; 5/9/96; FR vol. 61, p. 21228.

(6) 29 CFR 1910.137 Electrical protective equipment, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 1/31/94, FR vol. 59, no. 20, pp. 4435-7.

(7) 29 CFR 1910.138 Hand Protection, published 4/6/94, Federal Register, vol. 59, no. 66, p. 16362.

(8) 29 CFR 1910.139 Respiratory protection for M. tuberculosis, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49748; 2/10/84, FR vol. 49, p. 5322; 4/30/84, FR vol. 49, p. 18295; 6/30/93, FR vol. 58, no. 124, p. 35309; 1/8/98, FR vol. 63, no. 5, p. 1270. Removed, 12/3/03, FR vol. 68, p. 75776-75780 (OR-OSHA Admin. Order 1-2004, f. 3/26/04, ef. 7/1/04).

(9) Appendices. Appendix A — References for further information (nonmandatory). Appendix B — Nonmandatory compliance guidelines for hazard assessment and personal protective equipment selection.

NOTE: These standards are available from the Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services; and the United States Government Printing Office.
[ED. NOTE: Appendices referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 9-1993, f. 7-29-93, cert. ef. 9-15-93; OSHA 3-1994, f. & cert. ef. 8-1-94; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 1-2004, f. 3-26-04, cert. ef. 7-1-04; OHSA 5-2004, f. & cert. ef. 11-19-04; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09

437-002-0180
Adoption by Reference

In addition to and not in lieu of any other health and safety codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1910**, revised as of 7/1/98, and any subsequent amendments published in the Federal Register as listed below:

(1) 29 CFR 1910.155 Scope, application and definitions applicable to this subpart, published 9/12/80, Federal Register, vol. 45, p. 60704; amended 4/12/88, FR vol. 53, p. 12122.

(2) 29 CFR 1910.156 Fire brigades, published 9/12/80, FR vol. 45, p. 60706; amended 5/1/81, FR vol. 46, p. 24557; 4/30/84, FR vol. 49, p. 18295; 3/7/96, FR vol. 61, no. 46, p. 9239; 1/8/98, FR vol. 63, no. 5, p. 1284; 6/18/98, FR vol. 63, no. 117, p. 33467; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(3) 29 CFR 1910.157 Portable fire extinguishers, published 9/12/80, FR vol. 45, p. 60708; amended 5/1/81, FR vol. 46, p. 24557; 9/29/86, FR vol. 51, p. 34560; 3/7/96, FR vol. 61, no. 46, p. 9239; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01; REPEALED with OR-OSHA Admin. Order 7-2007, f. and ef. 11/8/07.

(4) 29 CFR 1910.158 Standpipe and hose systems, published 9/12/80, FR vol. 45, p. 60710; 3/7/96, FR vol. 61, no. 46, p. 9239.

(5) 29 CFR 1910.159 Automatic sprinkler systems, published 9/12/80, FR vol. 45, p. 60710; amended 5/1/81, FR vol. 46, p. 24557.

(6) 29 CFR 1910.160 Fixed extinguishing systems, general, published 9/12/80, FR vol. 45, p. 60711; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01.

(7) 29 CFR 1910.161 Fixed extinguishing systems, dry chemical, published 9/12/80, FR vol. 45, p. 60712.

(8) 29 CFR 1910.162 Fixed extinguishing systems, gaseous agent, published 9/12/80, FR vol. 45, p. 60712; amended 5/1/81, FR vol. 46, p. 24557.

(9) 29 CFR 1910.163 Fixed extinguishing systems, water spray and foam, published 9/12/80, FR vol. 45, p. 60712.

(10) 29 CFR 1910.164 Fire detection systems, published 9/12/80, FR vol. 45, p. 60713; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01.

(11) 29 CFR 1910.165 Employee alarm systems, published 9/12/80, FR vol. 45, p. 60713.

(12) Appendix A to Subpart L — Fire protection, published 9/12/80, FR vol. 45, p. 60715; amended 5/1/81, FR vol. 46, p. 24557.

(13) Appendix B to Subpart L — National consensus standards, published 9/12/80, FR vol. 45, p. 60715; amended 6/30/93, FR vol. 58, no. 124, p. 35309.

(14) Appendix C to Subpart L — Fire protection references for further information, published 9/12/80, FR vol. 45, p. 60715; amended 6/30/93, FR vol. 58, no. 124, p. 35309.

(15) Appendix D to Subpart L —Availability of publications incorporated by reference in Section 1910.156, Fire Brigades, published 9/12/80, FR vol. 45, p. 60715; amended 6/30/93, FR vol. 58, no. 124, p. 35309; 3/7/96, FR vol. 61, no. 46, p. 9239.

(16) Appendix E to Subpart L — Test methods for protective clothing, published 9/12/80, FR vol. 45, p. 60715; amended 5/1/81, FR vol. 46, p. 24557.

NOTE: These standards are available from the Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services, and the United States Government Printing Office.
Stat. Auth.: ORS 654.025(2), 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Hist.: OSHA 14-1993, f. 8-37-93, cert. ef. 11-1-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 7-2007, f. & cert. ef. 11-8-07; OSHA 5-2009, f. & cert. ef. 5-29-09

437-002-0360
Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1910**, revised as of 7/1/99, and any subsequent amendments published in the Federal Register as listed below:

(1) (Reserved) 29 CFR 1910.1000 Air contaminants, published 6/27/74, Federal Register, vol. 39, pp. 23540 23543; amended in the following FR publications: 5/28/75, vol. 40, pp. 23072 23073; 5/3/77, vol. 42, p. 22525; 1/17/78, vol. 43, p. 2600; 2/10/78, vol. 43, p. 5963; 3/29/78, vol. 43. p. 13563; 5/4/78, vol. 43, p. 19624; 6/23/78, vol. 43, p. 27394; 6/30/78, vol. 43, p. 28473; 10/3/78, vol. 43, p. 45809; 11/14/78, vol. 43, p. 53007; 12/8/78, vol. 43, pp. 57602 57603; 2/5/79, vol. 44, p. 7141; 6/18/80, vol. 45, pp. 12416 12417; 7/28/80, vol. 45, pp. 50328 50329; 6/19/81, vol. 46, p. 32022; 6/22/84, vol. 49, p. 25796; 1/02/85, vol. 50, p. 64; 12/13/85, vol. 50, p. 51173; 11/17/86, vol. 51, p. 41477; 9/11/87, vol. 52, p. 34562; 12/4/87, vol. 52, p. 46291; 1/19/89, vol. 54, pp. 2920 2983; 7/5/89, vol. 54, no. 127, pp. 28054 28061; 9/5/89, vol. 54, no. 170, pp. 36767-36768; 11/15/89, vol. 54, no. 219, p. 47513; 2/5/90, vol. 55, no. 24, pp. 3724; 5/9/90, vol. 55, no. 90, pp. 19258-19259; 11/8/90, vol. 55, no. 217, pp. 46948 46950; 7/1/92, vol. 57, no. 127, pp. 29204 29206. NOTE: 29 CFR 1910.1000 was repealed on 11/15/93 by OR OSHA. In Oregon, OAR 437-002-0382 applies.

(2) 29 CFR 1910.1001 Asbestos, published 6/20/86, Federal Register, vol. 51, no. 119, pp. 22612 22790; amended 10/17/86, FR vol. 51, pp. 37002 37007; amended 5/12/87, FR vol. 52, pp. 17754 17755; amended 9/14/88, FR vol. 53, no. 178, pp. 35610-35627; amended 9/23/88, FR vol. 53, no. 185, p. 37080; amended 7/21/89, FR vol. 54, no. 139, p. 30704 30705; amended 12/20/89, FR vol. 54, no. 243, p. 52028; amended 2/5/90, FR vol. 55, no. 24, pp. 3731 3732; amended 12/10/90, FR vol. 55, no. 237, pp. 50685 50687; amended 9/4/91, FR vol. 56, no. 171, pp. 43699 43700; 3/5/92, FR vol. 57, no. 44, p. 7878; 6/8/92, FR vol. 57, no. 110, p. 24330; 8/10/94, FR vol. 59, no. 153, p. 41065; 6/29/95, FR vol. 60, no. 125, pp. 33983 34002; 8/23/96, FR vol. 61, no. 165, pp. 43434-43459; 1/8/98, FR vol. 63, no. 5, p. 1285; 4/23/98, FR vol. 63, no. 78, p. 20099; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(3) 29 CFR 1910.1002 Coal tar pitch volatiles, interpretation of term, published 1/21/83, Federal Register, vol. 43, p. 2768.

(4) 29 CFR 1910.1003 13 Carcinogens, published 3/7/96, Federal Register, vol. 61, no. 46, p. 9242; 1/8/98, FR vol. 63, no. 5, p. 1286; 4/23/98, FR vol. 63, no. 78, p. 20099; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(5) 29 CFR 1910.1004 See §1910.1003, 13 Carcinogens.

(6) Reserved for 29 CFR 1910.1005.

(7) 29 CFR 1910.1006 See §1910.1003, 13 Carcinogens.

(8) 29 CFR 1910.1007 See §1910.1003, 13 Carcinogens.

(9) 29 CFR 1910.1008 See §1910.1003, 13 Carcinogens.

(10) 29 CFR 1910.1009 See §1910.1003, 13 Carcinogens.

(11) 29 CFR 1910.1010 See §1910.1003, 13 Carcinogens.

(12) 29 CFR 1910.1011 See §1910.1003, 13 Carcinogens.

(13) 29 CFR 1910.1012 See §1910.1003, 13 Carcinogens.

(14) 29 CFR 1910.1013 See §1910.1003, 13 Carcinogens.

(15) 29 CFR 1910.1014 See §1910.1003, 13 Carcinogens.

(16) 29 CFR 1910.1015 See §1910.1003, 13 Carcinogens.

(17) 29 CFR 1910.1016 See §1910.1003, 13 Carcinogens.

(18) 29 CFR 1910.1017 Vinyl chloride, published 10/4/74, Federal Register, vol. 39, p. 35896; amended by the following FR publications: 12/3/74, FR vol. 39, p. 41848; 3/25/75, FR vol. 40, p. 13211; 5/28/75, FR vol. 40, p. 23072; 10/24/78, FR vol. 43, p. 49751; 5/23/80, FR vol. 45, p. 35282; 6/7/89, FR vol. 54, p. 24334; 6/30/93, FR vol. 58, no. 124, p. 35310; 1/8/98, FR vol. 63, no. 5, p. 1286; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR

vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(19) 29 CFR 1910.1018 Inorganic arsenic, published 5/25/78, Federal Register, vol. 43, p. 19624; amended by the following FR publications: 6/30/78, FR vol. 43, p. 28472; 5/23/80, FR vol. 45, p. 35282; 6/7/89, FR vol. 54, p. 24334; 6/30/93, FR vol. 58, no. 124, p. 35310; 3/7/96, FR vol. 61, no. 46, p. 9245; 1/8/98, FR vol. 63, no. 5, p. 1286; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(20) 29 CFR 1910.1020 Access to Employee Exposure and Medical Records, published May 23, 1980, Federal Register, vol. 45, no. 102, pp. 35277 35281; amended September 29, 1988, Federal Register, vol. 53, no. 189, pp. 38163 38168; 3/7/96, FR vol. 61, no. 46, p. 9235; 6/20/96, FR vol. 61, p. 31427; 4/3/06, FR vol. 71, no. 63, p. 16669. Appendix A Sample Authorization Letter. Appendix B Availability of NIOSH RTECS.

(21) 29 CFR 1910.1025 Lead, published 11/14/78, Federal Register, vol. 44, p. 53007; amended by the following FR publications: 1/26/79, vol. 44, p. 5447; 3/13/79, vol. 44, p. 14554; 8/28/79, vol. 44 p. 50338; 10/23/79, vol. 44, p. 60981; 11/30/79, vol. 44, 68828; 5/23/80, vol. 45, p. 35283; 12/11/81, vol. 46, p. 60775; 11/12/82, vol. 47, p. 51117; 3/6/83, vol. 48, p. 9641; 4/30/84, vol. 49, p. 18295; 6/5/84, vol. 49, p. 23175; 6/5/84, vol. 49, p. 23175; and modified by OSHA Instruction CPL 2 2.47 published by the U. S. Department of Labor on 1/5/89. Amended 7/11/89, vol. 54, p. 29142; 1/30/90, vol. 55, no. 20, pp. 3166 3167; 2/13/90, vol. 55, no. 30, pp. 4998 4999; modification of OSHA Instruction CPL 2 2.47, published by Office of Health Compliance Assistance, OSHA, on 7/10/90. Amended 5/31/91, FR vol. 56, no. 105, p. 24686; amended 10/11/95, FR vol. 60, p. 52856; 1/8/98, FR vol. 63, no. 5, p. 1287; 4/23/98, FR vol. 63, no. 78, p. 20099; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(22) 29 CFR 1910.1026 Chromium (VI), published 2/28/06, Federal Register, vol. 71, no. 39, p. 10100; 6/23/06, FR vol. 71, no. 121, p. 36008; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(23) 29 CFR 1910.1027 Cadmium, published 9/14/92, Federal Register, vol. 57, no. 178, pp. 42388 42453; corrections published 4/23/93, FR vol. 58, no. 77, pp. 21778 21787; 1/8/98, FR vol. 63, no. 5, p. 1288; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(24) 29 CFR 1910.1028 Benzene, and Appendices A, B, C, D, and E, published 9/11/87, Federal Register, vol. 52, no. 176, pp. 34562 34578; 1/8/98, FR vol. 63, no. 5, p. 1289; 4/23/98, FR vol. 63, no. 78, p. 20099; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(25) 29 CFR 1910.1029 Coke oven emissions, published 10/22/76, Federal Register, vol. 41, p. 46784; amended by the following FR publications: 1/18/77, FR vol. 42, p. 3304; 5/23/80, FR vol. 45, p. 35283; 9/13/85, FR vol. 50, p. 37353; 6/7/89, FR vol. 54, p. 24334; 1/8/98, FR vol. 63, no. 5, p. 1290; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(26) 29 CFR 1910.1030 Bloodborne pathogens, published 12/6/91, Federal Register, vol. 56, no. 235, pp. 64175 64182; amended 7/1/92, vol. 57, no. 127, p. 29206; 1/18/01, FR vol. 66, no. 12, p. 5318; 4/3/06, FR vol. 71, no. 63, p. 16669; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(27) 29 CFR 1910.1043 Cotton dust, published 6/23/78, Federal Register, vol. 43, p. 27394; amended by the following FR publications: 8/8/78, FR vol. 43, p. 35035; 10/10/80, FR vol. 45, p. 67340; 12/13/85, FR vol. 50, p. 51173; 7/3/86, FR vol. 51, p. 24325; 6/7/89, FR vol. 54, p. 24334; 1/8/98, FR vol. 63, no. 5, p. 1290; 12/7/00, FR vol. 65, no. 236, p. 76563; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(28) 29 CFR 1910.1044 1,2 dibromo-3 chloropropane, published 3/17/78, Federal Register, vol. 43, p. 11527; amended by the following FR publications: 5/23/80, FR vol. 45, p. 35283; 4/30/84, FR vol. 49, p. 18295; 6/7/89, FR vol. 54, p. 24334; 6/30/93, FR vol. 58, no. 124, p. 35310; 1/8/98, FR vol. 63, no. 5, p. 1291; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(29) 29 CFR 1910.1045 Acrylonitrile, published 10/3/78, Federal Register, vol. 43, p. 45809; amended by the following FR publications: 5/23/80, FR vol. 45, p. 35283; 6/7/89, FR vol. 54, p. 24334; 6/30/93, FR vol. 58, no. 124, p. 35310; 1/8/98, FR vol. 63, no. 5, p. 1291; 4/23/98, FR vol. 63, no. 78, p. 20099; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(30) 29 CFR 1910.1047 Ethylene oxide, published 6/22/84, Federal Register, vol. 49, p. 25796; amended 3/12/85, FR vol. 50, p. 9801; amended 10/11/85, FR vol. 50, p. 41494; amended 7/10/86, FR vol. 51, p. 25053; amended 4/6/88, FR vol. 53, p. 11437; amended 7/26/88, FR vol. 53, p. 27960; 1/8/98, FR vol. 63, no. 5, p. 1292; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(31) 29 CFR 1910.1048 Formaldehyde, and Appendices A, B, C, D and E, published 12/4/87, Federal Register, vol. 52, no. 233, pp. 46291 46312; and amendments to 1910.1048 published 3/2/88, FR vol. 53, no. 41, pp. 6628 6629; 11/8/88, FR vol. 53, pp. 45080 45088; 11/22/88, FR vol. 53, p. 47188; 7/13/89, FR vol. 54, no. 133, pp. 29545 29546; 8/1/89, FR vol. 54, No. 146, p. 31765; 8/29/89, FR vol. 54, p. 35639; 9/11/89, FR vol. 54, p. 37531; 10/24/89, vol. 54, pp. 43344 43346; 6/13/90, FR vol. 55, no. 114, p. 24070; 8/10/90, FR vol. 55, no. 155, p. 32616; 12/17/90, FR vol. 55, no. 242, p. 51698; 3/12/91, FR vol. 56, no. 48, pp. 10377 8; 6/12/91, FR vol. 56, no. 113, p. 26909; 8/8/91, FR vol. 56, no. 153, p. 37650 1, 11/13/91, FR vol. 56, no. 219, p. 57593; 1/23/92, FR vol. 57, no. 15, p. 2681 2; 5/5/92, FR vol. 57, no. 87, p. 19262; 5/27/92, FR vol. 57, no. 102, pp. 22307 9; 6/10/92, FR vol. 57, no. 112, p. 24701; 6/18/92, FR vol. 57, no. 118, pp. 27160 1; 1/8/98, FR vol. 63, no. 5, p. 1293; 4/23/98, FR vol. 63, no. 78, p. 20099; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(32) 29 CFR 1910.1050 Methylenedianiline (MDA), published 8/10/92, Federal Register, vol. 57, no. 154, pp. 35666 35681; 1/8/98, FR vol. 63, no. 5, p. 1293; 4/23/98, FR vol. 63, no. 78, p. 20099; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(33) 29 CFR 1910.1051 1,3-Butadiene, published 11/4/96, Federal Register, vol. 61, no. 214, p. 56831; 1/8/98, FR vol. 63, no. 5, p. 1294; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(34) 29 CFR 1910.1052 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1601; 10/20/97, FR vol. 62, p. 54382; 12/18/97, FR vol. 62, no. 243, p. 66275; 1/8/98, FR vol. 63, no. 5, p. 1295; 4/23/98, FR vol. 63, no. 78, p. 20099; 9/22/98, FR vol. 63, no. 183, p. 50729; amended by AO 12-2001, reference typo corrected, f. and ef. 10/26/01; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(**NOTE:** 29 CFR 1910.1101 Asbestos, was repealed by Federal Register, vol. 57, no. 110, issued 6/8/92, p. 24330.)

(35) 29 CFR 1910.1096 Ionizing radiation, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49746; 11/7/78, FR vol. 43, p. 51759; 4/30/84, FR vol. 49, p. 18295; 6/30/93, FR vol. 58, no. 124, p. 35309; 6/20/96, FR vol. 61, no. 46, p. 31427.

(36) 29 CFR 1910.1200 Hazard communication, published 8/24/87, Federal Register, vol. 52, p. 31877; amended by the following FR publications: 12/4/87, FR vol. 52, p. 46080; 4/27/88, FR vol. 53, p. 15035; 2/15/89, FR vol. 54, p. 6888; 6/7/89, FR vol. 54, p. 24334; 2/9/94, FR vol. 59, no. 27, pp. 6126-6184; 4/13/94, FR vol. 59, no. 71, pp. 17478; 12/22/94, FR vol. 59, no. 245, p. 65947; 3/7/96, FR vol. 61, no. 46, p. 9245.

(37) 29 CFR 1910.1201 Retention of DOT Markings, Placards and Labels, published 7/19/94, Federal Register, vol. 59, p. 36700.

(38) 29 CFR 1910.1450 Occupational Exposure to Hazardous Chemicals in Laboratories, published 1/31/90, Federal Register, vol. 55 no. 21, pp. 3300 3335; corrected 3/6/90, FR vol. 55, no. 44, p. 7967; 7/1/92, vol. 57, no. 127, p. 29204; 4/3/06, FR vol. 71, no. 63, p. 16669.

(39) 29 CFR 1910.1499 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9245.

(40) 29 CFR 1910.1500 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9245.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 13-1988, f. 8-2-88 & ef. 8-2-88; APD 14-1988, f. & ef. 9-12-88; APD 18-1988, f. & ef. 11-17-88; APD 4-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 6-1989(Temp), f. 4-20-89, ef. 5-1-89; APD 9-1989, f. & ef. 7-7-89; APD 11-1989, f. 7-14-89, ef. 8-14-89; APD 13-1989, f. & ef. 7-17-89; OSHA 1-1990(Temp), f. & ef. 1-11-90; OSHA 3-1990(Temp), f. & ef. 1-19-90; OSHA 6-1990, f. & ef. 3-2-90; OSHA 7-1990, f. & ef. 3-2-90; OSHA 9-1990, f. 5-8-90, ef. 8-8-90; OSHA 11-1990, f. 6-7-90, ef. 7-1-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 14-1990, f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & ef. 8-31-90; OSHA 20-1990, f. & ef. 9-18-90; OSHA 21-1990, f. & ef. 9-18-90; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 13-1991, f. & cert. ef. 10-10-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 1-1992, f. & cert. ef. 1-22-92; OSHA 4-1992, f. & cert. ef. 4-16-92; OSHA 5-1992, f. 4-24-92, cert. ef. 7-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 9-1992(Temp), f. & cert. ef. 9-24-92; OSHA 11-1992, f. & cert. ef. 10-9-92; OSHA 12-1992, f. & cert. ef. 10-13-92; OSHA 14-1992, f. & cert. ef. 12-7-92; OSHA 15-1992, f. & cert. ef. 12-30-92; OSHA 1-1993, f. &

cert. ef. 1-22-93; OSHA 6-1993(Temp), f. & cert. ef. 5-17-93; OSHA 12-1993, f. 8-20-93, cert. ef. 11-1-93; OSHA 17-1993, f. & cert. ef. 11-15-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 4-1996, f. & cert. ef. 9-13-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 8-1997, f. & cert. ef. 11-14-97; OSHA 1-1998, f. & cert. ef. 2-13-98; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 1-1999, f. & cert. ef. 3-22-99; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-2001, f. & cert. ef. 5-15-01; OSHA 10-2001, f. 9-14-01, cert. ef. 10-18-01; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 5-2009, f. & cert. ef. 5-29-09

437-003-0001
Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1926**, revised as of 7/1/99, and any subsequent amendments published in the Federal Register as listed below:

(1) Subdivision A — GENERAL:

(a) 29 CFR 1926.1 Purpose and Scope, published 2/9/79, Federal Register (FR), vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.2 Variances from safety and health standards, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.3 Inspections — right of entry, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.4 Rules of practice for administrative adjudications for enforcement of safety and health standards, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(2) Subdivision B — GENERAL INTERPRETATIONS:

(a) 29 CFR 1926.10 Scope of subpart, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.11 Coverage under section 103 of the act distinguished, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.12 Reorganization plan No. 14 of 1950, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.13 Interpretation of statutory terms, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.14 Federal contracts for 'mixed' types of performance, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.15 Relationship to the service contract act; Walsh-Healey Public Contracts Act, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.16 Rules of construction, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(3) Subdivision C — GENERAL SAFETY AND HEALTH PROVISIONS:

(a) 29 CFR 1926.20 General safety and health provisions, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(b) 29 CFR 1926.21 Safety training and education, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.22 Recording and reporting of injuries (Reserved)

(d) 29 CFR 1926.23 First aid and medical attention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.24 Fire protection and prevention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.25 Housekeeping, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.26 Illumination, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.27 Sanitation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.28 Personal protective equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.29 Acceptable certifications, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.30 Shipbuilding and ship repairing, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9249.

(l) 29 CFR 1926.31 Incorporation by reference, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9249; 6/18/98, FR vol. 63, no. 117, p. 33468.

(m) 29 CFR 1926.32 Definitions, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35078.

(n) 29 CFR 1926.33 Access to employee exposure and medical records, published 6/20/96, FR vol. 61, no. 46, p. 31427.

(o) 29 CFR 1926.34 Means of egress, published 6/30/93, Federal Register, vol. 58, no. 124, p. 35083.

(4) Subdivision D — OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROLS:

(a) 29 CFR 1926.50 Medical services and first aid, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/18/98, FR vol. 63, no. 117, p. 33469.

(b) 29 CFR 1926.51 Sanitation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35084.

(c) 29 CFR 1926.52 Occupational noise exposure, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.53 Ionizing radiation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.54 Nonionizing radiation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.55 Gases, vapors, fumes, dusts, and mists, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/17/86, FR vol. 51, p. 37007; 12/4/87, FR vol. 52, p. 46312; 11/4/96, FR vol. 61, no. 214, p. 56856; 1/10/97, FR vol. 62, no. 7, p. 1619.

(g) 29 CFR 1926.56 Illumination, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.57 Ventilation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35099; 3/7/96, FR vol. 61, no. 46, p. 9250; 1/8/98, FR vol. 63, no. 5, p. 1295.

(i) 29 CFR 1926.58 Reserved, §1926.58, Asbestos, tremolite, anthophyllite and actinolite is redesignated as §1926.1101, Asbestos, and §1926.58 is reserved (8/10/94, FR vol. 59, no. 153, pp. 41131-62).

(j) 29 CFR 1926.59 Hazard Communication, published 8/24/87, FR vol. 52, p. 31852; amended 12/4/87, FR vol. 52, 46075; 4/27/88, FR vol. 53, no. 81, pp. 15033-15035; stay lifted on 2/17/89, FR vol. 54, p. 6886; 2/9/94, FR vol. 59, no. 27, pp. 6126-6184; 4/13/94, FR vol. 59, no. 71, pp. 17478-17479; 12/22/94, FR vol. 59, no. 245, p. 65947; 6/20/96, FR vol. 61, p. 31427.

(k) 29 CFR 1926.60 Methylenedianiline (MDA), published 8/10/92, FR vol. 57, no. 154, pp. 35681-35695; 6/20/96, FR vol. 61, p. 31427; 1/8/98, FR vol. 63, no. 5, p. 1296; 12/6/04, FR vol. 69, p. 70373; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(l) 29 CFR 1926.61 Retention of DOT markings, placards and labels, published 7/19/94, FR vol. 59, no. 137, pp. 36700; 6/20/96, FR vol. 61, p. 31427.

(m) 29 CFR 1926.62 Lead, published 5/4/93, FR vol. 58, no. 84, pp. 26626-26649; 1/8/98, FR vol. 63, no. 5, p. 1296; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

NOTE: Cadmium has been redesignated as §1926.1127.

(n) 29 CFR 1926.65 Hazardous Waste Operations and Emergency Response.

NOTE: Division 2/H, 1910.120, Hazardous Waste Operations and Emergency Response, applies to Construction.

(5) Subdivision E — PERSONAL PROTECTIVE AND LIFE SAVING EQUIPMENT:

(a) 29 CFR 1926.95 Criteria for personal protective equipment, published 6/30/93, Federal Register, vol. 58, p. 35152; 11/15/07, FR vol. 72, no. 220, p. 64342.

(b) 29 CFR 1926.100 Head protection, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.101 Hearing protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.102 Eye and face protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35160.

(e) 29 CFR 1926.103 Respiratory protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 1/8/98, FR vol. 63, no. 5, p. 1297.

NOTE: 29 CFR 1926.104 Removed, 8/9/94, FR vol. 59, no. 152, p. 40729.

(f) 29 CFR 1926.105 Reserved, 8/9/94, FR vol. 59, no. 152, p. 40729.

(g) 29 CFR 1926.106 Working over or near water, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.107 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 8/9/94, FR vol. 59, no. 152, p. 40729.

(6) Subdivision F — FIRE PROTECTION AND PREVENTION:

(a) 29 CFR 1926.150 Fire protection, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.151 Fire prevention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, p. 25318.

(c) 29 CFR 1926.152 Flammable and combustible liquids, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/18/98, FR vol. 63, no. 117, p. 33469; 6/30/93, FR vol. 58, no. 124, p. 35162.

(d) 29 CFR 1926.153 Liquefied petroleum gas (LP-Gas), published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35170.

(e) 29 CFR 1926.154 Temporary heating devices, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.155 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(7) Subdivision G — SIGNS, SIGNALS, AND BARRICADES

(a) 29 CFR 1926.200 Accident prevention signs and tags, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35173; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(b) 29 CFR 1926.201 Signaling, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(c) 29 CFR 1926.202 Barricades, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(d) 29 CFR 1926.203 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(8) Subdivision H — MATERIALS HANDLING, STORAGE, USE AND DISPOSAL:

(a) 29 CFR 1926.250 General requirements for storage, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 8/9/94, FR vol. 59, no. 152, p. 40729; 6/30/93, FR vol. 58, no. 124, p. 35173.

(b) 29 CFR 1926.251 Rigging equipment for material handling, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35173.

(c) 29 CFR 1926.252 Disposal of waste materials, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(9) Subdivision I — TOOLS — HAND AND POWER:

(a) 29 CFR 1926.300 General requirements, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35076; 3/7/96, FR vol. 61, no. 46, p. 9250.

(b) 29 CFR 1926.301 Hand tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.302 Power operated hand tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35175.

(d) 29 CFR 1926.303 Abrasive wheels and tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35175.

(e) 29 CFR 1926.304 Woodworking tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9251.

(f) 29 CFR 1926.305 Jacks — lever and ratchet, screw, and hydraulic, published Federal Register vol. 58, no. 124, p. 35176.

(10) Subdivision J — WELDING AND CUTTING

(a) 29 CFR 1926.350 Gas welding and cutting, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35179.

(b) 29 CFR 1926.351 Arc welding and cutting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, p. 25318.

(c) 29 CFR 1926.352 Fire prevention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.353 Ventilation and protection in welding, cutting, and heating, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35179.

(e) 29 CFR 1926.354 Welding, cutting, and heating in way of preservative coatings, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(11) Subdivision K — ELECTRICAL:

(a) 29 CFR 1926.400 Introduction, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(b) 29 CFR 1926.401 (Reserved);

(c) 29 CFR 1926.402 Applicability, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(d) 29 CFR 1926.403 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(e) 29 CFR 1926.404 Wiring design and protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; amended with AO 5-2002, repeal (b)(1), f. 6/28/02, ef. 10/1/03.

(f) 29 CFR 1926.405 Wiring methods, components, and equipment for general use, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(g) 29 CFR 1926.406 Specific purpose equipment and installations, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(h) 29 CFR 1926.407 Hazardous (classified) locations, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(i) 29 CFR 1926.408 Special systems, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(j) 29 CFR 1926.409 (Reserved);

(k) 29 CFR 1926.415 (Reserved);

(l) 29 CFR 1926.416 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; 6/30/93, FR vol. 58, no. 124, p. 35179; 3/7/96, FR vol. 61, no. 46, p. 9251; 8/12/96, FR vol. 61, no. 156, p. 41738.

(m) 29 CFR 1926.417 Lockout and tagging of circuits, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; 6/30/93, FR vol. 58, no. 124, p. 35181; 3/7/96, FR vol. 61, no. 46, p. 9251; 8/12/96, FR vol. 61, no. 156, p. 41739.

(n) 29 CFR 1926.418 (Reserved);

(o) 29 CFR 1926.430 (Reserved);

(p) 29 CFR 1926.431 Maintenance of equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(q) 29 CFR 1926.432 Environmental deterioration of equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(r) 29 CFR 1926.433 - 29 CFR 1926.440 (Reserved);

(s) 29 CFR 1926.441 Battery locations and battery charging, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(t) 29 CFR 1926.442 - 29 CFR 1926.448 (Reserved);

(u) 29 CFR 1926.449 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(12) Subdivision L — SCAFFOLDING:

(a) 29 CFR 1926.450 Scope, application and definitions applicable to this subpart, published 8/30/96, FR vol. 61, no. 170, p. 46104.

(b) 29 CFR 1926.451 General requirements, published 8/30/96, FR vol. 61, no. 170, p. 46107; 11/25/96, FR vol. 61, no. 228, p. 59831.

(c) 29 CFR 1926.452 Additional requirements applicable to specific types of scaffolds, published 8/30/96, FR vol. 61, no. 170, p. 46113.

(d) 29 CFR 1926.453 Aerial lifts, published 8/30/96, FR vol. 61, no. 170, p. 46116; 11/25/96, FR vol. 61, no. 228, p. 59832.

(e) 29 CFR 1926.454 Training, published 8/30/96, FR vol. 61, no. 170, p. 46117.

(f) Appendix A to Subpart L Scaffold Specifications, published 8/30/96, FR vol. 61, no. 170, p. 46117.

(g) Appendix B to Subpart L Criteria for determining the feasibility of providing safe access and fall protection for scaffold erectors and dismantlers (Reserved), published 8/30/96, FR vol. 61, no. 170, p. 46122.

(h) Appendix C to Subpart L List of National Consensus Standards, published 8/30/96, FR vol. 61, no. 170, p. 46122.

(i) Appendix D to Subpart L List of training topics for scaffold erectors and dismantlers, published 8/30/96, FR vol. 61, no. 170, p. 46122.

(j) Appendix E to Subpart L Drawing and illustrations, published 8/30/96, FR vol. 61, no. 170, p. 46122; 11/25/96, FR vol. 61, no. 228, p. 59832.

(13) Subdivision M — FALL PROTECTION:

(a) 29 CFR 1926.500 Scope, application, and definitions applicable to this subpart. Amended 8/9/94, FR vol. 59, no. 152, p. 40730-40731; 1/18/01, FR vol. 66, no. 12, p. 5265; 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02.

(b) 29 CFR 1926.501 Duty to have fall protection. Amended 8/9/94, FR vol. 59, no. 152, p. 40732-40733; amended 2/5/01 (Oregon Exceptions); amended with AO 6-2002, f. and ef. 7/19/02.

(c) 29 CFR 1926.502 Fall protection systems criteria and practices. Amended 8/9/94, FR vol. 59, no. 152, p. 40733-40738; amended with AO 6-2002, f. and ef. 7/19/02.

(d) 29 CFR 1926.503 Training requirements. Amended 8/9/94, FR vol. 59, no. 152, p. 40738; REPEALED with AO 6-2002, f. and ef. 7/19/02, replaced with OI.

(e) Appendix A to Subpart M Determining Roof Widths, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; amended 8/9/94, FR vol. 59, no. 152, p. 40738-40742.

(f) Appendix B to Subpart M Guardrail Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743.

(g) Appendix C to Subpart M Personal Fall Arrest Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743-40746.

(h) Appendix D to Subpart M Positioning Device Systems, published 8/9/94, FR vol. 59, no. 152, p. 40746.

(14) Subdivision N — CRANES, DERRICKS, HOISTS, ELEVATORS, AND CONVEYORS

(a) 29 CFR 1926.550 Cranes and derricks, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 4/6/82, FR vol. 47, p. 14706; 8/2/88, FR vol. 53, p. 29139; 4/18/89, FR vol. 54, no. 73, p. 15405; 8/9/94, FR vol. 59, no. 152, p. 40730; 6/30/93, FR vol. 58, no. 124, p. 35183.

(b) 29 CFR 1926.551 Helicopters, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.552 Material hoists, personnel hoists, and elevators, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.553 Base-mounted drum hoist, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.554 Overhead hoists, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.555 Conveyors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(15) Subdivision O — MOTOR VEHICLES, MECHANIZED EQUIPMENT, AND MARINE OPERATIONS

(a) 29 CFR 1926.600 Equipment, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35183.

(b) 29 CFR 1926.601 Motor vehicles, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; REPEALED by OR-OSHA Admin. Order 6-2007, f. 9/26/07, ef. 9/26/07.

(c) 29 CFR 1926.602 Material handling equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35183; 12/1/98, FR vol. 63, no. 230, p. 66274; amended by AO 7-2003, f. 12/5/03, ef. 12/5/03.

(d) 29 CFR 1926.603 Pile driving equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.604 Site clearing, published 6/24/74, FR vol. 39, p. 22801; amended 7/22/77, FR vol. 42, p. 37674.

(f) 29 CFR 1926.605 Marine operations and equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.606 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(16) Subdivision P – EXCAVATIONS:

(a) 29 CFR 1926.650 Scope, application, and definitions applicable to this subdivision, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/31/89, FR vol. 54, no. 209, pp. 45959-45961.

(b) 29 CFR 1926.651 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/31/89, FR vol. 54, no. 209, pp. 45960-45961; 8/9/94, FR vol. 59, no. 152, p. 40730.

(c) 29 CFR 1926.652 Requirements for protective systems, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/31/89, FR vol. 54, no. 209, pp. 45961-45962.

(d) Appendices A-F to Subdivision P, Excavations, published 10/31/89, FR vol. 54, no. 209, pp. 45962-45991.

(17) Subdivision Q — CONCRETE AND MASONRY CONSTRUCTION

(a) 29 CFR 1926.700 Scope, application and definitions applicable to this subpart, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/16/88, FR vol. 53, p. 22612; 10/18/90, FR vol. 55, no. 202, p. 42326.

(b) 29 CFR 1926.701 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/16/88, FR vol. 53, p. 22612; 8/9/94, FR vol. 59, no. 152, p. 40730.

(c) 29 CFR 1926.702 Requirements for equipment and tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/16/88, FR vol. 53, p. 22612.

(d) 29 CFR 1926.703 Requirements for cast-in-place concrete, published 6/16/88, FR vol. 53, p. 22612.

(e) 29 CFR 1926.704 Requirements for precast concrete, published 6/16/88, FR vol. 53, p. 22612; amended 10/5/89, FR vol. 54, no. 192, p. 41088.

(f) 29 CFR 1926.705 Requirements for lift-slab construction operations, published 6/16/88, FR vol. 53, p. 22612; amended 10/18/90, FR vol. 55, no. 202, p. 42326.

(g) Appendix A to 1926.705 Lift-slab operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.

(h) 29 CFR 1926.706 Requirements for masonry construction, published 6/16/88, FR vol. 53, p. 22612; amended with OR-OSHA Admin. Order 1-2003, f. 1/30/03, ef. 4/30/03.

(18) Subdivision R — STEEL ERECTION:

(a) 29 CFR 1926.750 Scope, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(b) 29 CFR 1926.751 Definitions, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(c) 29 CFR 1926.752 Site layout, site-specific erection plan and construction sequence, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(d) 29 CFR 1926.753 Hoisting and rigging, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(e) 29 CFR 1926.754 Structural steel assembly, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04; amended 1/18/06, FR vol. 71, no. 11, p. 2879; 4/3/06, FR vol. 71, no. 63, p. 16669.

(f) 29 CFR 1926.755 Column anchorage, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(g) 29 CFR 1926.756 Beams and columns, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(h) 29 CFR 1926.757 Open web steel joists, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(i) 29 CFR 1926.758 Systems-engineered metal buildings, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(j) 29 CFR 1926.759 Falling object protection, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(k) 29 CFR 1926.760 Fall protection, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(l) 29 CFR 1926.761 Training, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(m) Appendix A to Subpart R Guidelines for establishing the components of a site-specific erection plan: Nonmandatory Guidelines for Complying with §1926.752(e), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(n) Appendix B to Subpart R Reserved.

(o) Appendix C to Subpart R Illustrations of bridging terminus points: Nonmandatory Guidelines for Complying with §1926.757(a)(10) and §1926.757(c)(5), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(p) Appendix D to Subpart R Illustration of the use of control lines to demarcate controlled decking zones (CDZs): Nonmandatory Guidelines for Complying with §1926.760(c)(3), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(q) Appendix E to Subpart R Training: Nonmandatory Guidelines for Complying with §1926.761, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(r) Appendix F to Subpart R Perimeter columns: Nonmandatory Guidelines for Complying with §1926.756(e) to Protect the Unprotected Side or Edge of a Walking/Working Surface, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(s) Appendix G to Subpart R Fall protection systems criteria and practices from §1926.502: Nonmandatory Guidelines for Complying with Complying with §1926.760(d), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(t) Appendix H to Subpart R Double connections: Illustration of a clipped end connection and a staggered connection: Non-Mandatory Guidelines for Complying with Complying with §1926.756(c)(1), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(19) Subdivision S — UNDERGROUND CONSTRUCTION, CAISSONS, COFFERDAMS, AND COMPRESSED AIR

(a) 29 CFR 1926.800 Tunnels and shafts, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940. Underground Construction, published 6/2/89, FR vol. 54, no. 105, p. 23824; 1/8/98, FR vol. 63, no. 5, p. 1297; 4/3/06, FR vol. 71, no. 63, p. 16669.

(b) 29 CFR 1926.801 Caissons, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.802 Cofferdams, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.803 Compressed air, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, p. 25318.

(e) 29 CFR 1926.804 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) Appendix A to Subpart S Decompression Tables, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(20) Subdivision T — DEMOLITION:

(a) 29 CFR 1926.850 Preparatory operations, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.851 Stairs, passageways, and ladders, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.852 Chutes, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.853 Removal of materials through floor openings, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.854 Removal of walls, masonry sections, and chimneys, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.855 Manual removal of floors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.856 Removal of walls, floors, and materials with equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.857 Storage, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.858 Removal of steel construction, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.859 Mechanical demolition, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.860 Selective demolition by explosives, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(21) Subdivision U — BLASTING AND USE OF EXPLOSIVES

(a) 29 CFR 1926.900 General provisions, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.901 Blaster qualifications, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.902 Surface transportation of explosives, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35311.

(d) 29 CFR 1926.903 Underground transportation of explosives, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.904 Storage of explosives and blasting agents, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35311.

(f) 29 CFR 1926.905 Loading of explosives or blasting agents, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35184.

(g) 29 CFR 1926.906 Initiation of explosive charges – electric blasting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/18/98, FR vol. 63, no. 117, p. 33469.

(h) 29 CFR 1926.907 Use of safety fuse, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.908 Use of detonating cord, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.909 Firing the blast, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.910 Inspection after blasting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(l) 29 CFR 1926.911 Misfires, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(m) 29 CFR 1926.912 Underwater blasting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(n) 29 CFR 1926.913 Blasting in excavation work under compressed air, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(o) 29 CFR 1926.914 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35184, 35311.

(22) Subdivision V — POWER TRANSMISSION AND DISTRIBUTION

(a) 29 CFR 1926.950 General requirements, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.951 Tools and protective equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 8/9/94, FR vol. 59, no. 152, p. 40730.

(c) 29 CFR 1926.952 Mechanical equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.953 Material handling, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.954 Grounding for protection of employees, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.955 Overhead lines, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.956 Underground lines, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.957 Construction in energized substations, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.958 External load helicopters, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.959 Lineman's body belts, safety straps, and lanyards, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.960 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(23) Subdivision W — ROLLOVER PROTECTIVE STRUCTURES: OVERHEAD PROTECTION

(a) 29 CFR 1926.1000 Rollover protective structures (ROPS) for material handling equipment, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.1001 Minimum performance criteria for rollover protective structure for designated scrapers, loaders, dozers, graders, and crawler tractors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.1002 Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9251; 12/29/05, FR vol. 70, no. 249, p. 76979; 2/28/06, FR vol. 71, no. 39, p. 9909; 7/20/06, FR vol. 71, no. 139, p. 41127..

(d) 29 CFR 1926.1003 Overhead protection for operators of agricultural and industrial tractors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9251; 12/29/05, FR vol. 70, no. 249, p. 76979; 2/28/06, FR vol. 71, no. 39, p. 9909.

(24) Subdivision X — STAIRWAYS AND LADDERS:

(a) 29 CFR 1926.1050 Scope, application and definitions applicable to this Subdivision, published 11/14/90, Federal Register, vol. 55, no. 220, p. 47687; amended 1/23/91, FR vol. 56, no. 15, p. 2585; 6/30/93, FR vol. 58, no. 124, p. 35184.

(b) 29 CFR 1926.1051 General requirements, published 11/14/90, FR vol. 55, no. 220, p. 47688.

(c) 29 CFR 1926.1052 Stairways, published 11/14/90, FR vol. 55, no. 220, p. 47688; amended 1/23/91, FR vol. 56, no. 15, p. 2585; 2/7/91, FR vol. 56, no. 26, p. 5061; 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.

(d) 29 CFR 1926.1053 Ladders, published 11/14/90, FR vol. 55, no. 220, p. 47689; amended 1/23/91, FR vol. 56, no. 15, p. 2585; 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.

(e) 29 CFR 1926.1054 (Reserved);

(f) 29 CFR 1926.1055 (Reserved);

(g) 29 CFR 1926.1056 (Reserved);

(h) 29 CFR 1926.1057 (Reserved);

(i) 29 CFR 1926.1058 (Reserved);

(j) 29 CFR 1926.1059 (Reserved).

(k) 29 CFR 1926.1060 Training requirements, published 11/14/90, FR vol. 55, no. 220, p. 47691.

(25) Subdivision Z — TOXIC AND HAZARDOUS SUBSTANCES

(a) 29 CFR 1926.1101 Asbestos, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/20/86, FR vol. 51, p. 22612; 10/17/86, FR vol. 52, p. 17756; 7/20/88, FR vol. 53, no. 138, p. 27346; 9/14/88, FR vol. 53, p. 35627; 9/23/88, FR vol. 53, no. 185, p. 37080; 7/21/89, FR vol. 54, no. 139, p. 30705, 12/20/89, FR vol. 54, no. 243, pp. 52027-52028; 2/5/90, FR vol. 55, no. 24, p. 3792; 12/10/90, FR vol. 55, no. 237, pp. 50685-50687; 9/4/91, FR vol. 56, no. 171, pp. 43699-43700; 3/5/92, FR vol. 57, no. 44, p. 7878; 6/8/92, FR vol. 57, no. 110, pp. 24330-1; 6/30/92, FR vol. 57, no. 126, p. 29119; 8/10/94, FR vol. 59, no. 153, pp. 41131-62; 6/29/95, FR vol. 60, no. 125, pp. 33983-34002; 7/13/95, FR vol. 60, p. 36043; 9/29/95, FR vol. 60, p. 50411; 8/23/96, FR vol. 61, no. 165, p. 43454; 1/8/98, FR vol. 63, no. 5, p. 1298; 4/23/98, FR vol. 63, no. 78, p. 20099; 6/29/98, FR vol. 63, no. 124, p. 35137; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589; 1/9/09, FR vol. 74, no. 6, p. 858.

(b) 29 CFR 1926.1126 Chromium (VI), published 2/28/06, Federal Register, vol. 71, no. 39. p. 10100; 6/23/06, FR vol. 71, no. 121, p. 36008; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(c) 29 CFR 1926.1127 Cadmium, published 9/14/92, FR vol. 57, no. 178, pp. 42453-42463; amended 4/23/93, FR vol. 58, no. 77, p. 21778; 1/3/94, FR vol. 59, no. 1, p. 215; 6/20/96, FR vol. 61, p. 31427; 1/8/98, FR vol. 63, no. 5, p. 1298; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(d) 29 CFR 1926.1152 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1619; 10/20/97, FR vol. 62, p. 54382; 12/18/97, FR vol. 62, no. 243, p. 66275.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001–654.295

Hist.: APD 5-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 8-1989, f. & ef. 7-7-89; APD 14-1989(Temp), f. 7-20-89, ef. 8-1-89; APD 15-1989, f. & ef. 9-13-89; OSHA 3-1990(Temp), f. & cert. ef. 1-19-90; OSHA 7-1990, f. & cert. ef. 3-2-90; OSHA 8-1990, f. & cert. ef. 3-30-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & cert. ef. 8-31-90; OSHA 27-1990, f. 12-12-90, cert. ef. 2-1-91; OSHA 6-1991, f. 3-18-91, cert. ef. 4-15-91; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 16-1991, f. 12-16-91, cert. ef. 1-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 11-1992, f. & cert. ef. 10-9-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 16-1993, f. & cert. ef. 11-1-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 6-1995, f. & cert. ef. 4-18-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 2-1997, f. & cert. ef. 3-12-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1997, f. & cert. ef. 9-15-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 6-1998, f. & cert. ef. 10-15-98; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 3-2000, f. & cert. ef. 2-8-00; OSHA 3-2001, f. & cert. ef. 2-5-01; OSHA 3-2002, f. 4-15-02, cert. ef. 4-18-02; OSHA 5-2002, f. 6-28-02 cert. ef. 10-1-03; OSHA 6-2002, f. & cert. ef. 7-19-02; OSHA 1-2003, f. 1-30-03 cert. ef. 4-30-03; OSHA 2-2003, f. & cert. ef. 1-30-03; OSHA 7-2003, f. & cert. ef. 12-5-03; OSHA 8-2003, f. 12-30-03 cert. ef. 1-1-04; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 2-2006, f. & cert. ef. 4-28-06; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 5-2006, f. 8-7-06, cert. ef. 1-1-07; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 6-2007, f. & cert. ef. 9-26-07; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09

437-005-0001

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1915, revised as of 7/1/03, and any subsequent amendments published in the Federal Register as listed below:

(1) Subdivision A

(a) 29 CFR 1915.1. Purpose and authority, published 4/20/82, Federal Register (FR) vol. 47, p. 16984.

(b) 29 CFR 1915.2. Scope and application, published 4/20/82, FR vol. 47, p. 16984.

(c) 29 CFR 1915.3. Responsibility, published 4/20/82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.4. Definitions, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.5. Incorporation by reference, published 5/24/96, FR vol. 61, no. 102, p. 26359; amended 7/3/02, FR vol. 67, no. 128, p. 44541; 9/15/04, FR vol. 69, p. 55667; 10/17/06, FR vol. 71, no. 200, p. 60843.

(f) 29 CFR 1915.6. Commercial diving operations, published 4/20/82, FR vol. 47, p. 16984.

(g) 29 CFR 1915.7. Competent person, published 4/20/82, FR vol. 47, p. 16984; amended 6/7/89, FR vol. 54, p. 24334; 7/25/94, FR vol. 59, p. 37856.

(h) 29 CFR 1915.9. Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(2) Subdivision B

(a) 29 CFR 1915.11. Scope, application and definitions applicable to this Subpart, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37857.

(b) 29 CFR 1915.12. Precautions before entering confined and enclosed spaces and other dangerous atmospheres, published 4/20 /82, FR vol. 47, p. 16984; amended 7/1/93, FR vol. 58, no. 125, p. 35514; amended 7/25/94, FR vol. 59, p. 37858 ; 3/16/95, FR vol. 60, no. 51, p. 14218.

(c) 29 CFR 1915.13. Cleaning and other cold work, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37859.

(d) 29 CFR 1915.14. Hot work, published 4/20 /82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37860; 3/16/95, FR vol. 60, no. 51, p. 14218; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.15. Maintenance of safe conditions, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37860; 3/16/95, FR vol. 60, no. 51, p. 14218; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.16. Warning signs and labels, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37861.

Appendix A to Subpart B published 7/25/94, FR vol. 59, p. 37816; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix B to Subpart B published 7/25/94, FR vol. 59, p. 37816.

(3) Subdivision C

(a) 29 CFR 1915.31. Scope & application of subdivision, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.32. Toxic cleaning solvents, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(c) 29 CFR 1915.33. Chemical paint & preservative remover, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(d) 29 CFR 1915.34. Mechanical paint removers, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(e) 29 CFR 1915.35. Painting, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.36. Flammable liquids, published 4/20/82, FR vol. 47, p. 16984.

(4) Subdivision D

(a) 29 CFR 1915.51. Ventilation & protection in welding, cutting and heating, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.52. Fire prevention, published 4/20/82, FR vol. 47, p. 16984; REMOVED 9/15/04, FR vol. 69, p. 55667.

(c) 29 CFR 1915.53. Welding, cutting and heating of hollow metal containers & structure not covered by 1915.12, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(d) 29 CFR 1915.55. Gas welding & cutting, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.56. Arc welding and cutting, published 4/20/82, FR vol. 47, p. 16984.

(f) 29 CFR 1915.57. Uses of fissionable material in ship repairing and shipbuilding, published 4/20/82, FR vol. 47, p. 16984.

(5) Subdivision E

(a) 29 CFR 1915.71. Scaffolds or staging, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.72. Ladders, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.73. Guarding of deck openings and edges, published 4/20/ 82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(d) 29 CFR 1915.74. Access to vessels, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.75. Access to and guarding of dry docks and marine railways, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.76. Access to cargo spaces and confined spaces, published 4/20/82, FR vol. 47, p. 16984.

(g) 29 CFR 1915.77. Working surfaces, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(6) Subdivision F

(a) 29 CFR 1915.91. Housekeeping, published 4/ 20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.92. Illumination, published 4/20/ 82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.93. Utilities, published 4/20/82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.94. Work in confined or isolated spaces, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.95. Ship repairing and shipbuilding work on or in the vicinity of radar and radio, published 4/20/82, FR vol. 47, p. 16984; amended 4/30/ 84, FR vol. 49, p. 18295; 6/7/89, FR vol. 54, p. 24334.

(f) 29 CFR 1915.96. Work in or on lifeboats, published 4/20/82, FR vol. 47, p. 16984; amended 8/24/ 87, FR vol. 52, p. 31886.

(g) 29 CFR 1915.97. Health and sanitation, published 4/20/82, FR vol. 47, p. 16984; amended 8/24/87, FR vol. 52, p. 31886; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(h) 29 CFR 1915.98. First aid, published 4/20/82, FR vol. 47 p. 16984.

(**NOTE:** 29 CFR 1915.99, Hazard Communication, was redesignated as 1915.1200 on 7/1/93, FR vol. 58, no. 125, p. 35514.)

(i) 29 CFR 1915.100. Retention of DOT markings, placards and labels, published 7/19/94, Federal Register, vol. 59, no. 137, p. 36700.

(7) Subdivision G

(a) 29 CFR 1915.111. Inspection, published 4/20/ 82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.112. Ropes, chains and slings, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.113. Shackles and hooks, published 4/20/82, FR vol. 47, p. 16984; amended 9/29/86, FR vol. 51, p. 34562.

(d) 29 CFR 1915.114. Chain falls and pull lifts, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.115. Hoisting and hauling equipment, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.116. Use of gear, published 4/20/ 82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(g) 29 CFR 1915.117. Qualifications of operators, published 4/20/82, FR vol. 47, p. 16984.

(h) 29 CFR 1915.118. Tables, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(8) Subdivision H

(a) 29 CFR 1915.131. General precautions, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.132. Portable electric tools, published 4/20/82, FR vol. 47, p. 16984.

(c) 29 CFR 1915.133. Hand tools, published 4/20/ 82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.134. Abrasive wheels, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.135. Powder actuated fastening tools, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(f) 29 CFR 1915.136. Internal combustion engines other than ship's equipment, published 4/20/82, FR vol. 47, p. 16984.

(9) Subdivision I

(a) 29 CFR 1915.151. Scope, application and definitions, published 5/24/96, FR vol. 61, no. 102, p. 26352.

(b) 29 CFR 1915.152. General requirements, published 5/24/96, FR vol. 61, no. 102, p. 26352; 6/13/96, FR vol. 61, p. 29957; amended 7/3/02, FR vol. 67, no. 128, p. 44541; 11/15/07, FR vol. 72, no. 220, p. 64342.

(c) 29 CFR 1915.153. Eye and face protection, published 5/24/96, FR vol. 61, no. 102, p. 26353.

(d) 29 CFR 1915.154. Respiratory protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.

(e) 29 CFR 1915.155. Head protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.

(f) 29 CFR 1915.156. Foot protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.

(g) 29 CFR 1915.157. Hand and body protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.

(h) 29 CFR 1915.158. Lifesaving equipment, published 5/24/96, FR vol. 61, no. 102, p. 26354; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(i) 29 CFR 1915.159. Personal fall arrest systems (PFAS), published 5/24/96, FR vol. 61, no. 102, p. 26355; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(j) 29 CFR 1915.160. Positioning device systems, published 5/24/96, FR vol. 61, no. 102, p. 26356; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix A to Subpart I, published 5/24/96, FR vol. 61, no. 102, p. 26356; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix B to Subpart I, published 5/24/96, FR vol. 61, no. 102, p. 26358; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(10) Subdivision J

(a) 29 CFR 1915.161. Scope and application of subdivision, published 4/20/ 82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.162. Ship's boilers, published 4/ 20/82, FR vol. 47, p. 16984.

(c) 29 CFR 1915.163. Ship's piping systems, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(d) 29 CFR 1915.164. Ship's propulsion machinery, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.165. Ship's decking machinery, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(11) Subdivision K

(a) 29 CFR 1915.171. Scope and application of subdivision, published 4/20/ 82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.172. Portable air receiver and other unfired pressure vessels, published 4/20/82, FR vol. 47, p. 16984; amended 9/29/86, FR vol. 51, p. 34562; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.173. Drums and containers, published 4/20/82, FR vol. 47, p. 16984.

(12) Subdivision L

(a) 29 CFR 1915.181. Electrical circuits and distribution boards, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(13) Subdivisions M O (Reserved)

(14) Subdivision P

(a) 29 CFR 1915.501. General provisions, published 9/15/04, FR vol. 69, p. 55667.

(b) 29 CFR 1915.502. Fire safety plan, published 9/15/04, FR vol. 69, p. 55667.

(c) 29 CFR 1915.503. Precautions for hot work, published 9/15/04, FR vol. 69, p. 55667.

(d) 29 CFR 1915.504. Fire watches, published 9/15/04, FR vol. 69, p. 55667.

(e) 29 CFR 1915.505. Fire response, published 9/15/04, FR vol. 69, p. 55667; 10/17/06, FR vol. 71, no. 200, p. 60843.

(f) 29 CFR 1915.506. Hazards of fixed extinguishing systems on board vessels and vessel sections, published 9/15/04, FR vol. 69, p. 55667.

(g) 29 CFR 1915.507. Land-side fire protection systems, published 9/15/04, FR vol. 69, p. 55667; 10/17/06, FR vol. 71, no. 200, p. 60843.

(h) 29 CFR 1915.508. Training, published 9/15/04, FR vol. 69, p. 55667.

(i) 29 CFR 1915.509. Definitions applicable to this subpart, published 9/15/04, FR vol. 69, p. 55667.

Appendix A to Subpart P, published 9/15/04, FR vol. 69, p. 55667.

(15) Subdivision Q-Y (Reserved)

(16) Subdivision Z

(a) 29 CFR 1915.1000, Air Contaminants, published 7/1/93, FR vol. 58, no. 125, p. 35514; 11/4/96, FR vol. 61, p. 56856; 1/10/97, FR vol. 62, p. 1619; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.1001, Asbestos, published 7/1/93, FR vol. 58, no. 125, p. 35514; 8/10/94, FR vol. 59, no. 153, p. 41080; 6/29/95, FR vol. 60, no. 125, pp. 33974 34002; 7/13/95, FR vol. 60, p. 36043; 9/29/95, FR vol. 60, p. 50411; 8/23/96, FR vol. 61, p. 43454; 6/29/98, FR vol. 63, no. 124, p. 35137; amended 7/3/02, FR vol. 67, no. 128, p. 44541; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

Appendix A to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.

Appendix B to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.

Appendix C to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix D to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964.

Appendix E to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.

Appendix F to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.

Appendix G to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964.

Appendix H to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.

Appendix I to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964.

Appendix J to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.

Appendix K to 1915.1001, published 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.

Appendix L to 1915.1001, published 7/1/93, vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 2/21/95, FR vol. 60, p. 9624; amended 6/28/95, FR vol. 60, p. 33343; amended 6/29/95, FR vol. 60, p. 33972; amended 7/13/95, FR vol. 60, p. 36043; amended 9/29/95, FR vol. 60, p. 50411; amended 2/13/96, FR vol. 61, p. 5507; amended 8/23/96, FR vol. 61, p. 43454.

(c) 29 CFR 1915.1002. Coal tar pitch volatiles; interpretation of term, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(d) 29 CFR 1915.1003. 13 Carcinogens (4 Nitrobiphenyl, etc.), published 7/ 1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(e) 29 CFR 1915.1004. alpha Naphthylamine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(f) 29 CFR 1915.1005. (Reserved)

(g) 29 CFR 1915.1006. Methyl chloromethyl ether, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(h) 29 CFR 1915.1007. 3,3'Dichlorobenzidiene (and its salts), published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(i) 29 CFR 1915.1008. bis Chloromethyl ether, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(j) 29 CFR 1915.1009. beta Naphthylamine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(k) 29 CFR 1915.1010. Benzidine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(l) 29 CFR 1915.1011. 4 Aminodiphenyl, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(m) 29 CFR 1915.1012. Ethyleneimine, published 7/ 1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(n) 29 CFR 1915.1013. beta Propiolactone, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(o) 29 CFR 1915.1014. 2 Acetylaminofluorene, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(p) 29 CFR 1915.1015. 4 Dimethylaminoazobenzene, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(q) 29 CFR 1915.1016. N Nitrosodimethylamine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(r) 29 CFR 1915.1017. Vinyl chloride, published 7/1/ 93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(s) 29 CFR 1915.1018. Inorganic arsenic, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(t) 29 CFR 1915.1020 Access to employee exposure and medical records, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(u) 29 CFR 1915.1025. Lead, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(v) 29 CFR 1915.1026 Chromium (VI), published 2/28/06, Federal Register, vol. 71, no. 39, p. 10100; 6/23/06, FR vol. 71, no. 121, p. 36008; 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(w) 29 CFR 1915.1027. Cadmium, published 9/14/ 92, FR vol. 57, no. 178. pp. 42388 42452; amended 4/23/93, FR vol. 58, no. 177, p. 21778; 1/3/94, FR vol. 59, no. 1, pp. 146 215; 6/20/96, FR vol. 61, p. 31427.

(x) 29 CFR 1915.1028. Benzene, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(y) 29 CFR 1915.1030. Bloodborne pathogens, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(z) 29 CFR 1915.1044. 1,2 dibromo 3 chloropropane, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(aa) 29 CFR 1915.1045. Acrylonitrile, published 7/1/ 93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(bb) 29 CFR 1915.1047. Ethylene oxide, published 7/1/ 93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(cc) 29 CFR 1915.1048. Formaldehyde, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(dd) 29 CFR 1915.1050. Methylenedianiline, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(ee) 29 CFR 1915.1052 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1619.

(ff) 29 CFR 1915.1120 Access to employee exposure and medical records has been redesignated to §1915.1020.

(**NOTE:** 29 CFR 1915.99, Hazard Communication was redesignated as 1915.1200 on 7/1/93, FR vol. 58, no. 125, p. 35514.)

(gg) 29 CFR 1915.1200. Hazard communication, published 9/24/87, FR vol. 52, p. 31886; amended 4/27/88, FR vol. 53, p. 15035; 2/15/ 89, FR vol. 54, p. 6888; 6/7/89, FR vol. 54, p. 24334; 7/1/93, FR vol. 58, no. 125, p. 35514; 2/9/94, FR vol. 59, no. 27, pp. 6126 6184; 4/13/ 94, FR vol.59, no.71, pp. 17478 17479; 12/22 /94, FR vol. 59, no. 245, p. 65947; 6/20/96, FR vol. 61, p. 31427.

(hh) 29 CFR 1915.1450. Occupational exposure to hazardous chemicals in laboratories, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 19-1993, f. & cert. ef. 12-29-93; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 2-1995, f. & cert. ef. 1-25-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 4-2001, f. & cert. ef. 2-5-01; OSHA 4-2003, f. & cert. ef. 5-6-03; OSHA 8-2004, f. & cert. ef. 12-30-04; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 1-2007, f. 1-9-07 cert. ef. 1-16-07; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09

437-005-0002

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1917**, revised as of 7/1/97, and any subsequent amendments published in the Federal Register as listed below:

(1) Subdivision A:

(a) 29 CFR 1917.1 Scope and applicability, published 7/5/83, Federal Register (FR) vol. 48, p. 30909; amended 12/31/87, FR vol. 52, p. 36026; 12/31/87, FR vol. 52, p. 49624; 7/25/97, FR vol. 62, no. 143, p. 40196; 6/30/00, FR vol. 65, no. 127, p. 40938; 2/28/06, FR vol. 71, no. 39, p. 10100.

(b) 29 CFR 1917.2 Definitions, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40196; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.3 Incorporation by reference, published 7/25/97, FR vol. 62, no. 143, p. 40196; 6/30/00, FR vol. 65, no. 127, p. 40938.

(d) 29 CFR 1917.5 Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(2) Subdivision B

(a) 29 CFR 1917.11 Housekeeping, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40196.

(b) 29 CFR 1917.12 Slippery conditions, published 7/5/83, FR vol. 48, p. 30909.

(c) 29 CFR 1917.13 Slinging, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40197.

(d) 29 CFR 1917.14 Stacking of cargo and pallets, published 7/5/83, FR vol. 48, p. 30909.

(e) 29 CFR 1917.15 Coopering, published 7/5/83, FR vol. 48, p. 30909.

(f) 29 CFR 1917.16 Line handling, published 7/5/83, FR vol. 48, p. 30909.

(g) 29 CFR 1917.17 Railroad facilities, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40197.

(h) 29 CFR 1917.18 Log handling, published 7/5/83, FR vol. 48, p. 30909.

(i) 29 CFR 1917.19 Movement of barges and rail cars, published 7/5/83, FR vol. 48, p. 30909.

(j) 29 CFR 1917.20 Interference with communications, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40197.

(k) 29 CFR 1917.21 Open fires, published 7/5/83, FR vol. 48, p. 30909.

(l) 29 CFR 1917.22 Hazardous cargo (see 1917.2(p)), published 7/5/83, FR vol. 48, p. 30909.

(m) 29 CFR 1917.23 Hazardous atmospheres and substances (see 1917.2(p)), published 7/5/83, FR vol. 48, p. 30909; amended 7/13/84, FR vol. 49, p. 28551; 7/25/97, FR vol. 62, no. 143, p. 40197; 6/30/00, FR vol. 65, no. 127, p. 40938.

(n) 29 CFR 1917.24 Carbon monoxide, published 7/5/83, FR vol. 48, p. 30909; amended 7/13/84, FR vol. 49, p. 28551; 7/25/97, FR vol. 62, no. 143, p. 40197.

(o) 29 CFR 1917.25 Fumigants, pesticides, insecticides and hazardous preservatives (see 1917.2(p)), published 7/5/83, FR vol. 48, p. 30909; amended 7/13/84, FR vol. 49, p. 28551; 7/25/97, FR vol. 62, no. 143, p. 40197; 6/30/00, FR vol. 65, no. 127, p. 40938.

(p) 29 CFR 1917.26 First aid and lifesaving facilities, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40197; 6/30/00, FR vol. 65, no. 127, p. 40938.

(q) 29 CFR 1917.27 Personnel, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40197; 6/30/00, FR vol. 65, no. 127, p. 40938.

(r) 29 CFR 1917.28 Hazard communication (see also §1917.1(a)(2)(vi)), published 7/5/83, FR vol. 48, p. 30909; amended 9/24/87, FR vol. 52, p. 31876; 4/27/88, FR vol. 53, p. 15035; 2/15/89, FR vol. 54, p. 6888; 6/7/89, FR vol. 54, p. 24334; 2/9/94, FR vol. 59, no. 27, pp. 6126 6184; 4/13/94, FR vol. 59, no. 71, pp. 17478 17479; 12/22/94, FR vol. 59, no. 245, p. 65947; 7/25/97, FR vol. 62, no. 143, p. 40198.

(s) 29 CFR 1917.29 Retention of DOT markings, placards and labels, published 7/19/94, Federal Register, vol. 59, no. 137, p. 36700.

(t) 29 CFR 1917.30 Emergency action plans, published 7/25/97, FR vol. 62, no. 143, p. 40198; 6/30/00, FR vol. 65, no. 127, p. 40938.

(3) Subdivision C:

(a) 29 CFR 1917.41 House falls, published 7/5/83, FR vol. 48, p. 30909.

(b) 29 CFR 1917.42 Miscellaneous auxiliary gear, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40198; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.43 Powered industrial trucks, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40198; 6/30/00, FR vol. 65, no. 127, p. 40938.

(d) 29 CFR 1917.44 General rules applicable to vehicles, published 7/5/83, FR vol. 48, p. 30909; amended 9/25/87, FR vol. 52, p. 36026; 7/25/97, FR vol. 62, no. 143, p. 40199; 6/30/00, FR vol. 65, no. 127, p. 40938.

(e) 29 CFR 1917.45 Cranes and derricks (see also §1917.50), published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40199; 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1917.46 Load indicating devices, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40199.

(g) 29 CFR 1917.47 Winches, published 7/5/83, FR vol. 48, p. 30909.

(h) 29 CFR 1917.48 Conveyors, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40200.

(i) 29 CFR 1917.49 Spouts, chutes, hoppers, bins, and associated equipment, published 7/5/83, FR vol. 48, p. 30909.

(j) 29 CFR 1917.50 Certification of marine terminal material handling devices (see also Mandatory Appendix IV, Part 1918 of this chapter), published 7/5/83, FR vol. 48, p. 30909; amended 7/13/84, FR vol. 49, p. 28551; 7/25/97, FR vol. 62, no. 143, p. 40200; 6/30/00, FR vol. 65, no. 127, p. 40938.

(k) 29 CFR 1917.51 Hand tools, published 7/5/83, FR vol. 48, p. 30909.

(4) Subdivision D:

(a) 29 CFR 1917.70 General, published 7/5/83, FR vol. 48, p. 30909.

(b) 29 CFR 1917.71 Terminals handling intermodal container or roll on roll off operations, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40200; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.72 (Reserved):

(d) 29 CFR 1917.73 Terminal facilities handling menhaden and similar species of fish (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(5) Subdivision E:

(a) 29 CFR 1917.91 Eye and face protection, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201.

(b) 29 CFR 1917.92 Respiratory protection, published 7/5/83, FR vol. 48, p. 30909; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.93 Head protection, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201.

(d) 29 CFR 1917.94 Foot protection, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201.

(e) 29 CFR 1917.95 Other protective measures, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1917.96 Payment for protective equipment, published 11/15/07, FR vol. 72, no. 220, p. 64342.

(6) Subdivision F:

(a) 29 CFR 1917.111 Maintenance and load limits, published 7/5/83, FR vol. 48, p. 30909.

(b) 29 CFR 1917.112 Guarding of edges, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.113 Clearance heights, published 7/5/83, FR vol. 48, p. 30909.

(d) 29 CFR 1917.114 Cargo doors, published 7/5/83, FR vol. 48, p. 30909.

(e) 29 CFR 1917.115 Platforms and skids, published 7/5/83, FR vol. 48, p. 30909.

(f) 29 CFR 1917.116 Elevators and escalators, published 7/5/83, FR vol. 48, p. 30909; amended 7/13/84, FR vol. 49, p. 28551.

(g) 29 CFR 1917.117 Manlifts, published 7/5/83, FR vol. 48, p. 30909; 6/30/00, FR vol. 65, no. 127, p. 40938.

(h) 29 CFR 1917.118 Fixed ladders, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(i) 29 CFR 1917.119 Portable ladders, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(j) 29 CFR 1917.120 Fixed stairways, published 7/5/83, FR vol. 48, p. 30909; 6/30/00, FR vol. 65, no. 127, p. 40938.

(k) 29 CFR 1917.121 Spiral stairways, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(l) 29 CFR 1917.122 Employee exits, published 7/5/83, FR vol. 48, p. 30909; 6/30/00, FR vol. 65, no. 127, p. 40938.

(m) 29 CFR 1917.123 Illumination, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201.

(n) 29 CFR 1917.124 Dockboards (car and bridge plates), published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(o) 29 CFR 1917.125 Guarding temporary hazards, published 7/5/83, FR vol. 48, p. 30909.

(p) 29 CFR 1917.126 River banks, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201.

(q) 29 CFR 1917.127 Sanitation, published 7/5/83, FR vol. 48, p. 30909.

(r) 29 CFR 1917.128 Signs and marking, published 7/5/83, FR vol. 48, p. 30909.

(7) Subdivision G:

(a) 29 CFR 1917.151 Machine guarding, published 7/5/83, FR vol. 48, p. 30909; 6/30/00, FR vol. 65, no. 127, p. 40938.

(b) 29 CFR 1917.152 Welding, cutting and heating (hot work) (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.153 Spray painting (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(d) 29 CFR 1917.154 Compressed air, published 7/5/83, FR vol. 48, p. 30909.

(e) 29 CFR 1917.155 Air receivers, published 7/5/83, FR vol. 48, p. 30909.

(f) 29 CFR 1917.156 Fuel handling and storage, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(g) 29 CFR 1917.157 Battery charging and changing, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40202.

(h) 29 CFR 1917.158 Prohibited operations, published 7/5/83, FR vol. 48, p. 30909.

NOTE: These standards are available at the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 9-1997, f. & cert. ef. 12-31-97; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 9-2000, f. & cert. ef. 10-10-00; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09

437-005-0003

Adoption by Reference.

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1918**, revised as of 7/1/97, and any subsequent amendments published in the Federal Register as listed below:

(1) Subdivision A:

(a) 29 CFR 1918.1 Scope and application, published 7/25/97, Federal Register (FR) vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938; 2/28/06, FR vol. 71, no. 39, p. 10100.

(b) 29 CFR 1918.2 Definitions, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.3 Incorporation by reference, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918. 5 Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(2) Subdivision B:

(a) 29 CFR 1918.11 Gear certification (see also §§1918.2 and 1918.51), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(3) Subdivision C:

(a) 29 CFR 1918.21 General requirements, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.22 Gangways , published 7/25/97, FR vol. 62, no. 143, p. 40202.

(c) 29 CFR 1918.23 Jacob's ladders, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.24 Fixed and portable ladders, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(e) 29 CFR 1918.25 Bridge plates and ramps (see also §1918.86), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1918.26 Access to barges and river towboats, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(4) Subdivision D:

(a) 29 CFR 1918.31 Hatch coverings, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.32 Stowed cargo and temporary landing surfaces, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(c) 29 CFR 1918.33 Deck loads, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.34 Other decks, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(e) 29 CFR 1918.35 Open hatches, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(f) 29 CFR 1918.36 Weather deck rails, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(g) 29 CFR 1918.37 Barges, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(5) Subdivision E:

(a) 29 CFR 1918.41 Coaming clearances, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(b) 29 CFR 1918.42 Hatch beam and pontoon bridles, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.43 Handling hatch beams and covers, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(6) Subdivision F:

(a) 29 CFR 1918.51 General requirements (see also §1918.11 and Appendix III of this part), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(b) 29 CFR 1918.52 Specific requirements, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.53 Cargo winches, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.54 Rigging gear, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(e) 29 CFR 1918.55 Cranes (see also §1918.11), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(7) Subdivision G:

(a) 29 CFR 1918.61 General (see also Appendix IV of this part), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(b) 29 CFR 1918.62 Miscellaneous auxiliary gear, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.63 Chutes, gravity conveyors and rollers, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.64 Powered conveyors, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(e) 29 CFR 1918.65Mechanically powered vehicles used aboard vessels, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1918.66 Cranes and derricks other than vessel's gear, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(g) 29 CFR 1918.67 Notifying ship's officers before using certain equipment, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(h) 29 CFR 1918.68 Grounding, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(i) 29 CFR 1918.69 Tools, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(j) 29 CFR 1918.70 - 1918.80 (Reserved):

(8) Subdivision H:

(a) 29 CFR 1918.81 Slinging, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.82 Building drafts, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(c) 29 CFR 1918.83 Stowed cargo, tiering and breaking down, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.84 Bulling cargo, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(e) 29 CFR 1918.85 Containerized cargo operations, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1918.86 Roll-on roll-off (Ro-Ro) operations (see also §1918.25), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(g) 29 CFR 1918.87 Ship's cargo elevators, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(h) 29 CFR 1918.88 Log operations, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(i) 29 CFR 1918.89 Handling hazardous cargo (see also §§1918.2 and 1918.99), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(9) Subdivision I:

(a) 29 CFR 1918.90 Hazard communication (see also §1918.1(b)(4)), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.91 Housekeeping, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(c) 29 CFR 1918.92 Illumination, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.93 Hazardous atmospheres and substances (see also §1918.2(j)), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(e) 29 CFR 1918.94 Ventilation and atmospheric conditions (see also §1918.2), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1918.95 Sanitation , published 7/25/97, FR vol. 62, no. 143, p. 40202.

(g) 29 CFR 1918.96 Maintenance and repair work in the vicinity of longshoring operations, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(h) 29 CFR 1918.97 First aid and lifesaving facilities (see also Appendix V of this part), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(i) 29 CFR 1918.98 Qualifications of machinery operators and supervisory training, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(j) 29 CFR 1918.99 Retention of DOT markings, placards and labels, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(k) 29 CFR 1918.100 Emergency action plans, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(10) Subdivision J:

(a) 29 CFR 1918.101 Eye and face protection, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.102 Respiratory protection, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.103 Head protection, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.104 Foot protection, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(e) 29 CFR 1918.105 Other protective measures, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1918.106 Payment for protective equipment, published 11/15/07, FR vol. 72, no. 220, p. 64342.

(11) Appendix I — Cargo Gear Register and Certificates (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(12) Appendix II — Tables for Selected Miscellaneous Auxiliary Gear (Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(13) Appendix III — The Mechanics of Conventional Cargo Gear (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(14) Appendix IV — Special Cargo Gear (Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(15) Appendix V — Basic Elements of a First Aid Training Program (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.

NOTE: These standards are available at the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 9-1997, f. & cert. ef. 12-31-97; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 9-2000, f. & cert. ef. 10-

10-00; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09

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Rule Caption: Adopt new federal amendments to the practice of vertical tandem lift in Longshoring and Marine Terminals.
Adm. Order No.: OSHA 6-2009
Filed with Sec. of State: 6-5-2009
Certified to be Effective: 6-5-09
Notice Publication Date: 5-1-2009
Rules Amended: 437-005-0002, 437-005-0003
Subject: This rulemaking is to keep Oregon OSHA in harmony with recent changes to Federal OSHA's standards.

In this rulemaking, Oregon OSHA is issuing revisions and additions to the Marine Terminals and Longshoring Standards (29 CFR Parts 1917 and 1918) that reflect Federal OSHA's new requirements for the practice of lifting two intermodal containers together, one on top of the other, connected by semiautomatic twist locks (SATLs). This practice is known as a Vertical Tandem Lift (VTL). The final standard permits VTLs of no more than two, empty containers provided that certain safeguards are followed. These revisions and additions focus on the reduction of employee death and injury achieved by providing safe work practices for employers who choose to perform VTLs.

Oregon OSHA adopts the changes in Division 5, Maritime Activities as published in the December 10, 2008 Federal Register.

Please visit OR-OSHA's web site at www.orosha.org
Rules Coordinator: Sue C. Joye—(503) 947-7449

437-005-0002
Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1917, revised as of 7/1/97, and any subsequent amendments published in the Federal Register as listed below:

(1) Subdivision A:

(a) 29 CFR 1917.1 Scope and applicability, published 7/5/83, Federal Register (FR) vol. 48, p. 30909; amended 12/31/87, FR vol. 52, p. 36026; 12/31/87, FR vol. 52, p. 49624; 7/25/97, FR vol. 62, no. 143, p. 40196; 6/30/00, FR vol. 65, no. 127, p. 40938; 2/28/06, FR vol. 71, no. 39, p. 10100.

(b) 29 CFR 1917.2 Definitions, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40196; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.3 Incorporation by reference, published 7/25/97, FR vol. 62, no. 143, p. 40196; 6/30/00, FR vol. 65, no. 127, p. 40938.

(d) 29 CFR 1917.5 Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp. 75568–75589.

(2) Subdivision B:

(a) 29 CFR 1917.11 Housekeeping, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40196.

(b) 29 CFR 1917.12 Slippery conditions, published 7/5/83, FR vol. 48, p. 30909.

(c) 29 CFR 1917.13 Slinging, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40197.

(d) 29 CFR 1917.14 Stacking of cargo and pallets, published 7/5/83, FR vol. 48, p. 30909.

(e) 29 CFR 1917.15 Coopering, published 7/5/83, FR vol. 48, p. 30909.

(f) 29 CFR 1917.16 Line handling, published 7/5/83, FR vol. 48, p. 30909.

(g) 29 CFR 1917.17 Railroad facilities, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40197.

(h) 29 CFR 1917.18 Log handling, published 7/5/83, FR vol. 48, p. 30909.

(i) 29 CFR 1917.19 Movement of barges and rail cars, published 7/5/83, FR vol. 48, p. 30909.

(j) 29 CFR 1917.20 Interference with communications, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40197.

(k) 29 CFR 1917.21 Open fires, published 7/5/83, FR vol. 48, p. 30909.

(l) 29 CFR 1917.22 Hazardous cargo (see 1917.2(p)), published 7/5/83, FR vol. 48, p. 30909.

(m) 29 CFR 1917.23 Hazardous atmospheres and substances (see 1917.2(p)), published 7/5/83, FR vol. 48, p. 30909; amended 7/13/84, FR vol. 49, p. 28551; 7/25/97, FR vol. 62, no. 143, p. 40197; 6/30/00, FR vol. 65, no. 127, p. 40938.

(n) 29 CFR 1917.24 Carbon monoxide, published 7/5/83, FR vol. 48, p. 30909; amended 7/13/84, FR vol. 49, p. 28551; 7/25/97, FR vol. 62, no. 143, p. 40197.

(o) 29 CFR 1917.25 Fumigants, pesticides, insecticides and hazardous preservatives (see 1917.2(p)), published 7/5/83, FR vol. 48, p. 30909; amended 7/13/84, FR vol. 49, p. 28551; 7/25/97, FR vol. 62, no. 143, p. 40197; 6/30/00, FR vol. 65, no. 127, p. 40938.

(p) 29 CFR 1917.26 First aid and lifesaving facilities, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40197; 6/30/00, FR vol. 65, no. 127, p. 40938.

(q) 29 CFR 1917.27 Personnel, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40197; 6/30/00, FR vol. 65, no. 127, p. 40938.

(r) 29 CFR 1917.28 Hazard communication (see also §1917.1(a)(2)(vi)), published 7/5/83, FR vol. 48, p. 30909; amended 9/24/87, FR vol. 52, p. 31876; 4/27/88, FR vol. 53, p. 15035; 2/15/89, FR vol. 54, p. 6888; 6/7/89, FR vol. 54, p. 24334; 2/9/94, FR vol. 59, no. 27, pp. 6126 6184; 4/13/94, FR vol. 59, no. 71, pp. 17478 17479; 12/22/94, FR vol. 59, no. 245, p. 65947; 7/25/97, FR vol. 62, no. 143, p. 40198.

(s) 29 CFR 1917.29 Retention of DOT markings, placards and labels, published 7/19/94, Federal Register, vol. 59, no. 137, p. 36700.

(t) 29 CFR 1917.30 Emergency action plans, published 7/25/97, FR vol. 62, no. 143, p. 40198; 6/30/00, FR vol. 65, no. 127, p. 40938.

(3) Subdivision C:

(a) 29 CFR 1917.41 House falls, published 7/5/83, FR vol. 48, p. 30909.

(b) 29 CFR 1917.42 Miscellaneous auxiliary gear, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40198; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.43 Powered industrial trucks, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40198; 6/30/00, FR vol. 65, no. 127, p. 40938.

(d) 29 CFR 1917.44 General rules applicable to vehicles, published 7/5/83, FR vol. 48, p. 30909; amended 9/25/87, FR vol. 52, p. 36026; 7/25/97, FR vol. 62, no. 143, p. 40199; 6/30/00, FR vol. 65, no. 127, p. 40938.

(e) 29 CFR 1917.45 Cranes and derricks (see also §1917.50), published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40199; 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1917.46 Load indicating devices, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40199.

(g) 29 CFR 1917.47 Winches, published 7/5/83, FR vol. 48, p. 30909.

(h) 29 CFR 1917.48 Conveyors, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40200.

(i) 29 CFR 1917.49 Spouts, chutes, hoppers, bins, and associated equipment, published 7/5/83, FR vol. 48, p. 30909.

(j) 29 CFR 1917.50 Certification of marine terminal material handling devices (see also Mandatory Appendix IV, Part 1918 of this chapter), published 7/5/83, FR vol. 48, p. 30909; amended 7/13/84, FR vol. 49, p. 28551; 7/25/97, FR vol. 62, no. 143, p. 40200; 6/30/00, FR vol. 65, no. 127, p. 40938.

(k) 29 CFR 1917.51 Hand tools, published 7/5/83, FR vol. 48, p. 30909.

(4) Subdivision D:

(a) 29 CFR 1917.70 General, published 7/5/83, FR vol. 48, p. 30909.

(b) 29 CFR 1917.71 Terminals handling intermodal container or roll on roll off operations, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40200; 6/30/00, FR vol. 65, no. 127, p. 40938; 12/10/08, FR vol. 73, no. 238, pp. 75246–75290.

(c) 29 CFR 1917.72 (Reserved).

(d) 29 CFR 1917.73 Terminal facilities handling menhaden and similar species of fish (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(5) Subdivision E:

(a) 29 CFR 1917.91 Eye and face protection, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201.

(b) 29 CFR 1917.92 Respiratory protection, published 7/5/83, FR vol. 48, p. 30909; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.93 Head protection, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201.

(d) 29 CFR 1917.94 Foot protection, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201.

(e) 29 CFR 1917.95 Other protective measures, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1917.96 Payment for protective equipment, published 11/15/07, FR vol. 72, no. 220, p. 64342.

(6) Subdivision F:

(a) 29 CFR 1917.111 Maintenance and load limits, published 7/5/83, FR vol. 48, p. 30909.

(b) 29 CFR 1917.112 Guarding of edges, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.113 Clearance heights, published 7/5/83, FR vol. 48, p. 30909.

(d) 29 CFR 1917.114 Cargo doors, published 7/5/83, FR vol. 48, p. 30909.

(e) 29 CFR 1917.115 Platforms and skids, published 7/5/83, FR vol. 48, p. 30909.

(f) 29 CFR 1917.116 Elevators and escalators, published 7/5/83, FR vol. 48, p. 30909; amended 7/13/84, FR vol. 49, p. 28551.

(g) 29 CFR 1917.117 Manlifts, published 7/5/83, FR vol. 48, p. 30909; 6/30/00, FR vol. 65, no. 127, p. 40938.

(h) 29 CFR 1917.118 Fixed ladders, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(i) 29 CFR 1917.119 Portable ladders, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(j) 29 CFR 1917.120 Fixed stairways, published 7/5/83, FR vol. 48, p. 30909; 6/30/00, FR vol. 65, no. 127, p. 40938.

(k) 29 CFR 1917.121 Spiral stairways, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(l) 29 CFR 1917.122 Employee exits, published 7/5/83, FR vol. 48, p. 30909; 6/30/00, FR vol. 65, no. 127, p. 40938.

(m) 29 CFR 1917.123 Illumination, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201.

(n) 29 CFR 1917.124 Dockboards (car and bridge plates), published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201; 6/30/00, FR vol. 65, no. 127, p. 40938.

(o) 29 CFR 1917.125 Guarding temporary hazards, published 7/5/83, FR vol. 48, p. 30909.

(p) 29 CFR 1917.126 River banks, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40201.

(q) 29 CFR 1917.127 Sanitation, published 7/5/83, FR vol. 48, p. 30909.

(r) 29 CFR 1917.128 Signs and marking, published 7/5/83, FR vol. 48, p. 30909.

(7) Subdivision G:

(a) 29 CFR 1917.151 Machine guarding, published 7/5/83, FR vol. 48, p. 30909; 6/30/00, FR vol. 65, no. 127, p. 40938.

(b) 29 CFR 1917.152 Welding, cutting and heating (hot work) (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1917.153 Spray painting (see also §1917.2, definition of hazardous cargo, materials, substance, or atmosphere), published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(d) 29 CFR 1917.154 Compressed air, published 7/5/83, FR vol. 48, p. 30909.

(e) 29 CFR 1917.155 Air receivers, published 7/5/83, FR vol. 48, p. 30909.

(f) 29 CFR 1917.156 Fuel handling and storage, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(g) 29 CFR 1917.157 Battery charging and changing, published 7/5/83, FR vol. 48, p. 30909; 7/25/97, FR vol. 62, no. 143, p. 40202.

(h) 29 CFR 1917.158 Prohibited operations, published 7/5/83, FR vol. 48, p. 30909.

NOTE: These standards are available at the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 9-1997, f. & cert. ef. 12-31-97; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 9-2000, f. & cert. ef. 10-10-00; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 6-2009, f. & cert. ef. 6-5-09

437-005-0003

Adoption by Reference.

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1918, revised as of 7/1/97, and any subsequent amendments published in the Federal Register as listed below:

(1) Subdivision A:

(a) 29 CFR 1918.1 Scope and application, published 7/25/97, Federal Register (FR) vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938; 2/28/06, FR vol. 71, no. 39, p. 10100.

(b) 29 CFR 1918.2 Definitions, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.3 Incorporation by reference, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918. 5 Compliance duties owed to each employee, published 12/12/08, FR vol. 73, no. 240, pp. 75568-75589.

(2)(a) Subdivision B:

(b) 29 CFR 1918.11 Gear certification (see also §§1918.2 and 1918.51), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(3) Subdivision C:

(a) 29 CFR 1918.21 General requirements, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.22 Gangways , published 7/25/97, FR vol. 62, no. 143, p. 40202.

(c) 29 CFR 1918.23 Jacob's ladders, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.24 Fixed and portable ladders, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(e) 29 CFR 1918.25 Bridge plates and ramps (see also §1918.86), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1918.26 Access to barges and river towboats, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(4) Subdivision D:

(a) 29 CFR 1918.31 Hatch coverings, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.32 Stowed cargo and temporary landing surfaces, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(c) 29 CFR 1918.33 Deck loads, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.34 Other decks, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(e) 29 CFR 1918.35 Open hatches, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(f) 29 CFR 1918.36 Weather deck rails, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(g) 29 CFR 1918.37 Barges, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(5) Subdivision E:

(a) 29 CFR 1918.41 Coaming clearances, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(b) 29 CFR 1918.42 Hatch beam and pontoon bridles, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.43 Handling hatch beams and covers, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(6) Subdivision F:

(a) 29 CFR 1918.51 General requirements (see also §1918.11 and Appendix III of this part), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(b) 29 CFR 1918.52 Specific requirements, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.53 Cargo winches, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.54 Rigging gear, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(e) 29 CFR 1918.55 Cranes (see also §1918.11), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(7) Subdivision G:

(a) 29 CFR 1918.61 General (see also Appendix IV of this part), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(b) 29 CFR 1918.62 Miscellaneous auxiliary gear, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.63 Chutes, gravity conveyors and rollers, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.64 Powered conveyors, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(e) 29 CFR 1918.65 Mechanically powered vehicles used aboard vessels, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1918.66 Cranes and derricks other than vessel's gear, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(g) 29 CFR 1918.67 Notifying ship's officers before using certain equipment, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(h) 29 CFR 1918.68 Grounding, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(i) 29 CFR 1918.69 Tools, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(j) 29 CFR 1918.70–1918.80 (Reserved).

(8) Subdivision H:

(a) 29 CFR 1918.81 Slinging, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.82 Building drafts, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(c) 29 CFR 1918.83 Stowed cargo, tiering and breaking down, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.84 Bulling cargo, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(e) 29 CFR 1918.85 Containerized cargo operations, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938; 12/10/08, FR vol. 73, no. 238, pp. 75246-75290.

(f) 29 CFR 1918.86 Roll-on roll-off (Ro-Ro) operations (see also §1918.25), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(g) 29 CFR 1918.87 Ship's cargo elevators, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(h) 29 CFR 1918.88 Log operations, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(i) 29 CFR 1918.89 Handling hazardous cargo (see also §§1918.2 and 1918.99), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(9) Subdivision I:

(a) 29 CFR 1918.90 Hazard communication (see also §1918.1(b)(4)), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.91 Housekeeping, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(c) 29 CFR 1918.92 Illumination, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.93 Hazardous atmospheres and substances (see also §1918.2(j)), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(e) 29 CFR 1918.94 Ventilation and atmospheric conditions (see also §1918.2), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1918.95 Sanitation , published 7/25/97, FR vol. 62, no. 143, p. 40202.

(g) 29 CFR 1918.96 Maintenance and repair work in the vicinity of longshoring operations, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(h) 29 CFR 1918.97 First aid and lifesaving facilities (see also Appendix V of this part), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(i) 29 CFR 1918.98 Qualifications of machinery operators and supervisory training, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(j) 29 CFR 1918.99 Retention of DOT markings, placards and labels, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(k) 29 CFR 1918.100 Emergency action plans, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(10) Subdivision J:

(a) 29 CFR 1918.101 Eye and face protection, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(b) 29 CFR 1918.102 Respiratory protection, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(c) 29 CFR 1918.103 Head protection, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(d) 29 CFR 1918.104 Foot protection, published 7/25/97, FR vol. 62, no. 143, p. 40202.

(e) 29 CFR 1918.105 Other protective measures, published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(f) 29 CFR 1918.106 Payment for protective equipment, published 11/15/07, FR vol. 72, no. 220, p. 64342.

(11) Appendix I — Cargo Gear Register and Certificates (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(12) Appendix II — Tables for Selected Miscellaneous Auxiliary Gear (Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(13) Appendix III — The Mechanics of Conventional Cargo Gear (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.

(14) Appendix IV — Special Cargo Gear (Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202; 6/30/00, FR vol. 65, no. 127, p. 40938.

(15) Appendix V — Basic Elements of a First Aid Training Program (Non-Mandatory), published 7/25/97, FR vol. 62, no. 143, p. 40202.

NOTE: These standards are available at the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 9-1997, f. & cert. ef. 12-31-97; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 9-2000, f. & cert. ef. 10-10-00; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 6-2009, f. & cert. ef. 6-5-09

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

Rule Caption: Rules affecting workers' compensation medical treatment and fees.

Adm. Order No.: WCD 1-2009

Filed with Sec. of State: 5-22-2009

Certified to be Effective: 7-1-09

Notice Publication Date: 4-1-2009

Rules Amended: 436-009-0004, 436-009-0010, 436-009-0015, 436-009-0018, 436-009-0020, 436-009-0022, 436-009-0030, 436-009-0040, 436-009-0050, 436-009-0060, 436-009-0090, 436-010-0230, 436-010-0275

Subject: Amendments to OAR 436-009, "Oregon Medical Fee and Payment Rules" — these rules:

Adopt updated medical fee schedules and resources for the payment of health care providers; clarify that when a provider submits a bill within 12 months of the date of service, the insurer may not reduce payment due to late billing (with certain exceptions, when a provider submits a bill over twelve months after the date of service, the bill is not payable); exclude cervical artificial disc replacement from compensability except under specified conditions; require hospitals to include procedural codes on their bills only when applicable; provide that hospitals with a financial flexibility index at or below the median for critical access hospitals nationwide qualify for the rural exemption; assign a number of (currently) unassigned CPT® codes used by ambulatory surgical centers (ASCs) to Medicare ASC groups 1 through 6; and clarify when nurse practitioners and physician assistants are paid at 15% of a surgeon's or 85% of a physician's allowable fee.

Amendments to OAR 436-010, "Medical Services" — these rules:

Describe the relative and absolute contraindications to cervical artificial disc replacement; and allow insurers to give workers Web addresses to access lists of eligible attending physicians in a managed care organization; if the worker then requests a written list, an enrollment notice is complete when the insurer mails the written list.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7514; or e-mail fred.h.bruyns @state.or.us

Rules are available on the Internet: http://www.wcd.oregon.gov/policy/rules/rules.html

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-009-0004
Adoption of Standards

(1)(a) The director adopts, by reference, the columns included in the Centers for Medicare & Medicaid Services (CMS) 2009 Medicare Resource-Based Relative Value Scale (RBRVS) Addendum B and Addendum C, 73 Federal Register No. 224 November 19, 2008, titled:

(A) "CPT/HCPCS";

(B) "Mod";
(C) "Physician Work RVUs";
(D) "Year 2009 Transitional Non-Facility PE RVUs";
(E) "Year 2009 Transitional Facility PE RVUs";
(F) "Malpractice RVUs"; and
(G) "Global."

(b) The Addendum B and C columns referenced in subsection (1)(a) are the basis for the fee schedule for payment to medical service providers.

(c) The director does not adopt the definitions, status indicators, alpha codes, edits, processes, policies or philosophies of CMS, such as the National Correct Coding Initiative.

(2) The director adopts, by reference, the American Society of Anesthesiologists ASA, Relative Value Guide 2009 as a supplementary fee schedule for those anesthesia codes not found in the Federal Register.

(3) The director adopts, by reference, the American Medical Association's (AMA) Current Procedural Terminology (CPT® 2009), Fourth Edition Revised, 2008, for billing by medical providers. The guidelines are adopted as the basis for determining level of service.

(4) The director adopts, by reference, the AMA's CPT® Assistant, Volume 0, Issue 04 1990 through Volume 18, Issue 12 2008, as a supplement for determining the level of service described by the CPT® manual guidelines. If there is a conflict between the CPT® manual and CPT® Assistant, the CPT® manual shall be the controlling resource to determine the level of service.

(5)(a) The director adopts, by reference, only the alphanumeric codes from the CMS Healthcare Common Procedure Coding System (HCPCS) to be used when billing for services only to identify products, supplies, and services that are not described by CPT® codes or that provide more detail than a CPT® code.

(b) The director does not adopt the HCPCS edits, processes, exclusions, color-coding and associated instructions, age and sex edits, notes, status indicators, or other policies of CMS.

(6) Specific provisions contained in OAR chapter 436, divisions 009, 010, and 015 control over any conflicting provision in Addenda B and C, 73 Federal Register No. 224, November 19, 2008, ASA Relative Value Guide 2009, CPT® 2009, CPT® Assistant, or HCPCS 2009.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 656.248 & 656.726(4)
Stats. Implemented: ORS 656.248
Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09

436-009-0010
General Requirements for Medical Billings

(1) Only treatment that falls within the scope and field of the medical provider's license to practice will be paid under a worker's compensation claim.

(2) Billings must include the worker's full name and date of injury, the employer's name and, if available, the insurer's claim number and the provider's NPI. If the NPI is not available, then the provider must provide its license number and FEIN. For provider types not licensed by the state, "999999" must be used. All medical providers must submit bills to the insurer or managed care organization, as provided by their contract for medical services, on a completed current UB-04 (CMS 1450) or CMS 1500 form, except for:

(a) Dental billings, which must be submitted on American Dental Association dental claim forms;

(b) Pharmacy billings, which must be submitted on the most current National Council for Prescription Drug Programs (NCPDP) form; and

(c) EDI transmissions of medical bills under OAR 436-009-0030(3)(c).

(d) Computer-generated reproductions of forms referenced in subsections (2)(a) and (b) may also be used.

(3)(a) All original medical provider billings must be accompanied by legible chart notes documenting services which have been billed and identifying the person performing the service and license number of the person providing the service. Medical providers are not required to provide their license number if they are already providing a national identification number.

(b) When processing billings via EDI, the insurer may waive the requirement that billings be accompanied by chart notes. The insurer remains responsible for payment of only compensable medical services. The medical provider may submit their chart notes separately or at regular intervals as agreed with the insurer.

(4) When billing for medical services, a medical service provider must use codes listed in CPT® 2009 or Oregon Specific Codes (OSC) that accurately describe the service. If there is no specific CPT® code or OSC, a medical service provider must use the appropriate HCPCS code, if available, to identify the medical supply or service. Pharmacy billings must use the National Drug Code (NDC) to identify the drug or biological billed.

(a) If there is no specific code for the medical service, the medical service provider must use the appropriate unlisted code from HCPCS or the unlisted code at the end of each medical service section of CPT® 2009 and provide a description of the service provided.

(b) Any service not identifiable with a code number must be adequately described by report.

(5) Medical providers must submit billings for medical services in accordance with this section.

(a) Bills must be submitted within:

(A) 60 days of the date of service;

(B) 60 days after the medical provider has received notice or knowledge of the responsible workers' compensation insurer or processing agent; or

(C) 60 days after any litigation affecting the compensability of the service is final, if the provider receives written notice of the final litigation from the insurer.

(b) A medical provider must establish good cause when submitting a bill later than outlined in subsection (a) of this section. Good cause may include, but is not limited to, such issues as extenuating circumstances or circumstances considered outside the control of the provider.

(c) When a provider submits a bill within 12 months of the date of service, the insurer may not reduce payment due to late billing. When a provider submits a bill over twelve months after the date of service, the bill is not payable, except when a provision of subsection (a) of this section is the reason the billing was submitted after twelve months.

(6) When rebilling, medical providers must indicate that the charges have been previously billed.

(7) The medical provider must bill their usual fee charged to the general public. The submission of the bill by the medical provider shall serve as a warrant that the fee submitted is the usual fee of the medical provider for the services rendered. The department shall have the right to require documentation from the medical provider establishing that the fee under question is the medical provider's usual fee charged to the general public. For purposes of this rule, "general public" means any person who receives medical services, except those persons who receive medical services subject to specific billing arrangements allowed under the law which require providers to bill other than their usual fee.

(8) Medical providers must not submit false or fraudulent billings, including billing for services not provided. As used in this section, "false or fraudulent" means an intentional deception or misrepresentation with the knowledge that the deception could result in unauthorized benefit to the provider or some other person. A request for pre-payment for a deposition is not considered false or fraudulent.

(9) When a worker with two or more separate compensable claims receives treatment for more than one injury or illness, costs must be divided among the injuries or illnesses, irrespective of whether there is more than one insurer.

(10) Workers may make a written request to a medical provider to receive copies of medical billings. Upon receipt of a request, the provider may furnish the worker a copy during the next billing cycle, but no later than 30 days following receipt of the request. Thereafter, worker copies must be furnished during the regular billing cycle.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 656.245, 656.252, 656.254
Stats. Implemented: ORS 656.245, 656.252, 656.254
Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 8-2001, f. 9-13-01, cert. ef. 9-17-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09

436-009-0015
Limitations on Medical Billings

(1) An injured worker is not liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer according to OAR chapter 436. A medical provider must not attempt to collect payment for any medical service from an injured worker, except as follows:

(a) When the injured worker seeks treatment for conditions not related to the accepted compensable injury or illness;

(b) When the injured worker seeks treatment that has not been prescribed by the attending physician or authorized nurse practitioner, or a specialist physician upon referral of the attending physician or authorized nurse practitioner. This would include, but not be limited to, ongoing treat-

ment by non-attending physicians in excess of the 30-day/12-visit period or by nurse practitioners in excess of the 90-day period, as set forth in ORS 656.245 and OAR 436-010-0210;

(c) When the injured worker seeks palliative care that is either not compensable or not authorized by the insurer or the director under OAR 436-010-0290, after the worker has been provided notice that the worker is medically stationary;

(d) When the injured worker seeks treatment outside the provisions of a governing MCO contract after insurer notification in accordance with OAR 436-010-0275; or

(e) When the injured worker seeks treatment after being notified that such treatment has been determined to be unscientific, unproven, outmoded, or experimental.

(2) A medical provider may not charge any fee for completing a medical report form required by the director under this chapter or for providing chart notes required by OAR 436-009-0010(3).

(3) The medical provider may not charge a fee for the preparation of a written treatment plan and the supplying of progress notes that document the services billed as they are integral parts of the fee for the medical service.

(4) No fee is payable for the completion of a work release form or completion of a PCE form where no tests are performed.

(5) No fee is payable for a missed appointment except a closing examination or an appointment arranged by the insurer or for a Worker Requested Medical Examination. Except as provided in OAR 436-009-0070(10)(d) and (11)(d), when the worker fails to appear without providing the medical provider at least 24 hours notice, the medical provider must be paid at 50 percent of the examination or testing fee.

(6) Under ORS 656.245(3), the director has excluded from compensability the following medical treatment. While these services may be provided, medical providers shall not be paid for the services or for treatment of side effects.

(a) Dimethyl sulfoxide (DMSO), except for treatment of compensable interstitial cystitis;

(b) Intradiscal electrothermal therapy (IDET);

(c) Surface EMG (electromylography) tests;

(d) Rolfing;

(e) Prolotherapy;

(f) Thermography;

(g) Lumbar artificial disc replacement, unless it is a single level replacement with an unconstrained or semi-constrained metal on polymer device and:

(A) The single level artificial disc replacement is between L3 and S1;

(B) The injured worker is 16 to 60 years old;

(C) The injured worker underwent a minimum of 6 months unsuccessful exercise based rehabilitation; and

(D) The procedure is not found inappropriate under OAR 436-010-0230(13) or (14); and

(h) Cervical artificial disc replacement, unless it is a single level replacement with a semi-constrained metal on polymer or a semi-constrained metal on metal device and:

(A) The single level artificial disc replacement is between C3 and C7;

(B) The injured worker is 16 to 60 years old;

(C) The injured worker underwent unsuccessful conservative treatment;

(D) There is intraoperative visualization of the surgical implant level; and

(E) The procedure is not found inappropriate under OAR 436-010-0230(15) or (16).

(7) Only one office visit code may be used for each visit except for those code numbers relating specifically to additional time.

(8) Mechanical muscle testing may be paid a maximum of three times during a treatment program when prescribed and approved by the attending physician or authorized nurse practitioner: once near the beginning, once near the middle, and once near the end of the treatment program. Additional mechanical muscle testing shall be paid for only when authorized in writing by the insurer prior to the testing. The fee for mechanical muscle testing includes a copy of the computer printout from the machine, written interpretation of the results, and documentation of time spent with the patient.

(9)(a) When a physician or authorized nurse practitioner provides services in hospital emergency or outpatient departments which are similar to services that could have been provided in the physician's or authorized nurse practitioner's office, such services must be identified by CPT® codes and paid according to the fee schedule.

(b) When a worker is seen initially in an emergency department and is then admitted to the hospital for inpatient treatment, the services provided immediately prior to admission shall be considered part of the inpatient treatment. Diagnostic testing done prior to inpatient treatment shall be considered part of the hospital services subject to the hospital fee schedule.

(10) Physician assistant, authorized nurse practitioner, or out-of-state nurse practitioner fees must be paid at the rate of 85 percent of a physician's allowable fee for a comparable service. The bills for services by these providers must be marked with modifier "-81". Chart notes must document when medical services have been provided by a physician assistant or nurse practitioner.

(11) Except as otherwise provided in OAR 436-009-0070, when a medical provider is asked to prepare a report, or review records or reports prepared by another medical provider, an insurance carrier or their representative, the medical provider should bill for their report or review of the records utilizing CPT® codes such as 99080. Refer to specific code definitions in the CPT® for other applicable codes. The billing should include documentation of the actual time spent reviewing the records or reports.

[Publications: Publications referenced are available from the agency.
Stat. Auth.: ORS 656.245, 656.252 & 656.254
Stats. Implemented: ORS 656.245, 656.252 & 656.254
Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 8-2001, f. 9-13-01, cert. ef. 9-17-01; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09

436-009-0018
Fee Discount Agreements

(1) An insurer may only apply the following discounts to a medical service provider's or clinic's fee:

(a) A fee agreed to under a fee discount agreement that conforms to this rule and has been reported to the director; or

(b) A fee agreed to by the medical service provider or clinic under an MCO contract to cover services provided to a worker enrolled in the MCO.

(2) Any discount under a fee discount agreement cannot be more than 10 percent of the fee schedule.

(3) An insurer may not apply a discount under a fee discount agreement until the medical service provider or clinic and the insurer have signed the fee discount agreement. Parties to the fee discount agreement must use Form 440-3659. The form must be reproduced on the medical service provider's or clinic's letterhead. The agreement must include the following:

(a) A statement that the medical service provider or clinic understands and voluntarily agrees with the terms of the fee discount agreement;

(b) The effective and end dates of the agreement;

(c) The discount rate or rates under the agreement;

(d) A statement that the insurer or employer may not direct patients to the provider or clinic, and that the insurer or employer may not direct or manage the care a worker receives;

(e) A statement that the agreement only applies to patients being treated for Oregon workers' compensation claims;

(f) A statement that the fee discount agreement may not be amended. A new fee discount agreement must be executed to change the terms between the parties.

(g) A statement that either party may terminate the agreement by providing the other party with 30 days written notice;

(h) The name and address of the singular insurer or self-insured employer that will apply the discounts;

(i) The National Provider Identifier for the provider or clinic; and

(j) Other terms and conditions to which the medical service provider or clinic and the insurer agree and that are consistent with these rules.

(4) Once the fee discount agreement has been signed by the medical service provider or clinic and the insurer, the insurer must report the fee discount agreement to the director by completing the director's online form. The following information must be included:

(a) The insurer's name that will apply the discounts under the fee discount agreement;

(b) The medical service provider's or clinic's name;

(c) The effective date of the agreement;

(d) The end date of the agreement;

(e) The discount rate under the agreement and;

(f) An indication that all the terms required under section (3) of this rule are included in the signed fee discount agreement.

(5) When the medical service provider or clinic and the insurer agree to changes under an existing fee discount agreement, the parties must enter into a new fee discount agreement. Bulletin 352 provides further information on the required form.

(6) Either party to the fee discount agreement may terminate the agreement by providing 30 days written notice. The insurer must report the termination to the director prior to the termination taking effect by com-

pleting the director's online form. The following information must be reported:

(a) The insurer's name;

(b) The medical service provider's or clinic's name; and

(c) The termination date of the agreement.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248
Hist.: WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09

436-009-0020
Hospital Fees

(1) Hospital inpatient charges billed to insurers must include ICD-9-CM diagnostic codes. When applicable, the hospital charges must also include procedural codes. Hospitals must include their NPI on all bills. For purposes of this rule, hospital inpatient services include, but are not limited to, those bills coded "111" through "118" in space #4 on the UB-04 billing form. The audited bill must be multiplied by the hospital's adjusted cost/charge ratio to determine the allowable payment.

(2) Hospital outpatient charges billed to insurers must include revenue codes, ICD-9-CM diagnostic and procedural codes, CPT® codes, HCPCS codes, and National Drug Codes (NDC), where applicable. Hospitals must include their NPI on all bills.

(3) Unless otherwise provided by contract, the insurer must pay for hospital inpatient services at the allowable payment amount as calculated by multiplying the hospital's adjusted cost/charge ratio by the amount billed (See Bulletin 290).

(4) The insurer must pay for hospital outpatient services as follows:

(a) Separate and pay charges for services by physicians and other medical service providers assigned a code under the CPT® and assigned a value in the RBRVS for physician fees as identified by the revenue codes indicating professional services. These charges must be subtracted from the total bill. All outpatient therapy services (physical therapy, occupational therapy, and speech language pathology) must be paid using the Physician work RVUs, Year 2009 transitional non-facility PE RVUs, and Malpractice RVUs columns.

(b) Unless otherwise provided by contract, the balance of the hospital total bill for outpatient services must be paid at the allowable payment amount as calculated by multiplying the hospital's adjusted cost/charge ratio by the amount billed (See Bulletin 290).

(c) Unless otherwise provided by contract, all other charges billed using both the hospital name and tax identification number must be paid at the allowable payment amount as calculated by multiplying the hospital's adjusted cost/charge ratio by the amount billed.

(5) If a hospital qualifies for a rural exemption under (6)(k), the insurer may only apply an MCO contract to discount the fees calculated under this rule.

(6) Each hospital's CMS 2552 form and financial statement shall be the basis for determining its adjusted cost/charge ratio. If a current form 2552 is not available, then financial statements may be used to develop estimated data. If the adjusted cost/charge ratio is determined from estimated data, the hospital will receive the lower ratio of either the hospital's last published cost/charge ratio or the hospital's cost/charge ratio based on estimated data.

(a) The basic cost/charge ratio shall be developed by dividing the total net expenses for allocation shown on Worksheet A, and as modified in subsection (b), by the total patient revenues from Worksheet G-2.

(b) The net expenses for allocation derived from Worksheet A shall be modified by adding, from Worksheet A-8, the expenses for:

(A) Provider-based physician adjustment;

(B) Patient expenses such as telephone, television, radio service, and other expenses determined by the department to be patient-related expenses; and

(C) Expenses identified as for physician recruitment.

(c) The basic cost/charge ratio shall be further modified to allow a factor for bad debt and the charity care provided by each hospital. The adjustment for bad debt and charity care is calculated in two steps. Step one: Add the dollar amount for net bad debt to the dollar amount for charity care. Divide this sum by the dollar amount of the total patient revenues, from Worksheet G-2, to compute the bad debt and charity ratio. Step two: Multiply the bad debt and charity ratio by the basic cost/charge ratio calculated in subsection (6)(a) to obtain the factor for bad debt and charity care.

(d) The basic cost/charge ratio shall be further modified to allow an adequate return on assets. The director will determine a historic real growth rate in the gross fixed assets of Oregon hospitals from the audited financial statements. This real growth rate and the projected growth in a national fixed weight price deflator will be added together to form a growth factor. This growth factor will be multiplied by the total fund balance, from Worksheet G of each hospital's CMS 2552 to produce a fund balance amount. The fund balance amount is then divided by the total patient revenues from Worksheet G-2, to compute the fund balance factor.

(e) The factors resulting from subsections (6)(c) and (6)(d) of this rule will be added to the ratio calculated in subsection (6)(a) of this rule to obtain the adjusted cost/charge ratio. In no event will the adjusted cost/charge ratio exceed 1.00.

(f) The adjusted cost/charge ratio for each hospital will be revised annually, at a time based on their fiscal year, as described by bulletin. Each hospital must submit a copy of their CMS 2552 and financial statements each year within 150 days of the end of their fiscal year to the Information Management Division, Department of Consumer and Business Services. The adjusted cost/charge ratio schedule will be published by bulletin twice yearly, effective for the six-month period beginning April 1 and the six-month period beginning October 1.

(g) For newly formed or established hospitals for which no CMS 2552 has been filed or for which there is insufficient data, or for those hospitals that do not file Worksheet G-2 with the submission of their CMS 2552, the division shall determine an adjusted cost/charge ratio for the hospital based upon the adjusted cost/charge ratios of a group of hospitals of similar size or geographic location.

(h) If the financial circumstances of a hospital unexpectedly or dramatically change, the division may revise the hospital's adjusted cost/charge ratio to allow equitable payment.

(i) If audit of a hospital's CMS 2552 by the CMS produces significantly different data from that obtained from the initial filing, the division may revise the hospital's adjusted cost/charge ratio to reflect the data developed subsequent to the initial calculation.

(j) Notwithstanding subsections (c) through (i) of this section the payment to out-of-state hospitals, may be negotiated between the insurer and the hospital.

(A) Any agreement for payment less than the billed amount must be in writing and signed by a hospital and insurer representative.

(B) The agreement must include language that the hospital will not bill the worker any remaining balance and that the negotiated amount is considered payment in full.

(C) If the insurer and the hospital are unable to reach agreement within 60 days of the insurer's receipt of the bill, either party may bring the issue to the director for resolution. The director may order payment up to the amount billed considering factors such as, but not limited to, reasonableness, usual fees for similar services by facilities in similar geographic areas, case specific services, and any extenuating circumstances.

(k) Notwithstanding sections (3) and (4) of this rule, the director may exclude rural hospitals from imposition of the adjusted cost/charge ratio based upon a determination of economic necessity. The rural hospital exclusion will be based on the financial health of the hospital reflected by its financial flexibility index. All rural hospitals having a financial flexibility index at or below the median for critical access hospitals nationwide will qualify for the rural exemption. Rural hospitals that are designated as critical access hospitals under the Oregon Medicare Rural Hospital Flexibility Program are automatically exempt from imposition of the adjusted cost/charge ratio.

[ED. NOTE: Forms referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 656.726(4), also see 656.012, 656.236(5), 656.327(2) , 656.313(4)(d)
Stats. Implemented: ORS 656.248; 656.252; 656.256
Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0701, 5-1-85; WCD 3-1985(Admin)(Temp), f. & ef. 9-4-85; WCD 4-1985(Admin)(Temp), f. & ef. 9-11-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1986(Admin)(Temp), f. 2-5-86, ef. 2-6-86; WCD 2-1986(Admin), f. 3-10-86, ef. 3-17-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 2-1989, f. 8-21-89, cert. ef. 9-1-89; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 15-1990, f. & cert. ef. 8-7-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 18-1995(Temp), f. & cert. ef. 12-4-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0090; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1997, f. 4-21-97, cert. ef. 7-1-97; Administrative correction 6-18-97; WCD 8-1997(Temp), f. & cert. ef. 7-9-97; WCD 16-1997, f. & cert. ef. 12-15-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09

436-009-0022
Ambulatory Surgical Center Fees

(1) An ambulatory surgical center (ASC) is any distinct entity licensed by the state of Oregon, and operated exclusively for the purpose of providing surgical services to patients not requiring hospitalization.

(a) Any ASC outside of Oregon must meet similar licensing requirements, or be certified by Medicare or a nationally recognized agency.

(b) ASCs must bill on CMS 1500 forms using the modifier "SG" to identify facility charges.

(2) Unless otherwise provided by contract, insurers must pay an ASC at the ASC's usual fee, or the maximum allowable amount set by the fee schedule, whichever is less.

(3) Insurers must pay ASCs using the 2006 Medicare ASC groups, except:

(a) CPT® code 15004 is paid as Group 1;

(b) CPT® code 11760 is paid as Group 2;

(c) CPT® code 11750 is paid as Group 3;

(d) CPT® code 25606 is paid as Group 4;

(e) CPT® codes 25607, 25608, and 25609 are paid as Group 5;

(f) CPT® codes 24358 and 24359 are paid as Group 6;

(g) Arthroscopies (CPT® codes 29819 through 29898 except 29888 and 29889) are paid as Group 6;

(h) Arthroscopies (CPT® codes 29888 and 29889) are paid as Group 7; and

(i) Insurers must pay for services not listed in the Medicare ASC groups 1 through 9 at the provider's usual fee.

(4) The ASC fee schedule sets the maximum allowable amounts as follows:

Group 1 — $ 853.28
Group 2 — $ 1,143.88
Group 3 — $ 1,307.68
Group 4 — $ 1,616.75
Group 5 — $ 1,838.68
Group 6 — $ 2,108.00
Group 7 — $ 2,551.95
Group 8 — $ 2,485.78
Group 9 — $ 3,444.43

(5) The ASC fee includes services, such as:

(a) Nursing, technical, and related services;

(b) Use of the facility where the surgical procedure is performed;

(c) Drugs, biologicals, surgical dressings, supplies, splints, casts, appliances, and equipment directly related to the provision of the surgical procedure;

(d) Diagnostic or therapeutic services or items directly related to the provision of a surgical procedure;

(e) Administrative, record-keeping, and housekeeping items and services;

(f) Materials for anesthesia; and

(g) Supervision of the services of an anesthetist by the operating surgeon.

(6) The ASC fee does not include services, such as physicians' services, laboratory, x-ray or diagnostic procedures not directly related to the surgical procedure, prosthetic devices, orthotic devices, durable medical equipment (DME), or anesthetists' services. The insurer shall pay for prosthetic devices, orthotic devices, and DME as provided in OAR 436-009-0080.

(7) Unless otherwise provided by contract, when multiple procedures are performed, the highest payment group must be paid at the ASC's usual fee or the maximum allowable amount, whichever is less; each additional procedure must be paid at 50% of the ASC's usual fee or of the maximum allowable amount, whichever is less.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248 & 656.252
Hist.: WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09

436-009-0030
Insurer's Duties and Responsibilities

(1) The insurer must pay for medical services related to a compensable injury claim, except as provided by OAR 436-060-0055.

(2) The insurer, or its designated agent, may request from the medical provider, any and all necessary records needed to review accuracy of billings. The medical provider may charge an appropriate fee for copying documents in accordance with OAR 436-009-0070(1). If the evaluation of the records must be conducted on-site, the provider must furnish a reasonable work-site for the records to be reviewed at no cost. These records must be provided or made available for review within 14 days of a request.

(3) Insurers must date stamp medical bills and reports upon receipt and pay bills for medical services on accepted claims within 45 days of receipt of the bill, if the billing is submitted in proper form in accordance with OAR 436-009-0010(2) through (4) and clearly shows that the treatment is related to the accepted compensable injury or disease. Billings not submitted in the proper form must be returned to the medical provider within 20 days of receipt of the bill with a written explanation describing why the bill was not paid or what needs to be corrected. A request for chart notes on EDI billings must be made to the medical provider within 20 days of receipt of the bill. The number of days between the date the insurer returns the billing or requests for chart notes from the provider and the date the insurer receives the corrected billing or chart notes, shall not apply toward the 45 days within which the insurer is required to make payment.

(a) The insurer must retain a copy of each medical provider's bill received by the insurer or must be able to reproduce upon request data relevant to the bill, including but not limited to, provider name, date of service, date the insurer received the bill, type of service, billed amount, coding submitted by the medical provider as described in OAR 436-009-0010(2), and insurer action, for any non-payment or fee reduction. This includes all bills submitted to the insurer even when the insurer determines no payment is due.

(b) Any service billed with a code number commanding a higher fee than the services provided shall be returned to the medical provider for correction or paid at the value of the service provided.

(c) When a medical provider submits a bill electronically, it shall be considered "mailed" in accordance with OAR 436-010-0005.

(4) With each payment or denied payment, the insurer or its representative must provide the medical provider a written explanation of the specific reason(s) for non-payment, reduced payment, or discounted payment for each service billed by the medical provider. The written explanation must also include:

(a) An Oregon or toll-free contact phone number for the insurer for billing inquiries from medical providers;

(b) A notice of right to administrative review as follows:

"If you disagree with this decision about this payment, you may request administrative review by the director of the Department of Consumer and Business Services. Your request for review must be made within 90 days of receipt of this explanation. To request review, sign and date this document in the space provided, indicate which decisions you disagree with, and mail this document to the Workers' Compensation Division, Medical Section/ Resolution Team, PO Box 14480, Salem, OR 97309-0405. Or you may fax the request to the director at 503-934-6050. You must also send a copy of the request to the insurer. You should keep a copy of this document for your records."

(c) Space for the medical provider's signature and the date.

(5) An insurer must answer a medical provider's inquiry about a medical payment within 48 hours, not including weekends or legal holidays, of the medical provider's inquiry.

(6) Payment of medical bills is required within 14 days of any action causing the service to be payable, or within 45 days of the insurer's receipt of the bill, whichever is later.

(7) Failure to pay for medical services timely may render the insurer liable to pay a reasonable monthly service charge for the period payment was delayed, if the provider customarily levies such a service charge to the general public.

(8) When there is a dispute over the amount of a bill or the appropriateness of services rendered, the insurer must, within 45 days, pay the undisputed portion of the bill and at the same time provide specific reasons for non-payment or reduction of each medical service code. Resolution of billing disputes, including possible overpayment disputes, must be made in accordance with OAR 436-009-0008, 436-010-0008 and 436-015.

(9) Bills for medical services rendered at the request of the insurer and bills for information submitted at the request of the insurer, which are in addition to those required in OAR 436-010-0240 must be paid for within 45 days of receipt by the insurer even if the claim is denied.

(10) The insurer must establish an audit program for bills for all medical services to determine that the bill reflects the services provided, that appropriate prescriptions and treatment plans are completed in a timely manner, that payments do not exceed the maximum fees adopted by the director, and that bills are submitted in a timely manner. The audit shall be continuous and shall include no fewer than 10 percent of medical bills. The insurer must provide upon request documentation establishing that the insurer is conducting a continuous audit of medical bills. This documentation must include, but not be limited to, medical bills, internal audit forms, and any medical charge summaries prepared by private medical audit companies.

(11) The insurer must pay a medical provider for any bill related to the claimed condition received by the insurer on or before the date the terms of a disputed claim settlement (DCS) were agreed on, but was either not listed in the approved DCS or was not paid to the medical provider as set forth in the approved DCS. Payment must be made by the insurer as prescribed by ORS 656.313(4)(d) and OAR 438-009-0010(2)(g) as if the bill had been listed in the approved settlement or as set forth in the approved DCS, except if the DCS payments have already been made, the payment must not be deducted from the settlement proceeds. Payment must be made within 45 days of the insurer's knowledge of the outstanding bill.

(12) Insurers that had at least 100 accepted disabling claims in the previous calendar year, as determined by the director, are required to submit detailed medical bill payment data to the Information Management Division of the Department of Consumer and Business Services at 350 Winter St NE, Room 300, PO Box 14480, Salem OR 97309-0405. Once an

insurer has reached the minimum number of accepted disabling claims, they must continue to report in subsequent years unless there is a significant decrease below the 100 claim minimum which is expected to continue. The director will notify the affected insurers when they reach the minimum. If the insurer drops below the 100 disabling claim level or encounters other significant hardships, the insurer may apply to the director for exemption from the reporting requirement. The reporting requirements are as follows:

(a) The transmission data and format requirements are included in Appendix A of these rules and Appendix B of OAR 436-160. OAR 436-160 explains the IAIABC ANSI 837 medical bill reporting requirements. To determine which appendix applies to required reporting insurers, see below.

(b) Each insurer must continue to report according to Appendix A until successfully completing IAIABC ANSI 837 testing under OAR 436-160. Once successfully completing testing, the insurer may only report via IAIABC ANSI 837.

(c) Group 1 is all required reporting insurers who are currently reporting data via IAIABC ANSI 837 in another jurisdiction. Each insurer in Group 1 must begin testing on July 1, 2008.

(d) Group 2 is the State Accident Insurance Fund Corporation. Group 2 must begin testing on April 1, 2009.

(e) Group 3 is all other required reporting insurers. Each insurer in Group 3 must begin testing on October 1, 2009.

(13) An insurer may request, in writing, additional time to report the requested data elements according to OAR 436-160. The insurer must demonstrate that the date to begin testing creates an undue hardship. The request must include a plan to begin testing within 12 months of the group's testing date, and may not extend beyond January 1, 2010.

(14) Undue hardship is demonstrated by providing the total required expenses to begin testing; the reporting cost per bill if transmitted directly by the insurer; and the total cost per bill if reported by a vendor.

(15) If the director allows additional time, the insurer must continue to report all medical billing data under Appendix A during the testing.

(16) The director may audit an insurer's actual payments reported for individual claims. An insurer is subject to a civil penalty if an audit determines that the insurer's error rate is 15 percent or higher in any field.

[ED. NOTE: Appendix referenced are available from the agency.]
Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260 & 656.264
Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1997, f. 4-21-97, cert. ef. 7-1-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09

436-009-0040
Calculating Medical Provider Fees

(1) Insurers must pay for medical services at the provider's usual fee or according to the fee schedule, whichever is less, unless otherwise provided by contract or fee discount agreement permitted by these rules.

(2) If a billed service is not covered by a contract permitted by these rules or the fee schedule, then the insurer must pay for the medical services at the provider's usual fee. When there is no maximum payment established by the fee schedule, an insurer may challenge the reasonableness of a provider's billing on a case by case basis by asking the director to review the billing under OAR 436-009-0008. If the director determines the amount billed is unreasonable, the director may establish a different fee to be paid to the provider based on at least one of, but not limited to, the following: reasonableness, the usual fees of similar providers, the services provided in the specific case, fees for similar services in similar geographic regions, and any extenuating circumstances.

(3)(a) When using RBRVS, the total RVU is determined by reference to the appropriate CPT® code and by adding the values of the Physician work RVU, Year 2009 transitional non-facility PE RVU or Year 2009 transitional facility PE RVU, and Malpractice RVU. The PE RVU is determined by the location where the procedure is performed: If the procedure is performed inside the medical service provider's office, use Year 2009 transitional non-facility PE RVUs column; if the procedure is performed outside the medical service provider's office, use Year 2009 transitional facility PE RVUs column. Use the global column to identify the follow up days when applicable. For all outpatient therapy services (physical therapy, occupational therapy, and speech language pathology), use the Physician work RVUs, Year 2009 transitional non-facility PE RVUs, and Malpractice RVUs columns.

(b) When an Oregon Specific Code is assigned, the RVU for multidisciplinary program services is found in OAR 436-009-0060(5), or for other services in OAR 436-009-0070 (13).

(c) When using the American Society of Anesthesiologists Relative Value Guide, a basic unit value is determined by reference to the appropriate Anesthesia code. The anesthesia value includes the basic unit value, time units, and modifying units.

(4) Payment according to the fee schedule must be determined by multiplying the assigned RVU or basic unit value by the applicable conversion factor. Where the code is designated by an RVU of "0.00" or IC (individual consideration) for Anesthesia codes, the insurer must pay the provider's usual fee.

(5) The table below lists the conversion factors to be applied to services, assigned an RVU, rendered by all medical providers.

Service Categories — Conversion Factors
Evaluation / Management — $64.79
Anesthesiology — $53.45
Surgery — $86.44
Radiology — $68.00
Lab & Pathology — $60.00
Medicine — $75.04
Physical Medicine and Rehabilitation — $65.79
Multidisciplinary and Other Oregon-Specific Codes — $60.00
Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248
Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09

436-009-0050
CPT® Sections

Each CPT® section has its own schedule of relative values, completely independent of and unrelated to any of the other sections. The definitions, descriptions, and guidelines found in CPT® must be used as guides governing the descriptions of services, except as otherwise provided in these rules. The following provisions are in addition to those provided in each section of CPT®..

(1) Evaluation and Management services.

(2) Anesthesia services.

(a) In calculating the units of time, use 15 minutes per unit. If a medical provider bills for a portion of 15 minutes, round the time up to the next 15 minutes and pay one unit for the portion of time.

(b) Anesthesia basic unit values are to be used only when the anesthesia is personally administered by either a licensed physician or certified nurse anesthetist who remains in constant attendance during the procedure for the sole purpose of rendering such anesthesia service.

(c) When a regional anesthesia is administered by the attending surgeon, the value must be the "basic" anesthesia value only without added value for time.

(d) When the surgeon or attending physician administers a local or regional block for anesthesia during a procedure, the modifier "NT" (no time) must be noted on the bill.

(e) Local infiltration, digital block, or topical anesthesia administered by the operating surgeon is included in the relative value unit for the surgical procedure.

(3) Surgery services.

(a) When a worker is scheduled for elective surgery, the pre-operative visit, in the hospital or elsewhere, necessary to examine the patient, complete the hospital records, and initiate the treatment program is included in the listed global value of the surgical procedure. If the procedure is not elective, the physician is entitled to payment for the initial evaluation of the worker in addition to the global fee for the surgical procedure(s) performed.

(b) When an additional surgical procedure(s) is carried out within the listed period of follow-up care for a previous surgery, the follow-up periods will continue concurrently to their normal terminations.

(c) Multiple surgical procedures performed at the same session must be paid as follows:

(A) When multiple surgical procedures are performed by one surgeon, the principal procedure is paid at 100 percent of the maximum allowable fee, the secondary and all subsequent procedures are paid at 50 percent of the maximum allowable fee. A diagnostic arthroscopic procedure performed preliminary to an open operation, is considered a secondary procedure and paid accordingly.

(B) When multiple arthroscopic procedures are performed, the major procedure must be paid at no more than 100 percent of the value listed in these rules and the subsequent procedures paid at 50 percent of the value listed.

(C) When more than one surgeon performs surgery, each procedure must be billed separately. The maximum allowable fee for each procedure, as listed in these rules, must be reduced by 25 percent. When the surgeons assist each other throughout the operation, each is entitled to an additional

fee of 20 percent of the other surgeon's allowable fee as an assistant's fee. When the surgeons do not assist each other, and a third physician assists the surgeons, the third physician is entitled to the assistant's fee of 20 percent of the surgeons' allowable fees.

(D) When a surgeon performs surgery following severe trauma that requires considerable time, and the surgeon does not think the fees should be reduced under the multiple surgery rule, the surgeon may request special consideration by the insurer. Such a request must be accompanied by written documentation and justification. Based on the documentation, the insurer may pay for each procedure at 100 percent.

(E) When a surgical procedure is performed bilaterally, the modifier "-50" must be noted on the bill for the second side, and paid at 50% of the fee allowed for the first side.

(d) When physician assistants or nurse practitioners assist a surgeon performing surgery, they must be paid at the rate of 15 percent of the surgeon's allowable fee for the surgical procedure(s). When physician assistants or nurse practitioners are the primary providers of a surgical procedure, they must be paid at the rate of 85 percent of a physician's allowable fee for a comparable service. Physician assistants and nurse practitioners must mark their bills with a modifier "-81." Chart notes must document when medical services have been provided by a physician assistant or nurse practitioner.

(e) Other surgical assistants who are self-employed and work under the direct control and supervision of a physician must be paid at the rate of 10 percent of the surgeon's allowable fee for the surgical procedure(s). The operation report must document who assisted.

(4) Radiology services.

(a) In order to be paid, x-ray films must be of diagnostic quality and include a report of the findings. Billings for 14" x 36" lateral views shall not be paid.

(b) When multiple contiguous areas are examined by computerized axial tomography (CAT) scan, computerized tomography angiography (CTA), magnetic resonance angiography (MRA), or magnetic resonance imaging (MRI), the technical component for the first area examined must be paid at 100 percent, the second area at 50 percent, and the third and all subsequent areas at 25 percent under these rules. The discount applies to multiple studies done within 2 days, unless the ordering provider provides a reasonable explanation of why the studies needed to be done on separate days. No reduction is applied to multiple areas for the professional component.

(5) Pathology and Laboratory services.

(a) The laboratory and pathology conversion factor applies only when there is direct physician involvement.

(b) Laboratory fees must be billed in accordance with ORS 676.310. If any physician submits a bill for laboratory services that were performed in an independent laboratory, the bill must show the amount charged by the laboratory and any service fee that the physician charges.

(6) Medicine services.

(7) Physical Medicine and Rehabilitation services.

(a) Increments of time for a time-based CPT® code must not be prorated.

(b) Payment for modalities and therapeutic procedures shall be limited to a total of three separate CPT®-coded services per day. CPT® codes 97001, 97002, 97003, or 97004 are not subject to this limit. An additional unit of time (15 minute increment) for the same CPT® code is not counted as a separate code.

(c) All modality codes requiring constant attendance (97032, 97033, 97034, 97035, 97036, and 97039) are time-based. Chart notes must clearly indicate the time treatment begins and the time treatment ends for the day.

(d) CPT® codes 97010 through 97028 shall not be paid unless they are performed in conjunction with other procedures or modalities which require constant attendance or knowledge and skill of the licensed medical provider.

(e) When multiple treatments are provided simultaneously by a machine, device or table there must be a notation on the bill that treatments were provided simultaneously by a machine, device or table and there must be one charge.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248
Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09

436-009-0060
Oregon Specific Code, Multidisciplinary Services

(1) Services provided by multidisciplinary programs not otherwise described by CPT® codes must be billed under Oregon Specific Codes.

(2) Treatment in a chronic pain management program, physical rehabilitation program, work hardening program, or a substance abuse program shall not be paid unless the program is accredited for that purpose by the Commission on Accreditation of Rehabilitation Facilities (CARF) or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

(a) Organizations which have applied for CARF accreditation, but have not yet received such accreditation, may receive payment for multidisciplinary programs upon providing evidence to the insurer that an application for accreditation has been filed with and acknowledged by CARF. Such organizations may provide multidisciplinary services under this section for a period of up to 6 months from the date CARF provided notice to the organization that the accreditation process has been initiated, or until such time as CARF accreditation has been received or denied, whichever occurs first.

(b) Notwithstanding OAR 436-009-0010(4), program fees for services within a multidisciplinary program may be used based upon written preauthorization from the insurer. Programs must identify the extent, frequency, and duration of services to be provided.

(c) All job site visits and ergonomic consultations must be preauthorized by the insurer.

(3) When an attending physician or authorized nurse practitioner approves a multidisciplinary treatment program for an injured worker, he or she must provide the insurer with a copy of the approved treatment program within 14 days of the beginning of the treatment program.

(4) Billings using the multidisciplinary codes must include copies of the treatment record which specifies the type of service rendered, the medical provider who provided the service, whether treatment was individualized or provided in a group session, and the amount of time treatment was rendered for each service billed.

(5) The table below lists the Oregon Specific Codes for Multidisciplinary Services. [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.248
Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09

436-009-0090
Pharmacy Fees

(1) Except for hospital charges or unless otherwise provided by contract, insurers must pay medical providers for prescription medication at the medical provider's usual fee, or the amount set by the fee schedule, whichever is less.

(a) "AWP" means the Average Wholesale Price effective on the day the drug was dispensed.

(b) The maximum allowable fee is calculated according to the following table: [Table not included. See ED. NOTE.]

(2) All prescription medications are required medical services and do not require prior approval under the palliative care provisions of OAR 436-010-0290.

(3) Under ORS 689.515(2) licensed providers may dispense generic drugs to injured workers.

(4) Payment for Oxycontin, and COX-2 inhibitors is limited to an initial five-day supply unless the prescribing medical service provider writes a clinical justification for prescribing that drug rather than a less costly drug with a similar therapeutic effect.

(a) The clinical justification may accompany the prescription and be submitted by the pharmacist or may be given directly to the insurer by the medical provider.

(b) Clinical justification means a written document from the medical service provider stating the reason he or she believes the drug ordered is the one the patient should have. The justification may be included on the prescription itself and may simply be a brief statement. Insurers and self-insured employers cannot challenge the adequacy of the clinical justification. However, they can challenge whether or not the medication is excessive, inappropriate, or ineffectual in accordance with ORS 656.327.

(c) An additional clinical justification is not necessary for refills of that medication.

(5) Insurers shall use the prescription pricing guide published by First DataBank Inc, Thomson Healthcare, Inc., or Facts & Comparisons (a Wolters Kluwer Health, Inc., Company) for calculating payments to the licensed provider. Insurers must update their source at least monthly.

(6) The worker may select the pharmacy, except for claims enrolled in a managed care organization (MCO) where pharmacy service providers are specified by the MCO contract.

(7) Except for sections 2, 3, 4 and 6 of this rule, this rule does not apply to a worker's direct purchase of prescription medications, and does

not limit a worker's right to reimbursement for actual out-of-pocket expenses under OAR 436-009-0025.

(8) The insurer shall pay the retail-based fee for over-the-counter medications.

(9) Drugs dispensed by a hospital (inpatient or outpatient) shall be billed and paid according to OAR 436-009-0020.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2008(Temp), f. & cert. ef. 7-7-08 thru 1-2-09; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09

436-010-0230

Medical Services and Treatment Guidelines

(1) Medical services provided to the injured worker must not be more than the nature of the compensable injury or the process of recovery requires. Services which are unnecessary or inappropriate according to accepted professional standards are not reimbursable.

(2) An employer or insurer representative may not attend a worker's medical appointment without written consent of the worker. The worker has the right to refuse such attendance.

(a) The consent form must state that the worker's benefits cannot be suspended if the worker refuses to have a representative present.

(b) The consent form must be written in a way that allows the worker to understand it and to overcome language or cultural differences.

(c) The insurer must retain a copy of a signed consent form in the claim file.

(3) Insurers have the right to require evidence of the frequency, extent, and efficacy of treatment and services.

(4)(a) Except as otherwise provided by an MCO, ancillary services including but not limited to physical therapy or occupational therapy, by a medical service provider other than the attending physician, authorized nurse practitioner, or specialist physician will not be reimbursed unless prescribed by the attending physician, authorized nurse practitioner, or specialist physician and carried out under a treatment plan prepared prior to the commencement of treatment and sent by the ancillary medical service provider to the attending physician, authorized nurse practitioner, or specialist physician, and the insurer within seven days of beginning treatment. The treatment plan shall include objectives, modalities, frequency of treatment, and duration. The treatment plan may be recorded in any legible format including, but not limited to, signed chart notes. Treatment plans required under this subsection do not apply to services provided under ORS 656.245(2)(b)(A).

(b) The attending physician, authorized nurse practitioner, or specialist physician must sign a copy of the treatment plan within 30 days of the commencement of treatment and send it to the insurer. Failure of the physician or nurse practitioner to sign or mail the treatment plan may subject the attending physician or authorized nurse practitioner to sanctions under OAR 436-010-0340, but shall not affect payment to the ancillary medical service provider.

(c) Medical services prescribed by an attending physician, specialist physician, or authorized nurse practitioner and provided by a chiropractor, naturopath, acupuncturist, or podiatrist will be subject to the treatment plan requirements set forth in subsection (4)(a) and (b) of this rule.

(d) Unless otherwise provided for within utilization and treatment standards under an MCO contract, the usual range for therapy visits does not exceed 20 visits in the first 60 days, and 4 visits a month thereafter. This rule does not constitute authority for an arbitrary provision of or limitation of services, but is a guideline for reviewing treatment or services. The attending physician or authorized nurse practitioner must document the need for medical services in excess of these guidelines when submitting a written treatment plan. The process outlined in OAR 436-010-0008 should be followed when an insurer believes the treatment plan is inappropriate.

(5) The attending physician or authorized nurse practitioner, when requested by the insurer or the director through the insurer to complete a physical capacity or work capacity evaluation, must complete the evaluation within 20 days, or refer the worker for such evaluation within seven days. The attending physician or authorized nurse practitioner must notify the insurer and the worker in writing if the worker is incapable of participating in such evaluation.

(6) Prescription medications are required medical services under the provisions of ORS 656.245(1)(a), (1)(b), and (1)(c) and do not require prior approval under the palliative care provisions of OAR 436-010-0290. A pharmacist, dispensing physician, or authorized nurse practitioner must dispense generic drugs to injured workers in accordance with and under ORS 689.515. For the purposes of this rule, the worker will be deemed the "purchaser" and may object to the substitution of a generic drug. However, payment for brand name drugs are subject to the limitations provided in OAR 436-009-0090. Workers may have prescriptions filled by a provider of their choice, unless otherwise provided for in accordance with an MCO contract. Except in an emergency, drugs and medicine for oral consumption supplied by a physician's or authorized nurse practitioner's office are compensable only for the initial supply to treat the worker with the medication up to a maximum of 10 days, subject to the requirements of the provider's licensing board, this rule and OAR 436-009-0090. Compensation for certain drugs is limited as provided in OAR 436-009-0090.

(7) Dietary supplements including, but not limited to, minerals, vitamins, and amino acids are not reimbursable unless a specific compensable dietary deficiency has been clinically established in the injured worker or they are provided in accordance with a utilization and treatment standard adopted by the director. Vitamin B-12 injections are not reimbursable unless necessary because of a specific dietary deficiency of malabsorption resulting from a compensable gastrointestinal condition.

(8) X-ray films must be of diagnostic quality and accompanied by a report. 14" x 36" lateral views are not reimbursable.

(9) Upon request of either the director or the insurer, original diagnostic studies, including but not limited to actual films, must be forwarded to the director, the insurer, or the insurer's designee, within 14 days of receipt of a written request.

(a) Diagnostic studies, including films must be returned to the medical provider within a reasonable time.

(b) The insurer must pay for a reasonable charge made by the provider for the costs of delivery of diagnostic studies, including films.

(c) If a medical provider does not forward the films to the director or the insurer within 14 days of receipt of a written request, civil penalties may be imposed.

(10) Articles including but not limited to beds, hot tubs, chairs, Jacuzzis, and gravity traction devices are not compensable unless a need is clearly justified by a report which establishes that the "nature of the injury or the process of recovery requires" the item be furnished. The report must specifically set forth why the worker requires an item not usually considered necessary in the great majority of workers with similar impairments. Trips to spas, to resorts or retreats, whether prescribed or in association with a holistic medicine regimen, are not reimbursable unless special medical circumstances are shown to exist.

(11) Physical restorative services may include but are not limited to a regular exercise program or swim therapy. Such services are not compensable unless the nature of the worker's limitations requires specialized services to allow the worker a reasonable level of social and/or functional activity. The attending physician or authorized nurse practitioner must justify by report why the worker requires services not usually considered necessary for the majority of injured workers.

(12) The cost of repair or replacement of prosthetic appliances damaged when in use at the time of and in the course of a compensable injury is a compensable medical expense, including when the worker received no physical injury. For purposes of this rule, a prosthetic appliance is an artificial substitute for a missing body part or any device by which performance of a natural function is aided, including but not limited to hearing aids and eyeglasses.

(13) Lumbar artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(g) is always inappropriate for injured workers with the following conditions (absolute contraindications):

(a) Metabolic bone disease — for example, osteoporosis;

(b) Known spondyloarthropathy (seropositive and seronegative);

(c) Posttraumatic vertebral body deformity at the level of the proposed surgery;

(d) Malignancy of the spine;

(e) Implant allergy to the materials involved in the artificial disc;

(f) Pregnancy — currently;

(g) Active infection, local or systemic;

(h) Lumbar spondylolisthesis or lumbar spondylosis;

(i) Prior fusion, laminectomy that involves any part of the facet joint, or facetectomy at the same level as proposed surgery; or

(j) Spinal stenosis — lumbar — moderate to severe lateral recess and central stenosis.

(14) Lumbar artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(g) may be inappropriate for injured workers with the following conditions, depending on severity, location, etc. (relative contraindications):

(a) A comorbid medical condition compromising general health, for example, hepatitis, poorly controlled diabetes, cardiovascular disease, renal disease, autoimmune disorders, AIDS, lupus, etc.;

(b) Arachnoiditis;

(c) Corticosteroid use (chronic ongoing treatment with adrenal immunosuppression);

(d) Facet arthropathy — lumbar — moderate to severe, as shown radiographically;

(e) Morbid obesity — BMI greater than 40;

(f) Multilevel degenerative disc disease — lumbar — moderate to severe, as shown radiographically;

(g) Osteopenia — based on bone density test;

(h) Prior lumbar fusion at a different level than the proposed artificial disc replacement; or

(i) Psychosocial disorders — diagnosed as significant to severe.

(15) Cervical artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(h) is always inappropriate for injured workers with any of the following conditions (absolute contraindications):

(a) Instability in the cervical spine which is greater than 3.5 mm of anterior motion or greater than 20 degrees of angulation;

(b) Significantly abnormal facets;

(c) Osteoporosis defined as a T-score of negative (-)2.5 or more negative (e.g. -2.7);

(d) Allergy to metal implant;

(e) Bone disorders (any disease that affects the density of the bone);

(f) Uncontrolled diabetes mellitus;

(g) Active infection, local or systemic;

(h) Active malignancy, primary or metastatic;

(i) Bridging osteophytes (severe degenerative disease);

(j) A loss of disc height greater than 75 percent relative to the normal disc above;

(k) Chronic indefinite corticosteroid use;

(l) Prior cervical fusion at two or more levels; or

(m) Pseudo-arthrosis at the level of the proposed artificial disc replacement.

(16) Cervical artificial disc replacement that is not excluded from compensability under OAR 436-009-0015(6)(h) may be inappropriate for injured workers with any of the following conditions, depending on severity, location, etc. (relative contraindications):

(a) A comorbid medical condition compromising general health, for example hepatitis, poorly controlled diabetes, cardiovascular disease, renal disease, autoimmune disorders, AIDS, lupus, etc.;

(b) Multilevel degenerative disc disease — cervical — moderate to severe, as shown radiographically;

(c) Osteopenia — based on bone density test with a T-score range of negative (-)1.5 to negative (-)2.5;

(d) Prior cervical fusion at one level;

(e) A loss of disc height of 50 percent to 75 percent relative to the normal disc above; or

(f) Psychosocial disorders — diagnosed as significant to severe.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248 & 656.252

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0201, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 2-1989, f. 8-21-89, cert. ef. 9-1-89; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0040; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-1999(Temp), f. & cert. ef. 2-11-99 thru 8-10-99; WCD 7-1999, f. & cert. ef. 4-28-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09

436-010-0275

Insurer's Duties Under MCO Contracts

(1) Insurers who enter into an MCO contract in accordance with OAR 436-015, must notify the affected insured employers of the following:

(a) The names and addresses of the complete panel of MCO medical providers within the employer's geographical service area(s);

(b) The manner in which injured workers can receive compensable medical services within the MCO;

(c) The manner in which injured workers can receive compensable medical services by medical providers outside the MCO; and

(d) The geographical service area governed by the MCO.

(2) Insurers under contract with an MCO must notify all newly insured employers in accordance with section (1) of this rule, prior to or on the effective date of coverage.

(3) At least 30 days prior to any significant changes to an MCO contract affecting injured worker benefits, the insurer must notify in accordance with OAR 436-015-0035 all affected insured employers and injured workers of the manner in which injured workers will receive medical services.

(4) When the insurer is enrolling a worker in an MCO, the insurer must simultaneously provide written notice to the worker, the worker's representative, all medical service providers, and the MCO of enrollment. The notice must:

(a) Provide the worker a written list of the eligible attending physicians within the relevant MCO geographic service area or provide a Web address to access the list of eligible attending physicians. If the notice does not include a written list, then the notice must also:

(A) Provide a telephone number the worker may call to ask for a written list; and

(B) Tell the worker that he or she has seven days from the mailing date of the notice to request the list.

(b) Describe how the worker may obtain the names and addresses of the complete panel of MCO medical providers;

(c) Advise the worker of the manner in which the worker may receive medical services for compensable injuries within the MCO;

(d) Describe how the worker can receive compensable medical treatment from a primary care physician or authorized nurse practitioner qualified to provide services as described in OAR 436-015-0070, who is not a member of the MCO, including how to request qualification of their primary care physician or authorized nurse practitioner;

(e) Advise the worker of the right to choose the MCO when more than one MCO contract covers the worker's employer except when the employer provides a coordinated health care program as defined in OAR 436-010-0005(6);

(f) Provide the worker with the title, address and telephone number of the contact person at the MCO responsible for ensuring the timely resolution of complaints or disputes;

(g) Advise the worker of the time lines for appealing disputes beginning with the MCO's internal dispute resolution process through administrative review before the director, that disputes to the MCO must be in writing and filed within 30 days of the disputed action and with whom the dispute is to be filed, and that failure to request review to the MCO precludes further appeal; and

(h) Notify the MCO of any request by the worker for qualification of a primary care physician or authorized nurse practitioner.

(5) Insurers under contract with MCOs who enroll workers prior to claim acceptance must inform the worker in writing that the insurer will pay as provided in ORS 656.248 for all reasonable and necessary medical services received by the worker that are not otherwise covered by health insurance, even if the claim is denied, until the worker receives actual notice of the denial or until three days after the denial is mailed, whichever occurs first.

(6) Insurers enrolling a worker who is not yet medically stationary and is required to change medical providers, must notify the worker of the right to request review by the MCO if the worker believes the change would be medically detrimental.

(7) If, at the time of MCO enrollment, the worker's medical service provider is not a member of the MCO and does not qualify as a primary care physician or authorized nurse practitioner, the insurer must notify the worker and medical service provider regarding provision of care under the MCO contract, including the provisions for continuity of care.

(8) An enrollment notice is complete:

(a) On the date the notice is mailed when the notice includes all required information and a written list of eligible attending physicians;

(b) On the date the notice is mailed when the notice includes all required information and a Web address to access the list of eligible attending physicians, and the worker does not request a written list within seven days; or

(c) On the date the written list is mailed when the insurer includes all required information and a Web address to access the list of eligible attending physicians, and the worker requests a written list within seven days of the notice.

(9) When an insurer under contract with an MCO receives a dispute regarding a matter that is to be resolved through the MCO dispute resolution process and that dispute has not been simultaneously provided to the MCO, the insurer must within 14 days:

(a) Send a copy of the dispute to the MCO; or

(b) If the MCO does not have a dispute resolution process for that issue, the insurer must notify the parties in writing to seek administrative review before the director.

(10) The insurer must also notify the MCO of:

(a) The name, address, and telephone number of the worker and, if represented, the name of the worker's attorney, any changes in this information; and

(b) Any requests for medical services received from the worker or the worker's medical provider.

(11) Insurers under contract with MCOs must maintain records as requested including, but not limited to, a listing of all employer's covered by MCO contracts, their WCD employer numbers, the estimated number of employees governed by each MCO contract, a list of all injured workers enrolled in the MCO, and the effective dates of such enrollments.

(12) When the insurer is dis-enrolling a worker from an MCO, the insurer must simultaneously provide written notice of the dis-enrollment to the worker, the worker's representative, all medical service providers, and the MCO. The notice must be mailed no later than seven days prior to the date the worker is no longer subject to the contract. The notice must advise the worker of the manner in which the worker may receive compensable medical services after the worker is no longer enrolled.

(13) When a managed care contract expires or terminates without renewal, the insurer must simultaneously provide written notice to the worker, the worker's representative, all medical service providers, and the MCO, that the worker is no longer subject to the MCO contract. The notice must be mailed no later than three days prior to the date of the contract's expiration or termination. The notice must advise the worker of the manner in which the worker may receive compensable medical services after the worker is no longer subject.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260, 656.264
Hist.: WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09

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Department of Corrections
Chapter 291

Rule Caption: Transfer of Supervision Between Community Corrections Agencies for Sex Offenders.
Adm. Order No.: DOC 6-2009
Filed with Sec. of State: 5-22-2009
Certified to be Effective: 5-22-09
Notice Publication Date: 11-1-2008
Rules Amended: 291-019-0130
Subject: This rule amendment is needed to ensure that transfer of supervision of sex offenders from one county to another includes a completed sex offender risk assessment so the investigating field office can accurately review the transfer request and supervision of the offender.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-019-0130
Transfers of Supervision Between Community Corrections Agencies: Standards for Request and Acceptance

(1) Requests:

(a) Except for sex offender cases, whenever an officer has given an offender permission to relocate to a different county, within 30 days, the officer shall submit a transfer investigation request to the receiving county on all cases including misdemeanors.

(A) If the purpose of the change of residence is for residential treatment and a return is anticipated, no transfer is necessary.

(B) For limited supervision and limited risk offenders, the county of supervision will notify the county of residence that the offender now resides in their county. The receiving county may review the offender's history in the Corrections Information System to determine whether they wish to assume supervision. The decision to investigate and accept supervision shall be at the discretion of the county of residence.

(C) Under no circumstances shall a probation or parole officer allow a sex offender to move to a new county without first applying for and receiving emergency reporting instructions. If parameters for emergency reporting do not apply, then the offender must remain in the sending county until a full transfer investigation is completed.

(b) Transfer Investigation: In all cases involving the transfer of the supervision responsibility for an offender, the sending county shall assure that the following information is up to date and accurate in the offender's ISIS (computer integrated system) file prior to making the investigation request:

(A) Name: Last, first, and middle;

(B) Date of birth;

(C) SID Number: If none is available, the sending office shall submit a fingerprint card to the State Identification Bureau prior to transfer;

(D) Crime(s);

(E) County(ies);

(F) Sentencing data including county, docket numbers, expiration date, and judge's name for each case;

(G) History/risk score according to the Oregon Case Management System;

(H) Date of request to transfer;

(I) Special Conditions: List all special conditions including specific dollar amounts for restitution, court costs, fines and fees as well as community service hours and any other conditions requiring specificity;

(J) Residence: Provide a complete address; rural addresses should include specific directions on location of the residence as well as a description; and

(K) Conformance: Note any non-compliance with either the general or special conditions of supervision. Reflect the exact amount of any financial obligations owed to date and any other pertinent information.

(c) Sex Offenders: A transfer packet must be sent to the receiving county. The transfer packet shall include:

(A) Court orders/parole or post-prison supervision order;

(B) Sex offender evaluation (if available);

(C) Presentence investigation or police reports;

(D) Completed sex offender risk assessment; and

(E) Most recent treatment progress report or treatment discharge report.

(2) Acceptance/Rejection:

(a) If a sex offender meets the documented parameters for emergency reporting, the sending county must provide emergency reporting information to the receiving county. The receiving county has up to five days to reply. Once the receiving county has accepted the offender on an emergency basis, a rule transfer packet must be sent to the receiving county.

(b) The receiving county must complete the investigation and respond to the sending county within 30 days.

(c) The transfer request must be accepted if the offender has a job or other legitimate source of income, a residence and the means to comply with the special conditions of his/her supervision unless:

(A) The only active supervision is for a misdemeanor and the receiving county is unable to provide supervision based on misdemeanant status, due to county policy and/or resource limitations; or

(B) Public safety would be compromised by the transfer (e.g , a child molester residing in a dwelling where children are present; a proposed residence provider supporting sex offender's denial or noncompliance; a drug offender residing in a known drug house; an arson offender residing in a boarding house); or

(C) The supervision is for a limited supervision or limited risk offender, whereas the decision to accept supervision is at the discretion of the county of residence.

(d) Neither non-compliance (except for sex offender cases) nor outstanding misdemeanor warrants shall be grounds for rejection. Felony warrants and warrants involving active cases for which an offender is under formal supervision shall be resolved prior to the transfer process.

(e) Supervision of a misdemeanor must be accepted if there is a concurrent felony supervision.

(f) Outstanding Warrants and Pending Criminal Charges/Violations: Prior to transfer, the sending office shall:

(A) Make reasonable efforts to resolve any warrants;

(B) Remove any individual county requirements outside of usual practice;

(C) Report all non-compliance/violations to the releasing authority; and

(D) Be responsible for resolving all pending non-compliance/violations. The sending county should collaborate with the receiving county to determine an appropriate response to pending violations.

(g) When a transfer is rejected in the interest of public safety, the offender shall be directed by the receiving county to return to the sending county or to secure a suitable residence elsewhere, except for sex offenders who have been granted emergency reporting instructions, who shall be directed to return to the sending county and to initiate any further transfer requests form the sending county. Failure of the offender to do so is a violation and may be grounds for revocation. The reason for rejection needs to be specified and reviewed by the unit supervisor.

(h) During the transfer investigation, if an officer from the receiving office observes a violation or has reason to believe that a violation has occurred, that officer shall immediately report the alleged violation to the sending office for appropriate response.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 27-1997, f. & cert. ef. 11-26-97; DOC 11-2001, f. & cert. ef. 4-5-01; DOC 6-2009 f. & cert. ef. 5-22-09

Rule Caption: Use of Electronic immobilizing Devices for Parole and Probation Officers.
Adm. Order No.: DOC 7-2009
Filed with Sec. of State: 5-22-2009
Certified to be Effective: 5-23-09
Notice Publication Date: 1-1-2009
Rules Adopted: 291-022-0161, 291-022-0162
Rules Amended: 291-022-0115, 291-022-0160
Subject: These rule modifications are necessary to establish policies and procedures for deployment and use of electronic immobilizing devices in use of force situations for parole and probation officers.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-022-0115
Definitions

(1) Chemical Agents: Chemical compounds that when deployed are designed to cause sufficient physiological effect to stop, control or temporarily immobilize an individual.

(2) Deadly Physical Force: Physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

(3) Electronic Immobilizing Devices (EID): Security equipment designed to stop, control or temporarily immobilize through the use of high voltage, low amperage electric shock

(4) Level of Force: The type of force employed, the degree of that type of force employed, and the circumstances within which the force is employed.

(5) Local State Director: A person within the Department of Corrections who reports to the Chief of Community Corrections and has responsibility for managing a state community corrections office within a particular county.

(6) Offender: Any person under supervision who is on parole, post prison supervision, transitional leave, local control and/or probation status.

(7) Officer: Any state parole and probation officer certified as such by the Department of Public Safety Standards and Training

(8) Physical Force: The use of hands, other parts of the body, objects, instruments, chemical devices, firearms, or other physical methods, for the purpose of overcoming the resistance to lawful authority.

(9) Physical Injury: Impairment of physical condition or substantial pain.

(10) Planned Use of Force: The use of force in situations where time and circumstances allow for consultation with, and approval by, higher ranking employees, and there is some opportunity to plan the actual use of force.

(11) Reasonable Force: That force which the officer can objectively articulate was reasonable given the active resistance or attempts at evasion by the offender and the facts known at the time by the officer.

(12) Reactive Use of Force: The use of force in situations where time and circumstances do not permit approval by higher ranking employees, or consultation or planning.

(13) Security Equipment: Firearms, ammunition, chemical agents, restraints and similar devices.

(14) Serious Physical Injury: Physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.

(15) Security Restraints: Handcuffs, temporary cuffs (flexcuffs), and other similar equipment designed to control a person from injuring himself/herself, others, and to prevent escape.

(16) Show of Force: A demonstration of the current ability to use force, such as the massing of parole and probation officers or other officials.

(17) Totality of the Circumstances: All factors considered. With respect to use of force circumstances include, but are not limited to, comparative size; physical, emotional, and mental condition; skill level of combatants; nature of the offense; weapons; and availability of assistance.

(18) Use of Force: Any situation in which an employee uses physical force against an offender or other person, except those situations in which security restraints are used in a standard manner for arrest, escort, or transport.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 6-2005, f. & cert. ef. 5-24-05; DOC 28-2008(Temp), f. & cert. ef. 11-25-08 thru 5-22-09; DOC 7-2009, f. 5-22-09 cert. ef. 5-23-09

291-022-0160
Security Equipment

(1) Security Equipment:

(a) All security equipment shall require the approval of the Director or designee before being issued and used as department authorized security equipment.

(b) Only department authorized and/or issued equipment shall be used to apply physical force to individuals.

(c) Security equipment shall not be issued to or used by an employee who has not been trained in the proper use of such devices.

(d) Unless authorized by the local state director or written directive, the carrying or use of personal security equipment is prohibited.

(e) The local state director shall authorize the storage and use of security equipment.

(2) Security Restraints:

(a) The standard routine use of security restraints for arrest, escort or transportation of an offender is not a use of force within the context of this rule.

(b) The use of security restraints is authorized to restrict, immobilize, and control the movement of offenders or for the purpose of officer safety.

(c) An arrestee shall be placed in security restraints with their hands behind their back, before and during transport. Exceptions may exist due to physical and/or medical conditions, at which point alternative methods may be utilized.

(d) Security restraints shall be applied consistent with the training and experience of the officer. Restraints will be checked for tightness and double locked.

(e) Officers shall ensure that unnecessary pressure is not placed on the offender's chest, back or neck while applying restraints. Officers shall maintain close observation of a restrained arrestee in order to detect breathing difficulties and/or loss of consciousness.

(f) The officer shall check at least every 30 minutes and verify the security restraints are not causing injury or an obvious medical problem for an arrestee whom has been placed in restraints as a result of a use of force situation.

(3) Chemical Agents:

(a) Authorization to carry a chemical agent shall be granted by the local state director.

(b) Authorization to carry department issued chemical agents shall be limited to the performance of official duties.

(c) Officers authorized to carry a chemical agent shall carry the chemical agent whenever:

(A) Protective body armor is worn;

(B) A firearm is carried;

(C) An arrest is anticipated or when making an arrest; or

(D) A confrontation with vicious dogs or other dangerous animals is anticipated.

(d) An officer shall only discharge a chemical agent for the following:

(A) To defend the officer or another person from an animal attack;

(B) To defend the officer or another person from imminent danger; or

(C) To enforce a valid order(s) to an offender to submit to the application of restraints.

(e) Those affected by a chemical agent shall be permitted to wash their face, eyes and other exposed skin areas, as soon as safely possible after the chemical agent has been used.

(f) Those affected by a chemical agent in a closed area shall be permitted to move to an uncontaminated area as soon as safely possible after the chemical agent has been used.

(g) An offender receiving an application of a chemical agent shall be under continuous staff observation for the first ten minutes and thereafter every ten minutes for the next 20 minutes after receiving the application of a chemical agent.

(4) Electronic Immobilizing Device (EID):

(a) Authorization to carry an EID may be granted by the local state director in accordance to Department's policy on Electronic Immobilizing Devices (Parole and Probation Officers) (50.1.3)

(b) Authorization to carry an EID shall be limited to the performance of official duties.

(c) Use of the EID will be in accordance with these rules.

(5) Mandatory Use: Officers shall carry a chemical agent or an EID or another approved less than lethal force option whenever:

(a) Protective body armor is worn;

(b) A firearm is carried;

(c) An arrest is anticipated or when making an arrest; or

(d) A confrontation with vicious dogs or other dangerous animals is anticipated.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 6-2005, f. & cert. ef. 5-24-05; DOC 28-2008(Temp), f. & cert. ef. 11-25-08 thru 5-22-09; DOC 7-2009, f. 5-22-09 cert. ef. 5-23-09

291-022-0161
Electronic Immobilizing Device Deployment

(1) The EID may be deployed:

(a) To control a dangerous or violent offender when deadly force does not appear to be justified.

(b) To control an offender when other conventional tactics have been, or will likely be ineffective and when control is needed for the protection of the officer or others.

(c) On animals, as a deterrent to aggressive behavior, when the officer believes such aggression may cause injury to the officer or another person whom is present.

(2) When feasible, the officer shall provide a verbal warning to the offender prior to deploying the EID.

(3) The officer will use only the amount of force which reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control.

(4) Once the offender is incapacitated or restrained, continued use of the EID is prohibited, unless the officer reasonably believes the offender is a continuing threat.

Stat Auth: ORS 179.040, 423.020, 423.030, and 423.075
Stat Impl: ORS 179.040, 423.020, 423.030, and 423.075
Hist.: DOC 28-2008(Temp), f. & cert. ef. 11-25-08 thru 5-22-09; DOC 7-2009, f. 5-22-09 cert. ef. 5-23-09

291-022-0162
Treatment of Affected Persons

(1) Immediately after deploying the EID on an offender, the officer shall be alert to any indication that the individual needs medical care. This includes being aware of any secondary injuries that may have occurred during the incident.

(2) Probes may be removed by the officer unless embedded in a soft tissue site (face, throat, groin, female breasts). A probe embedded in soft tissue should only be removed by medical personnel.

(3) Monitoring the offender for medical problems shall continue for the time the officer has custody of the offender. Medical assistance shall be summoned as soon as a medical problem is observed.

(4) When custody or care of the offender is transferred, the officer shall inform jail staff or medical personnel of the approximate time the offender was immobilized, the puncture sites of the probes, and the probe size.

(5) Photographs shall be taken of the offender's injuries as soon as practical and retained as part of the documentation of the incident.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 28-2008(Temp), f. & cert. ef. 11-25-08 thru 5-22-09; DOC 7-2009, f. 5-22-09 cert. ef. 5-23-09

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Rule Caption: Structured, Intermediate Sanctions for Offender for Violations of Conditions of Supervision.
Adm. Order No.: DOC 8-2009
Filed with Sec. of State: 5-29-2009
Certified to be Effective: 5-29-09
Notice Publication Date: 11-1-2008
Rules Adopted: 291-058-0046, 291-058-0065
Rules Amended: 291-058-0010, 291-058-0020, 291-058-0030, 291-058-0040, 291-058-0045, 291-058-0050, 291-058-0060
Subject: These rule modifications are necessary to clarify Department policy for imposition of administrative structures sanctions to offenders for violations of conditions of supervision, and to include provisions for compact cases.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-058-0010
Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with 1993 Or Laws, ch 680, 1997 Or Laws, ch 525, ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to establish a uniform system of administrative sanctions to address violation behavior of offenders under supervision while on probation, parole or post-prison supervision that may be imposed by the Department of Corrections or a county community corrections agency, taking into consideration the severity of the violation behavior, the prior violation history, the severity of the underlying criminal conviction, the criminal history of the offender, protection of the community, deterrence, the effective capacity of the state prisons and local correctional facilities, and the availability of appropriate local sanctions.

(3) Policy: It is the policy of the Department of Corrections to compel compliance with the conditions of supervision by responding to violation(s) with swift, certain and fair interventions. It is the policy of the Department of Corrections that decisions to incarcerate offenders for violation(s) of the conditions of supervision must be made upon a systematic basis that will insure that available custodial space is used to house those offenders who constitute a threat to the public, taking into consideration the availability of custodial space and local resources. It is the policy of the Department of Corrections to provide, in conjunction with the Board of Parole and Post-Prison Supervision (Board), in accordance with ORS 144.106, 144.346 and Division 75 of Board of Parole and Post-Prison Supervision administrative rules, specific direction for Department and county community corrections agency employees to follow when considering administrative sanctioning options for offenders under supervision.

Stat. Auth.: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030, 423.075
Hist.: CD 24-1993(Temp), f. 9-20-93, cert. ef. 9-27-93; CD 8-1994, f. 3-18-94, cert. ef. 3-29-94; CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 8-2009, f. & cert. ef. 5-29-09

291-058-0020
Definitions

(1) Administrative Sanctions: Local structured, intermediate sanctions, as those terms are used in ORS 137.592, 137.593, 137.595.144.106, and 144.346 and in Criminal Justice Commission and Board of Parole and Post-Prison Supervision administrative rules, imposed by the Department of Corrections or a county community corrections agency for violation(s) of conditions of supervision. Administrative sanctions are less than a revocation action and include, but are not limited to local confinement in jails, restitution centers, work release centers, treatment facilities, or similar facilities or community services work, work crew and house arrest.

(2) Administrative Sanctions Sanctioning Grid: The sentencing grid used to determine an offender's presumptive sentencing guidelines sentence established by rules of the Criminal Justice Commission.

(3) Agency: The Department of Corrections or the county community corrections agency responsible for supervising the offender on parole, post-prison supervision or probation.

(4) Compact Offender: An offender who resides in and is being supervised by the State of Oregon, although sentenced in another state. Oregon being given the authority to supervise the offender by the rules of the Interstate Compact for Adult Offender Supervision.

(5) Conditions of Probation, Parole and Post-Prison Supervision: General and specific directives (special conditions) given to an offender placed on probation, parole or post-prison supervision by the sentencing judge, the Board of Parole and Post-Prison Supervision or local supervisory authority as a condition of supervision.

(6) Custody/Sanction Units: Custodial conditions of probation/sanctions imposed as a number of custody/sanction units as established by rules of the Criminal Justice Commission, including but not limited to, jail, restitution centers, work release, house arrest, community service, and inpatient treatment.

(7) Inmate: Any person under the supervision of the Department of Corrections that is not on probation, parole or post-prison supervision status.

(8) Interventions: Interventions imposed by the Department of Corrections or a county community corrections agency for violations of one or more conditions of supervision. Interventions include, but are not limited to, verbal reprimand, written reprimand, job search programming, increased reporting requirements, curfew, day reporting, modification of conditions, and outpatient treatment. Intervention responses are not counted as custody units and may be imposed along with sanctions.

(9) New Criminal Violation: Any conduct constituting a violation of criminal law whether or not it has led to new criminal charge(s) and which has occurred since the offender was placed on community supervision.

(10) Offender: Any person under the supervision of the Department of Corrections or a county community corrections agency that is on probation, parole or post-prison supervision status.

(11) Officer: Any county or state employed parole or probation officer.

(12) Revocation: Termination of supervision as result of violating behavior or a determination by the sentencing court, Board of Parole and Post-Prison Supervision or local supervisory authority that the purposes of an offender's supervision are not being served.

(13) Releasing Authority: The Department of Corrections, the Court, Board of Parole and Post-Prison Supervision or local supervisory authority.

(14) Risk or Supervision Level: The supervision level assigned to an offender as a result of computation of score utilizing the Oregon Case Management System Risk Instrument.

(15) Short-Term Transitional Leave/Non-Prison Leave: A leave for a period not to exceed 90 days preceding an established release date that 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 421.510 and the Department's rule on Short-Term Transitional Leave, Emergency Leaves, and Supervised Trips (OAR 291-163).

(16) Supervisory Authority: The state and local corrections official or officials designated in each county by that county's Board of County Commissioners or county court to operate corrections supervision services, custodial facilities or both.

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

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

Hist.: CD 24-1993(Temp), f. 9-20-93, cert. ef. 9-27-93; CD 8-1994, f. 3-18-94, cert. ef. 3-29-94; CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 8-2009, f. & cert. ef. 5-29-09

291-058-0030

Application to Offenders

(1) These rules shall apply to all offenders on probation for a felony committed on or after September 1, 1993, unless the court retained jurisdiction.

(2) These rules shall apply to offenders on probation for a felony committed prior to September 1, 1993, if:

(a) The sentencing judge orders the offender to be subject to the structured, intermediate sanctions sanctioning process; and

(b) The offender consents in writing or on the record to be subject to the structured, intermediate sanctions sanctioning process.

(3) The supervising agency/officer shall present offenders on probation for a felony committed prior to September 1, 1993, with the option of consenting to be subject to the structured, intermediate sanctions sanctioning process for violation(s) of conditions of probation supervision. Offenders may consent in writing to be subject to the structured, intermediate sanctions sanctioning process by signing a Structured, Intermediate Sanctions Sanctioning Process Consent form/order (CD 1274). The supervising agency/officer shall present an offender's written consent to be subject to the structured, intermediate sanctions sanctioning process to the sentencing court for the court's approval and signature.

(4) These rules shall apply to all compact offenders supervised in Oregon and all offenders on parole and post-prison supervision.

(5) These rules apply to all inmates on short-term transitional leave with specific limitations set forth in OAR 291-058-0046

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

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

Hist.: CD 24-1993(Temp), f. 9-20-93, cert. ef. 9-27-93; CD 8-1994, f. 3-18-94, cert. ef. 3-29-94; CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 8-2009, f. & cert. ef. 5-29-09

291-058-0040

Identification and Presentation of Violation Behavior

(1) Upon identifying violation behavior, the officer will prepare and present to the offender a copy of the Violation Report/Sanction Reporting form describing the alleged violation behavior.

(2) Notice of Rights/Decisions about Rights:

(a) Probation Cases: Using the Department of Corrections Notice of Rights form (CD 1272), the offender shall be notified of his/her rights to a violation hearing before the court, and to be represented by an attorney at the hearing and to have an attorney appointed for him/her at state expense if he/she cannot afford one.

(b) Parole and Post-Prison Supervision Cases: Using the Board of Parole and Post-Prison Supervision or local supervisory authority Notice of Rights form for parole and post-prison supervision offenders, the offender shall be notified of his/her rights to a violation hearing before the Board or local supervisory authority.

(c) Compact Cases: Using the Compact Notice of Rights form for compact offenders, the offender shall be notified of his/her rights to a violation hearing before an assigned hearings officer.

(A) All Notice of Rights forms shall include a description of the sanction(s) which will be imposed if the offender chooses to waive his/her right to a violation hearing and right to counsel, and in lieu of a violation hearing elects to participate in the administrative sanctioning process.

(B) A copy of the Notice of Rights form shall be provided to the offender at the time of or after the offender is presented with a copy of the Violation Report/Sanction Reporting form describing the alleged violation behavior, and prior to the imposition of sanction(s). The Notice of Rights may be administered by any agency personnel or other person at the direction of agency personnel.

(d) The person administering the Notice of Rights shall ask the offender if he/she can read and understand the Notice of Rights form printed in the English language. If the offender informs the person administering the Notice of Rights that he/she can not read the form, but can understand the English language, the person shall read the Notice of Rights form to the offender. If the offender informs the person administering the Notice of Rights that he/she cannot read or understand the English language, the person shall provide the offender with a form in the offender's language if available, or when necessary, a language interpreter.

(e) If, after receiving Notice of Rights in writing or orally as necessary, the offender indicates to the person administering the Notice of Rights that he/she understands his/her rights as stated in the Notice of Rights form, the offender shall sign the Notice of Rights form acknowledging that the offender understands his/her rights, and indicate by checking the appropriate box(es) on the form whether he/she wants a violation hearing before the court, Board or local supervisory authority or to accept the administrative sanction(s) listed on the form. If an offender refuses to sign the form acknowledging he/she has read, or has had read to him/her, and understands the Notice of Rights, the person administering the Notice of Rights shall so indicate on the Notice of Rights form, and the officer shall report the violation behavior to the court, Board or local supervisory authority for disposition in lieu of proceeding with the administrative sanctioning process.

(f) If, after receiving Notice of Rights in writing or orally as necessary, the offender indicates to the person administering the Notice of Rights that he/she does not understand his/her rights as stated in the Notice of Rights form, the officer shall report the violation behavior to the court, Board or local supervisory authority for disposition in lieu of proceeding with the administrative sanctioning process. For compact cases, a probable cause hearing shall be scheduled with an assigned hearings officer.

(g) If the offender admits to the alleged violation behavior or does not contest the information regarding the alleged violation behavior and the offender accepts the administrative sanction(s) to be imposed by the sanctioning agent as listed on the form, the sanctioning agent shall impose the administrative sanction(s).

(h) If the offender denies or otherwise contests the alleged violation behavior, or does not accept the administrative sanction(s) to be imposed by the sanctioning agent as listed on the form, the officer shall report the violation behavior to the court, Board or local supervisory authority for disposition in lieu of proceeding with the administrative sanctioning process. For compact cases, a probable cause hearing shall be scheduled with an assigned hearings officer.

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

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

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

Hist.: CD 24-1993(Temp), f. 9-20-93, cert. ef. 9-27-93; CD 8-1994, f. 3-18-94, cert. ef. 3-29-94; CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 8-2009, f. & cert. ef. 5-29-09

291-058-0045

Imposition of Administrative Sanction(s)/ Intervention(s) on Offenders

(1) The officer shall determine whether the alleged violation behavior is appropriately responded to with intervention(s) or with structured, intermediate sanction(s), or both.

(2) If the officer determines that the alleged violation behavior is appropriately responded to with intervention(s), the officer may direct the offender into appropriate intervention(s) outside of the administrative sanctioning process as authorized by the supervising agency.

(3) If the officer determines that the alleged violation behavior is appropriately responded to with administrative sanctions, the officer shall determine and impose appropriate administrative sanction(s) using the Administrative Sanctions Sanctioning Grid (Attachment A) and the Sanction Equivalency Table (Attachment B), and the following procedures:

(a) Identify the seriousness of the violation behavior using the Administrative Sanctions Sanctioning Grid. For a series of violations, select the violation that fits into the highest behavior level.

(b) If the offender has violated conditions of supervision imposed in more than one case (i.e., multiple cases from a single jurisdiction, cases from multiple jurisdictions, or on supervision for parole/post-prison supervision and probation), determine the grid block section that applies to the criminal conviction(s) in the case to which the administrative sanction(s) will be imposed. An administrative sanction or intervention at the agency level cannot be imposed on more than one case at a time and cases cannot be sanctioned separately for individual violations arising from a series of violations.

(c) If the offender is under supervision for conviction of a felony crime committed on or after November 1, 1989, determine the section that contains the Sentencing Guidelines Grid block assigned to the offender at sentencing. If the offender is under supervision for a felony crime(s) committed prior to November 1, 1989 (pre-sentencing guidelines) or is a compact case being supervised in Oregon, determine the grid block section that would have applied to the underlying felony conviction had the offender been sentenced under sentencing guidelines.

(d) Identify the offender's current supervision level. If the offender's current supervision level is the result of an agency mandated override to a less intensive supervision level because the offender was unavailable for more intensive supervision (i.e., the offender is in custody, on abscond, pending transfer, or in inpatient treatment in excess of 30 days, etc.), use the supervision level that would have been assigned to the offender absent the agency mandated override.

(e) For probation cases, determine the number of jail and non-jail custody/sanction units remaining for use as structured, intermediate sanction(s) applicable to the offender's probationary sentence(s) or order(s). There is no limit to the amount of total sanction time that can be imposed during a period of parole or post prison supervision or on compact cases.

(f) Determine the range of custody/sanction units which may be imposed by cross indexing the violation behavior category, Sentencing Guidelines Grid block, and the offender's supervision level at the time of the violation behavior(s).

(g) Determine the appropriate sanction(s) to impose. Sanction(s) may not exceed the maximum number of custody/sanction units as indicated on the Administrative Sanctions Sanctioning Grid, using the Sanction Equivalency Table.

(h) If the indicated level of sanction response is considered insufficient to address the seriousness of the violation behavior, a higher level of sanction, up to and including returning an offender to court or the Board of Parole and Post-Prison Supervision, may be imposed only after consultation and agreement of the unit supervisor or approval process established by the county agency or local supervisory authority. For revocation recommendations submitted under this section of rule, an offender may be returned to court or the Board of Parole and Post-Prison Supervision only after consultation with the unit supervisor and the agreement of the local supervisory authority or designee.

(i) Level of Authority for Probation Cases: Determine the level of authority that may impose the sanction(s) (agency or court). Jail confinement imposed as an administrative sanction may not exceed 60 days per violation report. The total number of days of jail confinement for all violation reports per conviction may not exceed the maximum number of available jail custody/sanction units as provided by rules of the Criminal Justice Commission. The officer shall follow agency policy for supervisory review when imposing jail confinement sanction(s).

(A) If the appropriate sanction(s) falls within the agency level designation, the officer shall impose the sanction(s) following agency procedures for consultation with supervisory personnel.

(B) If the appropriate sanction(s) falls within the court level designation, the officer may impose a sanction(s) from the agency level designation or report the violation behavior to the court with a recommendation that the appropriate sanction(s) from the court level designation be imposed.

(C) If the offender has previously served all of the available custody/sanction units applicable to his/her probationary sentence(s) or order(s), the officer may order appropriate interventions or report the violation(s) to the court for disposition.

(j) Level of Authority for Parole and Post-Prison Supervision and Compact Cases: Determine the level of authority that may impose the sanction(s) (i.e., supervising officer, hearings officer or other agency designee, Board of Parole and Post-Prison Supervision, local supervisory authority, or releasing authority for compact cases).

(A) A supervising officer may order local sanctions, including a local confinement sanction not exceeding 30 days.

(B) A hearings officer or agency designee may order local sanctions including a local confinement sanction not exceeding 60 days.

(C) The Board, local supervisory authority, or releasing authority in the state of conviction for compact cases may order administrative sanctions not exceeding 90 days.

(D) Revocation Sanctions: If structured sanctions are not felt sufficient to manage the offender, the local supervisory authority or the Board shall hold a hearing to determine whether incarceration is appropriate and may impose an appropriate revocation term of incarceration in compliance with the Oregon Criminal Justice Commission rules (OAR 213-005-0004) and the Board of Parole and Post-Prison Supervision rules (OAR 255-075).

(E) Revocation Sanctions for Compact Cases: If structured sanctions are not felt sufficient to manage the offender, the supervising officer shall prepare a compact violation report detailing the alleged violation and recommending the offender's return to the sending state to address the violation behavior. A revocation sanction shall never be imposed on a compact offender.

(F) An offender ordered to serve a term of incarceration following revocation for a post-prison supervision or violation is not eligible for earned credit time or transitional leave.

(G) An offender ordered to serve a term of prison incarceration as a sanction for a post-prison supervision violation shall receive credit for time served in a state or local correctional facility on the supervisory violation prior to the Board's imposition of a prison term sanction.

(4) Nothing in these rules shall limit the authority of the officer and supervising agency to direct the offender into appropriate interventions outside of the administrative sanctioning process.

(5) Sanctioning of Offenders Held in Jail on Officer's Detainer for Violation(s) of Probation Conditions:

(a) When an offender is arrested and detained in a county jail on authority of an officer's detainer for a violation(s) of the conditions of probation, the officer shall complete the imposition of administrative sanction(s) within the first 36 hours of the offender's detention, excluding Saturdays, Sundays and holidays, unless later disposition is authorized by supervisory personnel. Agency supervisory personnel, in consultation with the jail supervisory personnel, may authorize an extension of the 36-hour period for up to five judicial days if the officer is unable to collect the necessary information or meet with the offender within the 36-hour period.

(b) If the imposition of administrative sanctions is not completed within the authorized period, the officer shall notify the jail supervisor and remove his/her detainer lodged with the county jail authority. Nothing in these rules shall prohibit an officer from issuing a new detainer for the offender's arrest and detention for a violation(s) of the conditions of probation upon receipt of the information necessary for the officer to assess the full nature and extent of the violation(s), and impose appropriate administrative sanctions.

(c) If the offender does not consent to administrative sanctions imposed by the officer, the officer, as soon as practicable, but within one judicial day, shall report the arrest or detention to the court that imposed the probation. The officer shall promptly submit to the court a report showing in what manner the offender has violated the conditions of probation.

(6) Sanctioning of offenders held in jail on officer's detainer for violations of parole/post-prison supervision conditions. Within 15 days of the offender's arrest, either a structured sanction must be imposed or violation hearing proceedings initiated.

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

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

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

Hist.: CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 6-2001, f. & cert. ef. 2-7-01; DOC 13-2001, f. & cert. ef. 7-11-01; DOC 11-2002, f. & cert. ef. 8-1-02; DOC 8-2009, f. & cert. ef. 5-29-09

291-058-0046

Imposition of Administrative Sanctions/Interventions on Transitional Leave Inmates

(1) The process to impose administrative sanctions or interventions on inmates on short-term transitional leave shall be the same as for offenders on probation, parole, post-prison supervision, and compact cases with the restrictions listed in subsections (2) through (9) below.

(2) Only violations in the "System Response"; "Behavior Level 1"; and "Behavior Level 2" columns on the Administrative Sanctions Sanctioning Grid (Attachment A) shall be addressed with an administrative sanction or intervention response.

(3) Violations found to be in the "Behavior Level 3" of Attachment A shall be addressed in accordance with the Department's rule on Short–Term Transitional Leaves, Emergency Leaves and Supervised Trips, specifically OAR 291-063-0036(2) and (3).

(4) If the indicated level of sanction response is considered to be insufficient to address the seriousness of the violation behavior, a higher level of sanction, up to and including returning the inmate to a Department of Corrections facility, may be imposed only after consultation and agreement of the unit supervisor.

(a) For revocation recommendations under this section, an inmate may be returned to the releasing institution only after consultation with the unit supervisor and the agreement of the institution functional unit manager or designee.

(b) For revocations, supervising officers shall use the process outlined in subsection (3) above.

(5) Section 3 Crime Seriousness/Criminal History Grid (1, 2, 3, 4C-4I, 5G-5I) on Attachment A shall be used for all inmates on short-term transitional leave regardless of where they would be placed on the Sentencing Guidelines Grid.

(6) The maximum number of units available for short-term transitional leave violations shall be determined by the process outlined in 291-058-0045 with the above listed limitations in subsections (2) and (3) above.

(7) Use of jail as an administrative sanction is not permissible. Credit for sanction units for work crew, community service, restitution or work release centers, and house arrest shall be distributed according to Attachment B.

(8) Sanction reports shall be forwarded to the releasing institution. The institution functional unit manager or designee shall have the override authority of other releasing authorities. The sanction report shall be submitted via FAX transmittal or electronically the same day the sanction is imposed. The institution functional unit manager or designee may override the given sanction at any time without time limitations.

(9) The Notice of Rights form (CD 1497) developed specifically for violations of short-term transitional leave shall be utilized when serving the Notice of Rights to the inmate.

Stat. Auth.:ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030, 423.075
Hist.: DOC 8-2009, f. & cert. ef. 5-29-09

291-058-0050
Reporting of Sanctions for Probation Cases/Role of Court and District Attorney

(1) Whenever administrative sanction(s) are imposed, the sentencing court(s) and the district attorney(s) on probation cases shall be notified utilizing the Department of Corrections Violation Report/Sanction Reporting form. When a probation intervention/sanction involves modifying conditions of probation, the court must sign and return the request before the amended condition(s) is in effect, unless specific authority has been granted to the community corrections agency by the sentencing court.

(2) Notification shall be sent via facsimile where available during the same working day in which a sanction(s) is imposed. Where facsimile is not available, notification shall be mailed the same working day in which the sanction(s) is imposed.

(3) Prior to the imposition of any administrative sanction(s) or within four judicial days after receiving notice that a structured, intermediate sanction(s) has been imposed on a probationer, the court, upon motion of the district attorney or on its own motion, may cause the offender to be brought before the court for a hearing, and may revoke probation or impose such other of additional sanction(s) or modify the conditions of probation as authorized by law. In no case may the sentencing judge cause an offender to be brought before the court for a hearing and revoke probation or impose other or additional sanction(s) after the probationer has completed a structured, intermediate sanction(s) imposed by the Department of Corrections or a county community corrections agency.

Stat. Auth.: OAR 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: OAR 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030, 423.075
Hist.: CD 24-1993(Temp), f. 9-20-93, cert. ef. 9-27-93; CD 8-1994, f. 3-18-94, cert. ef. 3-29-94; CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 8-2009, f. & cert. ef. 5-29-09

291-058-0060
Reporting of Sanctions for Parole and Post-Prison Supervision Cases/Role of Supervisory Authority and Board of Parole and Post-Prison Supervision

(1) Whenever administrative sanction(s) are imposed, the supervisory authority or the Board of Parole and Post-Prison Supervision shall be notified utilizing the Department of Corrections Violation Report/Sanction Reporting form.

(2) When custody is imposed or conditions of supervision are modified, a completed Sanction Reporting form and Notice of Rights notification will be submitted to the local supervisory authority or the Board of Parole and Post-Prison Supervision.

(3) Notification shall be sent utilizing the automated structured sanction module within the Corrections Information System whenever possible, or via facsimile where available during the same working day in which a sanction(s) is imposed. Where facsimile is not available, notification shall be mailed the same working day in which the sanction(s) is imposed.

Stat. Auth.: OAR 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: OAR 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 423.020, 423.030, 423.075
Hist.: CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 8-2009, f. & cert. ef. 5-29-09

291-058-0065
Reporting of Sanctions for Compact Cases/Role of the Oregon Interstate Compact Office

(1) Whenever administrative sanctions are imposed, conditions of supervision are modified, or custody is imposed for a significant violation, as defined by the compact rules, the sending state may be notified utilizing the compact violation report form. A completed Sanction Reporting form and Notice of Rights notification may be included with the compact violation report form.

(2) Notification shall be sent within 30 days of the violation to the Oregon Interstate Compact office via facsimile or email where available. Where facsimile or email is not available, notification shall be mailed.

Stat. Auth.: ORS 144.600, 144.615, 179.040, 423.020, 423.030 , 423.075
Stats. Implemented: ORS 144.600, 144.615, 179.040, 423.020, 423.030 , 423.075
Hist.: DOC 8-2009, f. & cert. ef. 5-29-09

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Adopted Commercial and Sport Fishing Seasons for the Pacific Ocean, Estuaries and Columbia River.
Adm. Order No.: DFW 52-2009
Filed with Sec. of State: 5-18-2009
Certified to be Effective: 5-18-09
Notice Publication Date: 4-1-2009
Rules Amended: 635-003-0003, 635-003-0004, 635-003-0074, 635-003-0077, 635-003-0085, 635-013-0003, 635-013-0007, 635-023-0128, 635-023-0130
Rules Repealed: 635-003-0004(T)
Subject: Amended rules relating to commercial and sport salmon fishing in the Pacific Ocean; salmon fishing in specific nearshore ocean waters, bays and coastal streams; and sport salmon fishing in the Columbia River. Housekeeping and technical corrections to the regulations were made where necessary to ensure rule consistency.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-003-0003
Purpose and Scope

(1) The purpose of division 003 is to provide for management of commercial salmon fisheries off the Oregon Coast over which the state has jurisdiction.

(2) Division 003 incorporates into Oregon Administrative Rules, by reference, the annual ocean troll salmon specifications and management measures as adopted by the **Pacific Fishery Management Council** in its annual **Ocean Salmon Management Measures and Impacts**, as finalized in April 2009, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations** (**CFR**), **Title 50**, **Part 660**, **Subpart H** (**61FR34572**, **July 2**, **1996**, **as amended** to incorporate the standards in the **Pacific Fishery Management Council referenced document**). Therefore, persons must consult the **Pacific Fishery Management Council referenced document** and **Federal Regulations** in addition to Division 003 to determine all applicable troll salmon fishing requirements. A copy of the **Pacific Fishery Management Council referenced document** and the **Federal Regulations** may be obtained by contacting the Pacific Fishery Management Council at www.pcouncil.org or at 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

(3) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.129
Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 20-1996, f. & cert. ef. 4-29-96; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 52-2009, f. & cert. ef. 5-18-09

635-003-0004
Inclusions and Modifications

(1) OAR 635-003-0005 through 635-003-0076 modify or are in addition to provisions contained in **Code of Federal Regulations**, **Title 50**, **Part 660**, **Subpart H**.

(2) The **Code of Federal Regulations** (**CFR**), **Title 50**, **Part 660**, **Subpart H**, provides requirements for commercial salmon fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be

promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) This rule contains requirements which modify commercial salmon fishing regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean commercial salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations** (**CFR**, **Title 50**, **Part 660**, **Subpart H**).

(4) General Requirements, Definitions, Restrictions or Exceptions: Vessels prevented by unsafe weather conditions or mechanical problems from meeting management area landing restrictions, must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. Notification shall include the vessel name, port where delivery will be made, approximate number of salmon (by species) on board, and estimated time of arrival.

(5) A rectangular area offshore is open to the retention of all chinook salmon consistent with seasons adopted by the Pacific Fishery Management Council in adjacent waters, except that prior to August 1 only fin-clipped chinook salmon may be retained in this area. This rectangular area extends from Twin Rocks (45º35'54" N. Lat.) to Pyramid Rock (45º29'48" N. Lat.) inside the 15 fathom depth contour.

(6) Humbug Mountain, Oregon, to Humboldt South Jetty: When the fishery is closed north of the Oregon/California border and open to the south, vessels with fish on board taken in the open area may request authorization to temporarily moor in Brookings, Oregon, prior to landing in California. Such vessels shall first notify the Chetco River Coast Guard Station via VHF Channel 22A between the hours of 0500 and 2200. Proper notification shall include the vessel name, number of fish on board, and estimated time of arrival.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.129
Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 40-1995(Temp), f. & cert. ef. 5-18-95; FWC 62-1995(Temp), f. 7-27-95, cert. ef. 7-28-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 26-1996(Temp), f. 5-16-96, cert. ef. 5-17-96, FWC 31-1996(Temp), f. & cert. ef. 6-4-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 33-1997(Temp), f. & cert. ef. 5-28-97; FWC 44-1997(Temp), f. & cert. ef. 8-13-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 36-1998(Temp), f. 5-12-98, cert. ef. 5-13-98 thru 5-15-98; DFW 38-1998(Temp), f & cert. ef. 5-15-98 thru 6-15-98; DFW 39-1998(Temp), f. 5-19-98, cert. ef. 5-20-98 thru 5-23-98; DFW 44-1998(Temp), f. 6-1-98, cert. ef. 6-2-98 thru 6-4-98; DFW 64-1998(Temp), f. 8-14-98, cert. ef. 8-15-98 thru 8-21-98; DFW 65-1998(Temp), f. & cert. ef. 8-21-98 thru 8-31-98; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 45-2000(Temp), f. 8-10-00, cert. ef. 8-11-00 thru 8-31-00; DFW 46-2000(Temp), f. 8-10-00, cert. ef. 8-10-00 thru 9-30-00; DFW 49-2000(Temp), f. 8-17-00, cert. ef. 8-18-00 thru 9-30-00; DFW 56-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 9-30-00; DFW 59-2000(Temp), f. & cert. ef. 9-6-00 thru 9-30-00; DFW 73-2000(Temp), f. 10-26-00, cert. ef. 10-28-00 thru 11-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 48-2001(Temp), f. 6-14-01, cert. ef. 6-15-01 thru 6-30-01; DFW 58-2001(Temp), f. 7-18-01, cert. ef. 7-20-01 thru 9-30-01; DFW 67-2001(Temp), f. 8-2-01, cert. ef. 8-3-01 thru 9-30-01; DFW 69-2001(Temp), f. & cert. ef. 8-8-01 thru 9-30-01; DFW 74-2001(Temp), f. & cert. ef. 8-17-01 thru 9-30-01; DFW 83-2001(Temp), f. 8-30-01, cert. ef. 8-31-01 thru 9-30-01; DFW 22-2002(Temp), f. 3-19-02, cert. ef. 3-20-02 thru 4-30-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 58-2002(Temp), f. 6-6-02, cert. ef. 6-7-02 thru 6-30-02; DFW 65-2002(Temp), 6-27-02, cert. ef. 7-1-02 thru 12-27-02; DFW 72-2002(Temp), f. 7-11-02 cert. ef. 7-12-02 thru 12-31-02; DFW 76-2002(Temp), f. 7-25-02, cert. ef. 7-26-02 thru 12-31-02; DFW 77-2002(Temp), f. & cert. ef. 7-26-02 thru 12-31-02; DFW 84-2002(Temp), f. 8-8-02, cert. ef. 8-9-02 thru 12-31-02; DFW 86-2002(Temp), f. & cert. ef. 8-9-02 thru 12-31-02; DFW 92-2002(Temp), f. & cert. ef. 8-22-02 thru 12-31-02; DFW 101-2002(Temp), f. & cert. ef. 9-9-02 thru 12-31-02; DFW 111-2002(Temp), f. 10-8-02, cert. ef. 10-14-02 thru 12-31-02; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 47-2003(Temp), f. 6-5-03, cert. ef. 6-6-03 thru 6-30-03; Administrative correction, 2-18-05; DFW 10-2005(Temp), f. 3-2-05, cert. ef. 3-15-05 thru 4-30-05; DFW 17-2005(Temp), f. & cert. ef. 3-15-05 thru 4-15-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 13-2006(Temp), f. 3-14-06, cert. ef. 3-15-06 thru 4-30-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 78-2007(Temp), f. & cert. ef. 8-20-07 thru 8-31-07; DFW 79-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 9-13-07; DFW 85-2007(Temp), f. 9-5-07, cert. ef. 9-10-07 thru 9-13-07; Administrative correction 9-16-07; DFW 24-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 66-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 10-31-08; Administrative correction 11-18-08; DFW 28-2009(Temp), f. 3-12-09, cert. ef. 3-15-09 thru 9-10-09; DFW 52-2009, f. & cert. ef. 5-18-09

635-003-0074
Automatic Season Closures

(1) Salmon harvest quotas for Oregon, which include fish caught in the Exclusive Economic Zone (3-200 mile) are set forth in **Federal Register Notice FR Doc. 92-0412-2112**, filed May 1, 1992, published pursuant to **50 CFR 661.20 49 FR 43685**, October 31, 1984.

(2) Upon a determination by the Regional Director of the National Marine Fisheries Service, after consulting with the states, of the date the catch is projected to reach the quotas set forth in section (1) of this rule, the Fish and Wildlife Director may file a temporary rule with the Secretary of State designating those dates when the season will close.

Stat. Auth.: ORS 496.138, 496.162, 506.119 & 506.129
Stats. Implemented:
Hist.: FWC 16-1983, f. & ef. 4-29-83; FWC 17-1984, f. & ef. 4-30-84; FWC 20-1985, f. & ef. 5-1-85; FWC 13-1986, f. & ef. 5-1-86; FWC 19-1987, f. & ef. 5-5-87; FWC 27-1988, f. 4-29-88 (and amended 5-16-88), cert. ef. 5-1-88; FWC 33-1989, f. & cert. ef. 5-25-89; FWC 37-1990; f. & cert. ef. 5-1-90; FWC 39-1990(Temp), f. & cert. ef. 5-11-90; FWC 40-1990(Temp), f. & cert. ef. 5-18-90; FWC 42-1990(Temp), f. & cert. ef. 5-25-90; FWC 47-1990(Temp), f. 5-30-90, cert. ef. 5-31-90; FWC 48-1990(Temp), f. 6-7-90, cert. ef. 6-8-90; FWC 49-1990 (Temp), f. 6-13-90, cert. ef. 6-14-90; FWC 73-1990(Temp), f. 7-31-90, cert. ef. 8-1-90; FWC 79-1990(Temp), f. 8-7-90, cert. ef. 8-8-90; FWC 85-1990(Temp), f. 8-24-90, cert. ef. 8-25-90; FWC 97-1990(Temp), f. 9-14-90, cert. ef. 9-15-90; FWC 99-1990(Temp), f. 9-17-90, cert. ef. 9-18-90; FWC 104-1990(Temp), f. 9-21-90, cert. ef. 9-22-90; FWC 106-1990(Temp), f. & cert. ef. 9-25-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 72-1991(Temp), f. 7-11-91, cert. ef. 7-12-91; FWC 74-1991(Temp), f. 7-12-91, cert. ef. 7-15-91; FWC 76-1991 (Temp), f. 7-29-91, cert. ef. 8-10-91; FWC 87-1991(Temp), f. 8-9-91, cert. ef. 8-10-91; FWC 93-1991, f. 8-30-91, cert. ef. 9-1-91; FWC 111-1991(Temp), f. & cert. ef. 9-30-91; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 57-1992(Temp), f. 7-24-92, cert. ef. 7-25-92; FWC 63-1992(Temp), f. 7-30-92, cert. ef. 7-31-92; FWC 65-1992(Temp), f. & cert. ef. 8-6-92; FWC 66-1992(Temp), f. 8-7-92, cert. ef. 8-8-92; FWC 75-1992(Temp), f. 8-11-92, cert. ef. 8-12-92; FWC 77-1992 (Temp), f. 8-19-92, cert. ef. 8-20-92; FWC 78-1992(Temp), f. & cert. ef. 8-25-92; FWC 53-1993(Temp), f. 8-31-93, cert. ef. 9-1-93; FWC 55-1993(Temp), f. & cert. ef. 9-9-93; FWC 58-1993(Temp), f. 9-15-93, cert. ef. 9-16-93; FWC 28-1994(Temp), f. 5-19-94, cert. ef. 5-20-94; Administrative correction, 2-18-05; DFW 52-2009, f. & cert. ef. 5-18-09

635-003-0077
US-Canada Border to Cape Falcon

All vessels participating in the commercial ocean salmon fishery North of Cape Falcon must land their fish within the area North of Cape Falcon or in Garibaldi, Oregon, and within 24 hours of any closure of this fishery. Fishers from South of Cape Falcon intending to fish within the area North of Cape Falcon must notifify ODFW of their intent to fish within this area prior to transitting to the North of Cape Falcon by calling (541)867-0300 extension 271. All fishers landing salmon caught North of Cape Falcon must notify ODFW within one hour of delivery, limited fish sellers must notify ODFW within one hour of landing and prior to initiation of any sales, and all fishers intending to transport fish away from the port of landing must notify ODFW prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 506.129
Hist: DFW 6-2005, f. & cert. ef. 2-14-05; DFW 36-2005(Temp), f. & cert.ef. 5-4-05 thru 10-27-05; DFW 48-2005(Temp), f. 5-23-05, cert. ef. 5-24-05 thru 10-27-05; DFW 49-2005(Temp), f. 6-1-05, cert. ef. 6-3-05 thru 10-27-05; DFW 59-2005(Temp), f. 6-21-05, cert. ef. 6-26-05 thru 10-27-05; DFW 97-2005(Temp), f. & cert. ef. 8-23-05 thru 12-31-05; Administrative correction 1-19-06; DFW 43-2006(Temp), f. & cert. ef. 6-16-06 thru 11-16-06; DFW 70-2006(Temp), f. 7-28-06, cert. ef. 7-29-06 thru 12-31-06; DFW 85-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 2-14-07; DFW 93-2006(Temp), f. 9-7-06, cert. ef. 9-8-06 thru 12-31-06; Administrative correction 1-16-07; DFW 48-2007(Temp), f. 6-22-07, cert. ef. 6-23-07 thru 9-16-07; DFW 73-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 9-30-07; Administrative correction 10-16-07; DFW 66-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 10-31-08; Administrative correction 11-18-08; DFW 52-2009, f. & cert. ef. 5-18-09

635-003-0085
Extended Commercial Seasons

In addition to the open seasons prescribed in OAR 635-003-0003 additional late seasons within state waters may be established each year that are consistent with those annual management measures as established by the Pacific Fishery Management Council in April of each year as noted in 635-003-0003.

Stat. Auth.: ORS 496.138, 496.146, & 506.119
Stats. Implemented: ORS 506.129
Hist.: FWC 48-1984(Temp), f. & ef. 8-31-84; 57-1984(Temp), f. & ef. 9-15-84; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 106-1992(Temp), f. 10-8-92, cert. ef. 10-24-92; FWC 111-1992(Temp), f. 10-26-92, cert. ef. 10-27-92; FWC 62-1993, f. & cert. ef. 10-1-93; FWC 56-1994, f. 8-30-94, cert. ef. 9-1-94; FWC 80-1994(Temp), f. 10-25-94, cert. ef. 10-26-94; FWC 82-1994(Temp), f. 10-28-94, cert. ef. 10-30-94; FWC 81-1995, f. 9-29-95, cert. ef. 10-1-95; FWC 85-1995(Temp), f. & cert. ef. 10-20-95; FWC 56-1996, f. 9-27-96, cert. ef. 10-1-96; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 66-1997(Temp), f. 10-24-97, cert. ef. 10-26-97; FWC 67-1997(Temp), f. 10-28-97, cert. ef. 10-29-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 78-2006(Temp), f. 8-7-06, cert. ef. 9-1-06 thru 12-15-06; Administrative correction 12-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 65-2008(Temp), f. 6-20-08, cert. ef. 9-1-08 thru 12-31-08; DFW 128-2008(Temp), f. 10-9-08, cert. ef. 10-12-08 thru 12-31-08; Administrative correction 1-23-09; DFW 52-2009, f. & cert. ef. 5-18-09

635-013-0003
Purpose and Scope

(1) The purpose of division 013 is to provide for management of sport salmon fisheries off the Oregon Coast over which the State has jurisdiction.

(2) This rule incorporates by reference, the annual ocean sport salmon specifications and management measures as adopted by the **Pacific Fishery Management Council** in its annual **Ocean Salmon Management Measures and Impacts**, as finalized in April 2009 and in addition to the extent they are consistent with these rules, **Code of Federal Regulations** (**CFR**), **Title 50**, **Part 660**, **Subparts A and H**.

(3) This rule also incorporates by reference the **2009 Oregon Sport Fishing Regulations**.

(4) A copy of the **Pacific Fishery Management Council referenced document** and the **Federal Regulations** may be obtained by contacting the

Pacific Fishery Management Council at www.pcouncil.org or at 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

(5) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 44-1984(Temp), f. & ef. 8-23-84; FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 52-1989(Temp), f. & cert. ef. 7-28-89; FWC 37-1990, f. & cert. ef. 5-1-90; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; Administrative correction, 11-16-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09

635-013-0007
Extended Recreational Seasons

In addition to the open seasons prescribed in OAR 635-013-0005 additional late seasons within state waters may be established each year that are consistent with those annual management measures as established by the Pacific Fishery Management Council in April of each year as noted in 635-013-0003.

Stat. Auth.: ORS 496.138, 496.146, & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 25-1982, f. & ef. 4-30-82; FWC 62-1983(Temp), f. & ef. 11-1-83; FWC 69-1984(Temp), f. & ef. 10-2-84; FWC 59-1985(Temp), f. & ef. 9-13-85; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 77-1986(Temp), f. & ef. 11-26-86; FWC 76-1987, f. & ef. 9-15-87; FWC 84-1988, f. & cert. ef. 9-9-88; FWC 83-1989, f. 8-31-89, cert. ef. 9-16-89; FWC 86-1990, f. 8-24-90, cert. ef. 9-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 101-1992, f. 9-29-92, cert. ef. 10-1-92; FWC 114-1992(Temp), f. 10-26-92, cert. ef. 10-27-92; FWC 62-1993, f. & cert. ef. 10-1-93; FWC 56-1994, f. 8-30-94, cert. ef. 9-1-94; FWC 78-1994(Temp), f. 10-20-94, cert. ef. 10-21-94; FWC 81-1995, f. 9-29-95, cert. ef. 10-1-95; FWC 84-1995(Temp), f. 10-13-95, cert. ef. 10-16-95; FWC 86-1995(Temp), f. 10-20-95, cert. ef. 10-21-95; FWC 56-1996, f. 9-27-96, cert. ef. 10-1-96; FWC 30-1997, f. & cert. ef. 5-5-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 121-2008(Temp), f. & cert. ef. 10-2-08 thru 12-31-08; Administrative correction 1-23-09; DFW 52-2009, f. & cert. ef. 5-18-09

635-023-0128
Summer Sport Fishery

(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) Notwithstanding all other specifications and restrictions in the **2009 Oregon Sport Fishing Regulations**:

(a) Effective June 16 through July 31, 2009, the mainstem Columbia River is open to the retention of jack Chinook from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to the Oregon/Washington border.

(b) Effective June 22 through July 5, 2009, or until the harvest guideline is achieved; the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam is open to the retention of adult chinook salmon; and

(c) Effective July 1 through July 31, 2009, or until the harvest guideline is achieved; the mainstem Columbia River from Bonneville Dam to the Oregon/Washington border is open to the retention of adult Chinook salmon.

(d) The combined daily bag limit for adult salmon and adipose fin-clipped steelhead is two fish.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; 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; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09

635-023-0130
Fall Sport Fishery

(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) Notwithstanding all other specifications and restrictions in the **2009 Oregon Sport Fishing Regulations**:

(a) Effective August 1 through December 31, 2009, in the mainstem Columbia River from a north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank, the combined bag limit for adult Chinook salmon, adipose fin-clipped coho salmon, and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook; except:

(A) Retention of Chinook is prohibited during September 1 through December 31, 2009;

(B) Effective September 1 through December 31, 2009, the daily bag limit may include up to three adipose fin-clipped adult coho salmon.

(b)(A) Effective August 1 through December 31, 2009, in the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam, the combined bag limit for adult salmon and adipose fin-clipped steelhead is two fish per day of which only one may be a Chinook; except:

(B) Retention of Chinook is only allowed during August 1 through September 13, 2009 or until the harvest guideline is achieved, in the area bounded by a line projected from the Warrior Rock Lighthouse on the Oregon shore to Red Buoy #4 to a marker on the lower end of Bachelor Island, Washington, downstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06; DFW 113-2006(Temp), f. 10-12-06, cert. ef. 10-13-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 92-2007(Temp), f. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 96-2007(Temp), f. 9-21-07, cert. ef. 9-22-07 thru 12-31-07; DFW 101-2007(Temp), f. 9-28-07, cert. ef. 9-29-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 99-2008(Temp), f. 8-22-08, cert. ef. 8-25-08 thru 12-31-08; DFW 104-2008(Temp), f. 8-29-08, cert. ef. 8-31-08 thru 12-31-08; DFW 115-2008(Temp), f. & cert. ef. 9-18-08 thru 12-31-08; DFW 118-2008(Temp), f. 9-24-08, cert. ef. 9-25-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09

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Rule Caption: Powder River Sport Spring Chinook Fishery.
Adm. Order No.: DFW 53-2009(Temp)
Filed with Sec. of State: 5-18-2009
Certified to be Effective: 5-30-09 thru 9-1-09
Notice Publication Date:
Rules Amended: 635-021-0090
Subject: Amended rule allows the sport harvest of out-planted spring Chinook salmon in the Powder River from Saturday, May 30 through September 1, 2009. This amendment allows anglers sport angling opportunities to harvest spring Chinook which have been out-planted specifically for this purpose. Failure to adopt this rule would result in serious prejudice to the fishing public as it would deny them an opportunity to harvest this valuable resource.
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.

[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 11-1-0 2 (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

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Rule Caption: Number of Derelict Ocean Dungeness Crab Pots Allowed in Possession Increased.
Adm. Order No.: DFW 54-2009(Temp)
Filed with Sec. of State: 5-19-2009
Certified to be Effective: 5-29-09 thru 8-28-09
Notice Publication Date: 8-28-2009
Rules Amended: 635-005-0055
Rules Suspended: 635-005-0055(T)
Subject: Amended rule provides expanded opportunity for commercial ocean Dungeness crab permit holders to retrieve derelict crab pots found in the ocean from six, previously allowed, to fifty. Commercial fishermen may retrieve up to fifty Dungeness crab pots not belonging to their vessel each fishing trip provided the pots are unbaited, no crab from these pots is retained, and they document the activity in their logbook.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-005-0055
Fishing Gear

It is *unlawful* for commercial purposes to:

(1) Take crab by any means other than crab rings or crab pots (ORS 509.415); a crab ring is any fishing device that allows crab unrestricted entry or exit while fishing.

(2) Possess on a vessel, use, control, or operate any crab pot which is greater than thirteen cubic feet in volume, calculated using external dimensions.

(3) Possess on a vessel, use, control, or operate any crab pot which does not include a minimum of two circular escape ports of at least 4-1/4 inches inside diameter located on the top or side of the pot. If escape ports are placed on the side of the pot, they shall be located in the upper half of the pot.

(4) Possess on a vessel, use, control, or operate any crab pot which does not have a release mechanism. Acceptable release mechanisms are:

(a) Iron lid strap hooks constructed of iron or "mild" steel rod (not stainless steel) not to exceed 1/4-inch (6 mm) in diameter;

(b) A single loop of untreated cotton or other natural fiber twine, or other twine approved by the Department not heavier than 120 thread size between pot lid tiedown hooks and the tiedown straps; or

(c) Any modification of the wire mesh on the top or side of the pot, secured with a single strand of 120 thread size untreated cotton, natural fiber, or other twine approved by the Department which, when removed, will create an opening of at least five inches in diameter.

(5) Place, operate, or leave crab rings or pots in the Pacific Ocean and Columbia River or in any bay or estuary during the closed season, except that in only the Pacific Ocean and Columbia River, rings or pots may be placed no more than 64 hours immediately prior to the date the Dungeness crab season opens. In addition, unbaited crab rings or pots with open release mechanisms may be left in the Pacific Ocean (not including the Columbia River) for a period not to exceed 14 days following the closure of the Dungeness crab season.

(6) Have Dungeness crab gear deployed in the Pacific Ocean or Columbia River more than 14 days without making a landing of Dungeness crab.

(7) Use commercial crab pots in the Columbia River or Pacific Ocean unless the pots are individually marked with a surface buoy bearing, in a visible, legible and permanent manner, the brand of the owner and the Department buoy tag, provided that:

(a) The brand is a number registered with and approved by the Department;

(b) Only one unique buoy brand shall be registered to any one permitted vessel;

(c) All crab pots fished by a permitted vessel must use only the Oregon buoy brand number registered to that vessel in the area off of Oregon;

(d) The Department shall issue crab buoy tags to the owner of each commercial crab permit in the amount determined by OAR 635-006-1015(1)(g)(E);

(e) All buoy tags eligible to a permit holder must be purchased from the Department at cost and attached to the gear prior to setting gear; and

(f) Buoys attached to a crab pot must have the buoy tag securely attached to the first buoy on the crab pot line (the buoy closest to the crab pot) at the end away from the crab pot line;

(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:

(A) As of the first business day after 30 days following the season opening in the area fished, up to ten percent of the tags initially issued for that season; or

(B) For a catastrophic loss, defined as direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports; or

(C) If the Director finds that the loss of the crab pot buoy tags was:

(i) Due to an extraordinary event; and

(ii) The loss was minimized with the exercise of reasonable diligence; and

(iii) Reasonable efforts were taken to recover lost buoy tags and associated fishing gear.

(D) Upon receipt of the declaration of loss required by subsection (E) of this rule, and a request for replacement tags under subsection (C) of this rule, the Director or the Director's designee may provide an opportunity for the permit holder requesting the replacement tags to describe why the buoy tag loss meets the criteria for replacement under subsection (C). The Director or the Director's designee shall provide the Director's order to the permit holder and to the Department's License Services. The permit holder may appeal the Director's findings to the Fishery Permit Review Board under OAR 635-006-1065(1)(g).

(E) Permit holders (or their alternative designated on the buoy tag order form) must obtain, complete, and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee. The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(8) Remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the vessel's buoys and pots.

(9) Possess on a vessel, use, control, or operate any crab pot which does not have a pot tag identifying the pot as that vessel's, a surface buoy bearing the Department buoy brand registered to that vessel and a Department buoy tag issued by the Department to that vessel, except:

(a) To set gear as allowed under OAR 635-006-1015; or

(b) To retrieve from the ocean, including the Columbia River, and transport to shore up to fifty crab pot(s) of another vessel which were lost, forgotten, damaged, abandoned or otherwise derelict; provided that:

(A) Upon retrieval from the ocean or Columbia River, the pot(s) must be un-baited; and

(B) Crab from the retrieved pot(s) shall not be retained; and

(C) Immediately upon retrieval of pot(s), the retrieving vessel operator must document, in the retrieving vessel's logbook, the date and time of pot retrieval, number of retrieved crab pots, location of retrieval, and retrieved pot owner identification information; and

(D) Any retrieved crab pot(s) must be transported to shore during the same fishing trip that retrieval took place; or

(c) Under a waiver granted by the Department to allow one time retrieval of permitted crab gear to shore by another crab permitted vessel provided that:

(A) Vessel is incapacitated due to major mechanical failure or destroyed due to fire, capsizing, or sinking;

(B) Circumstances beyond the control of the permit holder created undue hardship as defined by OAR 635-006-1095(7)(d);

(C) A Request must be in writing and a waiver approved and issued prior to retrieval.

(D) A copy of the waiver must be on board the vessel making the retrieval. (Contact Oregon Department of Fish and Wildlife License Services, Salem for guidelines.)

(d) A vessel may transit through the Columbia River and the Pacific Ocean adjacent to Oregon while possessing crab pots not bearing Oregon buoy tags or Oregon buoy branded surface buoys, provided that the vessel is authorized to participate in the Dungeness crab fishery of an adjacent state.

(10) Attach one crab pot to another crab pot or ring net by a common groundline or any other means that connects crab pots together,

(11) Take crabs for commercial purposes by crab pots from any bay or estuary except the Columbia River.

(12) Operate more than 15 crab rings from any one fishing vessel in bays or estuaries, except the Columbia River.

(13) Take or fish for Dungeness crab for commercial purposes in the Columbia River or Pacific Ocean adjacent to the state of Oregon unless a crab pot allocation has been issued to the permit required under OAR 635-006-1015(1)(g).

(14) Deploy or fish more crab pots than the number of pots assigned by the crab pot allocation certificate or to use any vessel other than the vessel designated on the crab pot allocation, except to set gear as allowed under OAR 635-006-1015.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74, Renumbered from 625-010-0160; FWC 49-1978, f. & ef. 9-27-78, Renumbered from 635-036-0130; FWC 56-1982, f. & ef. 8-27-82; FWC 81-1982, f. & ef. 11-4-82; FWC 82-1982(Temp), f. & ef. 11-9-82; FWC 13-1983, f. & ef. 3-24-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (5) per FWC 45-1984, f. & ef. 8-30-84; FWC 72-1984, f. & ef. 10-22-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986 (Temp), f. & ef. 12-1-86; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 107-1990, f. & cert. ef. 10-1-90; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 84-1994, f. 10-31-94, cert. ef. 12-1-94; FWC 68-1996(Temp), f. & cert. ef. 12-5-96; FWC 2-1997, f. 1-27-97, cert. ef. 2-1-97; DFW 45-2006, f. 6-20-06, cert. ef. 12-1-06; DWF 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07;DFW 123-2006(Temp), f. 11-28-06, cert. ef. 12-1-06 thru 3-7-06; DFW 135-2006(Temp), f. & cert. ef.12-26-06 thru 6-15-07; DFW 11-2007, f. & cert. ef. 2-14-07; DFW 41-2007, f. & cert. ef. 6-8-07; DFW 82-2007(Temp), f. 8-31-07, cert .ef. 9-1-07 thru 10-31-07; DFW 113-2007, f. & cert. ef. 10-25-07; DFW 127-2007(Temp), f. & cert. ef. 12-11-07 thru 6-7-08; DFW 129-2007(Temp), f. & cert. ef. 12-14-07 thru 6-7-08; DFW 29-2008(Temp), f. & cert. ef. 3-25-08 thru 8-31-08; DFW 59-2008(Temp), f. & cert. ef. 6-11-08 thru 8-28-08; DFW 98-2008(Temp), f. 8-19-08, cert. ef. 8-29-08 thru 10-31-08; Administrative correction 11-18-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 145-2008(Temp), f. 11-24-08, cert. ef. 12-1-08 thru 5-29-09; DFW 54-2009(Temp), f. 5-19-09, cert. ef. 5-29-09 thru 8-28-09

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Rule Caption: Ocean Sport Pacific Halibut Closure from Leadbetter Point, Washington to Cape Falcon, Oregon.
Adm. Order No.: DFW 55-2009(Temp)
Filed with Sec. of State: 5-22-2009
Certified to be Effective: 5-22-09 thru 8-6-09
Notice Publication Date:
Rules Amended: 635-039-0085
Subject: Amended rule closes the sport fishery for Pacific halibut in the area between Leadbetter Point, Washington and Cape Falcon, Oregon at 11:59 p.m. on Friday, May 29, 2009 when the quota of 11,014 pounds is projected to have been taken. This rule is consistent with regulations that have been implemented by the federal government and the International Pacific Halibut Commission for the 2009 Oregon recreational fishery for Pacific halibut.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-039-0085
Halibut Seasons

(1) The Pacific halibut sport fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR chapter 635, division 039 incorporates into Oregon Administrative Rules, by reference, modifications or additions to provisions determined by the IPHC and to the extent they are consistent with **Title 50 of the Code of Federal Regulations**, **Part 300**, **Subpart E** (**61FR35550**, **July 5, 1996**) **Vol. 74**, **No. 52**, **dated March 19**, **2009** and **Vol. 24**, **No. 78** (**corrections**), **dated April 24**, **2009** and as amended by **Federal Regulations**. Therefore, persons must consult the Federal Regulations in addition to division 039 rules to determine applicable halibut fishing seasons.

(2) Effective 11:59 p.m., Friday, May 29, 2009 the Columbia River sub-area (Cape Falcon, OR to Leadbetter Pt., WA) is closed to the retention of Pacific halibut.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 107-2005(Temp), f. 9-14-05, cert. ef. 9-15-05 thru 10-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-19-06; DFW 34-2006(Temp), f. 5-25-06, cert. ef. 5-27-06 thru 8-3-06; Administrative correction 8-22-06; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 35-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 8-2-07; DFW 67-2007(Temp), f. 8-9-07, cert. ef. 8-12-07 thru 9-30-07; DFW 76-2007(Temp), f. 8-17-07, cert. ef. 8-24-07 thru 9-30-07; DFW 84-2007(Temp), f. 9-5-07, cert. ef. 9-15-07 thru 9-30-07; DFW 87-2007(Temp), f. 9-10-07, cert. ef. 9-14-07 thru 10-28-07; DFW 90-2007(Temp), f. 9-19-07, cert ef. 9-20-07 thru 10-31-07; Administrative corection 11-17-07; DFW 57-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 7-31-08; DFW 81-2008(Temp), f. 7-11-08, cert. ef. 8-2-08 thru 9-30-08; DFW 92-2008(Temp), f. & cert. ef. 8-11-08 thru 9-30-08; DFW 101-2008(Temp), f.8-25-08, cert. ef. 8-29-08 thru 9-30-08; DFW 107-2008(Temp), f. 9-5-08, cert. ef. 9-7-08 thru 12-31-08; DFW 111-2008(Temp), f. & cert. ef. 9-16-08 thru 12-31-08; DFW 120-2008(Temp), f. 9-25-08, cert. ef. 9-27-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 55-2009(Temp), f. & cert. ef. 5-22-09 thru 8-6-09

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Rule Caption: Allow Sales of Additional Species Caught During Columbia River Treaty Tribal Salmon Fisheries.
Adm. Order No.: DFW 56-2009(Temp)
Filed with Sec. of State: 5-26-2009
Certified to be Effective: 5-27-09 thru 7-31-09
Notice Publication Date:
Rules Amended: 635-041-0076
Rules Suspended: 635-041-0076(T)
Subject: This amended rule allows, in addition to species authorized at the May 13, 2009 compact meeting, the sale of sockeye and coho salmon, catfish, yellow perch and bass caught during the Treaty Tribal spring salmon fisheries in the Columbia River mainstem and Washington tributaries beginning at 6:00 a.m. Wednesday, May 27, 2009.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0076
Spring-Summer Salmon Season

(1) Chinook, steelhead, sockeye, walleye, carp, shad, catfish, yellow perch and bass may be taken for commercial purposes from the mainstem Columbia River, Zone 6, beginning 6:00 a.m. Saturday, May 16, 2009 until further notice.

(a) Gear is restricted to subsistence fishing gear: hoopnets, dipnets, and rod and reel with hook-and-line.

(b) 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.

(2) 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 shore below Bonneville Dam. 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) 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

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Rule Caption: Modifications to Southwest Zone sport Chinook salmon regulations for the Rogue River.
Adm. Order No.: DFW 57-2009(Temp)
Filed with Sec. of State: 5-27-2009
Certified to be Effective: 6-1-09 thru 7-31-09
Notice Publication Date:

Rules Amended: 635-016-0090
Subject: This amended rule will maximize the pawning 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:
(a) 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 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. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, certe. 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

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Rule Caption: Open the Snake River Spring Chinook Sport Fishery Below Hells Canyon Dam.
Adm. Order No.: DFW 58-2009(Temp)
Filed with Sec. of State: 5-27-2009
Certified to be Effective: 5-30-09 thru 7-12-09
Notice Publication Date:
Rules Amended: 635-023-0134
Subject: Amend rule to open a spring Chinook fishery on the Snake River in the area from Dug Bar Boat Ramp upstream to the deadline below Hells Canyon Dam. The fishery begins May 30, 2009 to run seven days per week, until further notice.
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 until further notice.
(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

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Rule Caption: 2009 Commercial Shad Seasons for the Columbia River.
Adm. Order No.: DFW 59-2009(Temp)
Filed with Sec. of State: 5-27-2009
Certified to be Effective: 6-1-09 thru 6-19-09
Notice Publication Date:
Rules Amended: 635-042-0110
Subject: Amended rule sets the 2009 commercial shad seasons for the Columbia River below Bonneville Dam. Modifications are consistent with the action taken May 26, 2009 by the Columbia River Compact agencies of Oregon and Washington.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0110
Gary Island to Bonneville Dam (Area 2S) Shad Season
(1) Shad may be taken for commercial purposes from the area of the Columbia River described in section (2) daily from 3:00 p.m. to 10:00 p.m. during the following open fishing periods:
(a) Monday, June 1 through Friday, June 5, 2009;
(b) Monday, June 8 through Friday, June 12, 2009; and
(c) Monday, June 15 though Friday, June 19, 2009.
(2) The area of the Columbia River open to fishing is from a downstream boundary of a true north/south line through the flashing red 4-second Light "50" near the Oregon bank to an upstream boundary of a straight line from a deadline marker on the Oregon bank, through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock, both such deadline markers located approximately four miles downstream from Bonneville Dam.
(3) It is *unlawful* to use a gillnet having a mesh size less than 5-3/8 inches or more than 6-1/4 inches with a breaking strength greater than a 10-pound pull, or to use a gillnet other than a single wall floater net, or to use a gillnet having slackers, or to use a gillnet of more than 150 fathoms in length or 40 meshes in depth. Rip lines are authorized spaced not closer than 20 corks apart.
(4) Only shad may be kept or sold. All salmon, steelhead, walleye and sturgeon taken in shad nets must be immediately returned unharmed to the water.
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: FWC 85, f. & ef. 1-28-77; FWC 116(Temp), f. & ef. 6-1-77 thru 6-3-77; FWC 124(Temp), f. & ef. 6-17-77 thru 10-14-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 27-1978(Temp), f. & ef. 5-26-78 thru 9-22-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0275; FWC 6-1980, f. & ef. 1-28-80; FWC 25-1980(Temp), f. & ef. 6-13-80; FWC 1-1981, f. & ef. 1-19-81; FWC 18-1981(Temp), f. & ef. 6-10-81; FWC 6-1982, f. & ef. 1-28-82; FWC 36-1982 (Temp), f. & ef. 6-11-82; FWC 2-

1983, f. 1-21-83, ef. 2-1-83; FWC 21-1983(Temp), f. & ef. 6-10-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 19-1985, f. & ef. 5-1-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 16-1986 (Temp), f. & ef. 5-23-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 23-1987(Temp), f. & ef. 5-20-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 10-1991, f. 2-7-91, cert. ef. 2-8-91; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 34-1992(Temp), f. 5-19-92, cert. ef. 5-20-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 6-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 36-2000(Temp), f. 6-28-00, cert. ef. 6-28-00 thru 7-1-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 39-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 45-2005(Temp), f. 5-17-05, cert. ef. 5-23-05 thru 10-16-05; DFW 63-2005(Temp), f. & cert. ef. 6-29-05 thru 7-31-05; Administrative correction 11-18-05; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 18-2008(Temp), f. 2-27-08, cert. ef. 5-12-08 thru 11-7-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; Administrative correction 9-29-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 59-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 6-19-09

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Rule Caption: Amend rules to change controlled hunt results notification date.
Adm. Order No.: DFW 60-2009(Temp)
Filed with Sec. of State: 5-28-2009
Certified to be Effective: 5-28-09 thru 11-16-09
Notice Publication Date:
Rules Amended: 635-060-0009
Subject: Amend rules to change controlled hunt results notification date.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-060-0009
Successful Applicants

Successful controlled hunt applicants must purchase the controlled hunt tag or permit for the hunt in which they were successful from a department license agent connected to the computerized licensing system within the following dates:

(1) Spring black bear controlled hunts tag sales begin February 20, each year and end at 11:59 pm, Pacific Time, the day before the season start date.

(2) Pronghorn antelope, deer and elk controlled hunts tag sales begin July 1 each year and end at 11:59 pm, Pacific Time, the day before the season start date for which the tag is valid.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 45-1994(Temp),f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 44-1996(Temp), f. 8-12-96, cert. ef. 8-14-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 6-1999(Temp), f. & cert. ef. 2-9-99 thru 2-19-99; DFW 12-1999(Temp), f. & cert. ef. 2-25-99 thru 6-30-99; Administrative correction 11-17-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 4-2002(Temp), f. & cert. ef. 1-3-02 thru 2-1-02; DFW 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; DFW 107-2004(Temp), f. & cert. ef 10-18-04 thru 11-27-04; Administrative correction, 2-18-05; DFW 70-2007(Temp), f. & cert. ef. 8-13-07 thru 2-9-08; DFW 103-2007(Temp), f. & cert. ef. 9-27-07 thru 3-24-08; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 60-2009(Temp), f. & cert. ef. 5-28-09 thru 11-16-09

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Rule Caption: Lower Deschutes River sport fall Chinook fishery.
Adm. Order No.: DFW 61-2009(Temp)
Filed with Sec. of State: 6-1-2009
Certified to be Effective: 8-1-09 thru 10-31-09
Notice Publication Date:
Rules Amended: 635-018-0090
Subject: Amend rule to allow the sport harvest of fall Chinook salmon in the Lower Deschutes River starting August 1, 2009.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-018-0090
Inclusions and Modifications

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

(2) The Deschutes River from the mouth at the I-84 Bridge upstream to Sherars Falls is open to angling for trout, steelhead, and Chinook salmon from August 1 to October 31, 2009.

(a) The catch limit for Chinook salmon is two adults and five jacks per day. Catch limits and restrictions applying to trout, steelhead, and coho remain unchanged from those listed in the 2009 Oregon Sport Fishing Regulations for Area 1 of the Deschutes River.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138 & 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96, FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp) f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99;DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08; DFW 27-2008(Temp), f. 3-24-08, cert. ef. 5-1-08 thru 10-27-08; Administrative correction 11-18-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 16-2009(Temp), f. 2-25-09, cert. ef. 4-15-09 thru 6-30-09; DFW 61-2009(Temp), f. 6-1-09, cert. ef. 8-1-09 thru 10-31-09

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Rule Caption: Sport Chinook Fisheries on the Imnaha and Wallowa Rivers.
Adm. Order No.: DFW 62-2009(Temp)
Filed with Sec. of State: 6-2-2009
Certified to be Effective: 6-13-09 thru 9-1-09
Notice Publication Date:
Rules Amended: 635-021-0090
Rules Suspended: 635-021-0090(T)
Subject: This amended rule allows sport anglers the opportunity to harvest adipose fin-clipped adult and jack Chinook salmon, in excess of ODFW's natural production needs, in the Imnaha and Wallowa rivers. These fisheries are scheduled for the period Saturday, June 13 through Sunday, July 12, 2009.
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:

(a) 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 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.

(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 11-1-0 2 (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

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Rule Caption: Sport Sturgeon Fishery Closes In Bonneville Reservoir.
Adm. Order No.: DFW 63-2009(Temp)
Filed with Sec. of State: 6-3-2009
Certified to be Effective: 6-6-09 thru 10-9-09
Notice Publication Date:
Rules Amended: 635-023-0095
Rules Suspended: 635-023-0095(T)
Subject: Amended rule prohibits retention of white sturgeon in the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam effective at 12:01 a.m. on Saturday, June 6, 2009. Revisions are consistent with Joint State Action taken by the Columbia River Compact states of Oregon And Washington on June 3, 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; and

(c) July 2 through July 5 (or until guideline is met).

(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, and from July 6 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 effective12:01 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

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Rule Caption: Amendments to Fern Ridge Wildlife Area Management Plan.
Adm. Order No.: DFW 64-2009
Filed with Sec. of State: 6-10-2009
Certified to be Effective: 6-10-09
Notice Publication Date: 3-1-2009
Rules Amended: 635-008-0095
Subject: Rules were amended relating to the Fern Ridge Wildlife Area Management Plan.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-008-0095
Fern Ridge Wildlife Area

As the underlying landowner, the U.S. Army Corps of Engineers has adopted rules and regulations (CFR Title 36) that apply to all Fern Ridge project land and water areas. The Fern Ridge Wildlife Area is open to wildlife-oriented public use compatible with the goals and objectives contained in the 2009 Fern Ridge Wildlife Area Management Plan unless otherwise excluded or restricted by the following rules:

(1) Hunting is prohibited except as authorized in annual game bird and big game hunting regulations.

(2) Discharging firearms is prohibited except as authorized during game bird and game mammal seasons, or by permit.

(3) Discharging rifles and handguns is prohibited.

(4) All dogs must be on a leash except during authorized hunting seasons, or by permit.

(5) Camping is prohibited except by permit.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162
Stats.Implemented: ORS 496.012, 496.138, 496.146, 496.162
Hist.: GC 64, f. 4-3-57; GC 232, f. 8-13-70, ef. 9-11-70; GC 252, f. 5-11-72, ef. 6-1-72, Renumbered from 630-010-0500, Renumbered from 635-015-0005; FWC 63-1980, f. & ef. 11-4-80; FWC 2-1981(Temp), f. & ef. 1-20-81; FWC 30-1982, f. & ef. 5-18-82, Renumbered from 635-008-0005(7); FWC 53-1994, f. & cert. ef. 8-25-94; DFW 64-2009, f. & cert. ef. 6-10-09

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Rule Caption: Amend Rules related to Cervid Disease and Parts.
Adm. Order No.: DFW 65-2009
Filed with Sec. of State: 6-10-2009
Certified to be Effective: 6-10-09
Notice Publication Date: 8-1-2008
Rules Adopted: 635-049-0065, 635-049-0067, 635-049-0069, 635-049-0071, 635-049-0073

Rules Amended: 635-049-0025
Rules Repealed: 635-049-0055, 635-049-0090
Subject: Adopted rules relating to a cervid disease surveillance list. The list includes diseases posing risk to cervids, cervid diseases posing risk to livestock, wildlife or humans, testing standards, test methods, prohibitions, and deadlines for required disease analysis and reporting. The list also addresses disease testing requirements and prohibitions for gamete or embryo transfer and importation.

Rules were repealed that related to the requirement that cervid part sales be reported in detail to ODFW.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-049-0025
Import or Export

(1) It is unlawful to import live cervids. However, live reindeer that leave Oregon temporarily for educational or display purposes may return to Oregon upon obtaining any necessary Department of Agriculture permits, provided:

(a) The reindeer have had no contact with other cervids while outside Oregon; and

(b) The Department of Fish and Wildlife is notified each time before the reindeer re-enter Oregon.

(2) Cervid gametes or embryos may be imported into Oregon only under the following conditions:

(a) The person proposing to import provides the Department with documentation of the pedigree of the parents;

(b) The gametes or embryos are of the species or subspecies for which the recipient is licensed to hold; and

(c) The Department approves the import proposal in advance as posing no threat to native wildlife, based upon the results of disease testing and genetic requirements provided in OAR 635-049-0073.

(3) Live cervids, gametes and embryos may be exported from Oregon, and cervid gametes and embryos may be imported into Oregon, only by a holder of an Oregon license valid for that species or subspecies, and provided that the licensee complies with all requirements of the Oregon Department of Agriculture governing transport, import and export in addition to provisions of OAR chapter 635 division 049.

(4) To the extent import or export of cervids, gametes or embryos is allowed by the above, any person proposing such import or export must obtain a permit from the Department of Fish and Wildlife in advance.

(5) Note the requirements of OAR 635-049-0265 governing transport of cervids.

(6) Effective January 1, 2009, it is unlawful for any person to export any bull elk that the person knows or should know will be used in a shooter bull operation. A "shooter bull operation" means a privately owned entity offering the hunting of bull elk for a fee or other remuneration within a fenced enclosure designed to prevent the elk's escape into the wild.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 52-2008, f. & cert. ef. 5-28-08; DFW 65-2009, f. & cert. ef. 6-10-09

635-049-0065
Disease Testing; Cervid Disease Surveillance List

(1) Any person holding cervids must, after discovery of the death of any captive cervid in their custody:

(a) Report the death to a Department veterinarian by telephone, electronic mail or fax within 24 hours, providing animal ID number, date, and cause of death; and

(b) Test the cervid per the requirements of the Cervid Disease Surveillance List (CDSL). Table 1 summarizes the current requirements of the CDSL. Paragraph (2) below addresses those requirements in detail.

Cervid Disease Surveillance List (CDSL)
Table1. CDSL Diseases

Cervid Species Surveyed	CWD*	Tb **	Brucellosis
Rocky Mountain Elk Activea	Active	Passiveb	
Roosevelt Elk	Active	Active	Passive
White-tailed Deer	Active	Active	Passive
Black-tailed Deer	Active	Active	Passive
Sika Deer	No testc	Passive	Passive
Muntjac Deer	No test	Passive	Passive
Fallow Deer	No test	Passive	Passive
Reindeer	No test	Passive	Passive

*Chronic Wasting Disease (CWD) - Collection and sampling of obex, tonsilar nodes, and medial retropharyngeal lymph nodes.
** Bovine Tuberculosis- Collection and sampling of the medial retropharyngeal lymph nodes. If necropsy conducted, examination of lung tissue and pleural cavity by an accredited veterinarian.
a Active Sampling- Tissue sampling from heads of deceased animals of this species
b Passive Surveillance- Based upon information gathered through phone interviews and through investigations into morbidity or mortality events that suggest disease issues, the Department reserves the right to require sampling and testing.
c CWD currently not documented in sika deer, muntjac deer, fallow deer, or reindeer.

(2) The following apply to any tests required by the CDSL:

(a) Where, in consultation with the Oregon Department of Agriculture's State Veterinarian, the Department determines that a captive cervid's clinical signs or death suggests a high risk of disease, the Department may (in addition to any testing required by the CDSL) also subject the carcass to a necropsy by a state or federal veterinarian or veterinary pathologist or accredited veterinarian as directed by the Department at the Department's expense.

(b) The CDSL testing requirements apply to any captive cervid dying of any cause at the age of six months or older. The holder is responsible for having the required tests performed, as per one of the following three options:

(A) The holder may choose to have the Department collect the samples;

(B) The holder may choose to have an accredited veterinarian collect the samples (so long as the veterinarian is not the holder or a member of the holder's immediate family); or

(C) The holder may choose to make other arrangements to collect and submit samples for required testing. The holder is responsible for ensuring that the test results are immediately and directly reported to the Department's veterinarian. If the holder chooses this option, the holder must submit all required tissues (obex, tonsilar, and medial retropharyngeal lymph nodes) to a testing facility accredited by the U.S. Department of Agriculture. The producer bears all collection and submission costs.

(c) The Department may waive the testing requirements of paragraph (1)(b) if the Department finds that the person was unable to complete testing due to one of the following circumstances:

(A) The animal was destroyed by fire (as verified in writing by a fire official with jurisdiction over the area where the fire occurred);

(B) The head was destroyed by a predator (as verified in writing by a Department biologist, an Oregon State Police Fish and Wildlife Division trooper or an employee of U.S. Department of Agriculture, Wildlife Services);

(C) The animal was stolen (as verified in writing by a law enforcement officer with jurisdiction over the area where the animal was stolen);

(D) The test sample was lost or destroyed while in the custody of a veterinarian, laboratory, the Department, Oregon Department of Agriculture or U.S. Department of Agriculture (as verified in writing by the responsible party);

(E) The test sample was damaged or destroyed during slaughter at a USDA certified facility during the culling process or removal of the head (as verified by a USDA inspector); or

(F) Any other circumstance where the Department determines that loss of the animal or sample was due to a circumstance that was reasonably outside the control of the person.

(3) An "unauthorized cervid" is one which was required to be listed in the holder's annual report for the previous year but was not so listed, or is one of a species or subspecies (or a hybrid of a species) which is not authorized by the holder's license. Upon a finding that an unauthorized cervid poses a risk to other captive cervids in a facility, the Department may also require testing of all cervids within the facility.

(4) If the Department determines that a captive cervid herd has been exposed to a disease on the Cervid Disease Surveillance List and that the exposure poses an imminent threat to wildlife, livestock or public health, the Department may take any appropriate action it determines necessary, including but not limited to confinement, testing or destruction of the affected captive cervids.

(5) If the Department determines that a licensed cervid holder has failed to comply with the testing requirements of this rule, and that such failure puts captive cervids or native wildlife at risk of disease or genetic harm, the Department may issue a hold order for any of the holder's captive cervids. A hold order may prohibit captive cervids from being moved outside the facility, from entering designated portions of the facility, or from contact with other captive animals.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 65-2009, f. & cert. ef. 6-10-09

635-049-0067
Voluntary Chronic Wasting Disease Monitored Herd Program

(1) Any licensed Type I cervid holder may enroll their herd in the CWD monitored herd program if the holder chooses to comply with the testing requirements of OAR 635-049-0065(1)–(2) by having the samples taken by a federally accredited veterinarian (other than the holder or a member of the holder's immediate family). A federally accredited veteri-

narian is a veterinarian approved by the U.S. Department of Agriculture pursuant to 9 Code of Federal Regulations Part 161 (Jan. 1, 2007).

(2) New facilities enrolling in the program begin monitored status when the herd inventory is completed by either the Department or Oregon State Police. Once a herd is enrolled, the Department will, each year by the anniversary of the herd's enrollment, assess the status of that herd's CWD testing data for the previous year.

(a) If the herd has not yet completed its first year of the certification program, or otherwise fails to meet the testing requirements in OAR 635-049-0065(2)(b)(A), the Department will designate that herd as "CWD monitored, status unknown."

(b) If the herd has been identified as CWD-affected, -exposed or -traced, the Department will designate that herd as "CWD monitored, status pending". "Traced" means that a records check has traced a member of the herd to another herd which was affected by CWD.

(c) If the herd has at least one documented case of CWD as determined by the National Veterinary Services Lab at Ames, Iowa, the Department will designate that herd as "CWD positive."

(d) If the herd has completed its first full year of the program, and its testing data has met all requirements of these rules and shows no CWD affect, exposure or tracing, the Department will designate that herd as "CWD monitored, no evidence of CWD".

(3) Based upon the annual status assessment and designation, each year by the herd's annual enrollment anniversary the Department will also assign a program completion level to each enrolled herd, based upon the number of years (I through V) the herd has been designated "CWD monitored, no evidence of CWD". If the herd is designated "CWD positive" during any year, the herd's program completion level reverts to year zero. A herd's program completion level reverts one step for each year that:

(a) The herd is designated "CWD monitored, status unknown" due to failure to meet testing requirements or "CWD monitored, status pending," or

(b) The Department determines that:

(A) An undocumented cervid was found in the holder's facility;

(B) One of the holder's test samples was collected by a non-accredited veterinarian;

(C) The holder submitted a test sample that did not match the deceased animal from which it was said to come; or

(D) Captive cervids escape from the facility or wild cervids enter the facility due to the holder's intentional act or negligence.

(4) If , pursuant to these rules, a herd fails to advance to the next status level for two consecutive years, the Department will designate it as "status unknown".

(5) When a holder enrolled in the program adds a cervid to the holder's herd, and the added cervid comes from a herd with a program completion level lower than the holder's herd, the Department will reduce the program completion level of the holder's herd to that of the source herd of the added cervid. When a holder assembles a new herd on premises where CWD has never been detected and all cervids come from enrolled herds, the new herd enters the program at the lowest program completion level of the cervids acquired.

(6) When a herd reaches program completion level V, the Department will list the herd as having completed the program. That listing remains valid so long as the herd continues to comply with the requirements of this rule and unless and until downgraded as per paragraphs (3) through (5). Once downgraded, a herd must successfully complete one year of monitoring at level IV before the holder can be relisted as having completed the program.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 65-2009, f. & cert. ef. 6-10-09

635-049-0069
Recaptured cervids

Where a captive cervid has escaped from a licensed facility and been recaptured, the Department may, where the Department determines it necessary to guard against disease, require that the cervid be subjected to non-lethal disease testing.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 65-2009, f. & cert. ef. 6-10-09

635-049-0071
Obligation to report disease incidents

Any cervid license holder with knowledge that a cervid in his or her licensed Type 1 facility has any of the diseases on the Cervid Disease Surveillance List (or has been exposed to any of those diseases) must promptly report that fact to the Department and the State Veterinarian:

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 65-2009, f. & cert. ef. 6-10-09

635-049-0073
Disease Testing and Genetic Requirements for Importation of Cervid Gametes and Embryos

(1) Before importing any cervid gamete or embryo into Oregon, a cervid holding licensee must submit for the Department's review and approval a list of test results and genetic information from the donor cervid. To qualify for approval, the test results and genetic information must prove to the Department's satisfaction that:

(a) No more than 30 days prior to submission, the donor cervid tested negative for brucellosis;

(b) No more than 90 days prior to submission, the donor cervid tested negative for bovine tuberculosis;

(c) The donor cervid has not been present in an area of CWD risk; and

(d) The donor cervid is a species which the licensee is licensed to hold in Oregon.

(2) Notwithstanding paragraph (1) (a), a gamete or embryo qualifies for import if the cervid licensee proves to the Department's satisfaction that the donor cervid:

(a) Originated in a herd classified by the U.S. Department of Agriculture (USDA) as Certified Brucellosis-Free; or

(b) Originated in a herd classified by USDA as Brucellosis Monitored, plus tested negative for brucellosis no more than 90 days prior to entry into Oregon.

(3) Notwithstanding paragraph (1) (b), a gamete or embryo qualifies for import if the cervid licensee proves to the Department's satisfaction that the donor cervid:

(a) Originated in a herd classified by USDA as Bovine Tuberculosis Accredited; or

(b) Originated in a herd classified by USDA as Bovine Tuberculosis Qualified or Monitored, plus tested negative for tuberculosis no more than 90 days prior to entry into Oregon.

(4) "Has not been present in an area of CWD risk" means that the donor cervid has never:

(a) Been in a herd or facility that tested positive for CWD;

(b) Come in contact with a cervid that tested positive for CWD or a cervid that came from a herd or facility that tested positive for CWD; or

(c) Been in a state, Canadian province or foreign country with a history of CWD.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106
Hist.: DFW 65-2009, f. & cert. ef. 6-10-09

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Rule Caption: 2010 Annual Changes to Game Regulations, 2009 Controlled Hunt Tag Numbers.
Adm. Order No.: DFW 66-2009
Filed with Sec. of State: 6-10-2009
Certified to be Effective: 6-10-09
Notice Publication Date: 5-1-2009
Rules Amended: 635-060-0046, 635-065-0015, 635-067-0000, 635-068-0000, 635-069-0000, 635-070-0000, 635-071-0000, 635-073-0000, 635-075-0005
Rules Repealed: 635-075-0005(T)
Subject: Rules were amended to establish 2009 controlled hunt tag numbers and/or season regulations for the hunting of pronghorn antelope, bighorn sheep, Rocky Mountain goat, deer and elk.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-060-0046
Lost Tags and Tag Exchanges

(1) A fee of $5.00 and a $1.50 license agent fee is charged to replace or exchange a tag or permit. Duplicates and exchanges may be obtained only through the Salem headquarters, regional offices of the department, and designated district offices. Exception: Replacement controlled hunt tags or permits will be issued at no charge only through the Salem headquarters or regional office of the department if the department determines that the person never received the original controlled tag or permit mailed from the Salem headquarters office.

(2) A Controlled Buck Deer Tag or Controlled Elk Tag may be exchanged for a general season tag before the opening date of the season for which either tag is valid.

(3) No controlled hunt tag shall be exchanged for another controlled hunt tag, except as described in 635-060-0008(5) and 635-075-0015(3).

(4) A Controlled Antlerless Deer Tag shall not be exchanged.

(5) In the event of the death of a successful controlled hunt applicant before the start of the season for which the tag or permit was issued, the tags of the deceased may be issued to a family member as defined by OAR 635-045-0002. Tag or permit transfer shall require a copy of the death certificate and the original controlled hunt tag or permit, and must be requested by the legal heir to the deceased which shall be presumed by possession of the tag or permit and death certificate.

(6) A "leftover" controlled hunt tag may only be exchanged for a general season tag, but only if the person does not already possess a tag authorized by OAR 635-065-0015(4)(a), (b) or (c) or OAR 635-0065-0015(5)(a), (b), (c), (d), (e), (f), or (g).

(7) The Commission shall accommodate Oregon residents who have lost preference points because of being called to active military service after June 1, 2002.

(a) The Commission shall accommodate the following individuals called to service at any location: Oregon National Guard.

(b) The Commission shall accommodate the following Oregon residents with military operational commitments: regular members of the United States Armed Forces (Army, Navy, Air Force, Marines, Coast Guard), members of the United States military reserves, and members of the National Guard.

(c) The Commission authorizes the Director to make such accommodations by:

(A) Reinstating preference points existing for a series, plus an additional point for participating in the draw.

(B) Reinstating preference points lost after two consecutive years of not applying for a controlled hunt in that series.

(d) Individuals seeking accommodation pursuant to this rule (or immediate family members acting on their behalf) must make a request in writing or in person to the Salem headquarters office. Each request must include a letter from a supervising officer on official unit letterhead verifying operational commitments.

(8)(a) The Director may reinstate the preference points of a person who the Director determines did not or will not participate in a controlled hunt because of:

(A) Circumstances beyond the person's control; or

(B) Tragic personal circumstances.

(b) "Tragic personal circumstances" means:

(A) Death or life-threatening injury or illness in the person's immediate family; or

(B) The person's own serious injury or illness, which results in the person's hospitalization. The person need not be hospitalized during the hunt; this rule also applies if preparation for surgery or recovery after hospitalization renders the person incapable of participating in the hunt.

(c) To apply for reinstatement, the person must provide a sworn affidavit providing adequate details and must return the unused tag if it was purchased or a signed affidavit stating the tag was not used. When relying upon tragic personal circumstances, the person must also provide a sworn affidavit by a physician. When relying upon circumstances beyond the person's control, the person must also provide documentation of the circumstances (such as an accident report or affidavit from an employer).

(d) "Circumstances beyond the person's control" excludes complaints about the quality of a hunt (including, but not limited to, road closures, inclement weather and work being conducted in the hunt area).

(e) If the Director decides that the person does not qualify for reinstatement, the person may appeal that decision to the Oregon Fish and Wildlife Commission (Commission). The Commission must review the Director's decision within 60 days after receipt of appeal. The Commission will not take verbal testimony from the person, and the Commission's decision is final.

(f) If the Director or Commission reinstates a person's preference point under this subsection, the person is not awarded a new point for being classified as "unsuccessful" and is not entitled to a refund of license or tag fees.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 118, f. & ef. 6-3-77; FWC 32-1978, f. & ef. 6-30-78; FWC 29-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 7-1981, f. 2-18-81, ef. 6-1-81; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 21-1982, f. & ef. 3-31-82; FWC 38-1982, f. & ef. 6-25-82; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 40-1987, f. & ef. 7-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 55-1992(Temp), f. 7-22-92, cert. ef. 7-24-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 52-2001(Temp) f. & cert. ef. 6-27-01 thru 12-24-01; DFW 13-2002, f. & cert. ef. 2-12-02; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 36-2002(Temp), f. & cert. ef. 4-22-02 thru 10-19-02; DFW 50-2002(Temp), f. & cert. ef. 5-16-02 thru 11-12-02; DFW 29-2003(Temp), f. & cert. ef. 4-9-03 thru 10-1-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; DFW 107-2004(Temp), f. & cert. ef 10-18-04 thru 11-27-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 26-2005, f. & cert. ef. 4-20-05; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 93-2007(Temp), f. & cert. ef. 9-26-07 thru 3-23-08; Administrative correction 4-23-08; DFW 126-2008(Temp), f. & cert. ef. 10-6-08 thru 4-4-09; DFW 66-2009, f. & cert. ef. 6-10-09

635-065-0015
General Tag Requirements and Limits

(1) Big Game Tags: Any person hunting game mammals for which a tag is required must have on their person a valid tag for the dates, area and species being hunted.

(2) Any person 12 years of age or older may purchase game mammal tags if they possess an adult hunting license.

(3) A person may obtain and possess during an annual hunting season only:

(a) One valid general season black bear tag;

(b) One valid additional general black bear tag valid in management units 20–30;

(c) One valid controlled black bear tag in addition to general season bear tags issued under subsection (a) and (b) above;

(d) One valid 700 series "leftover" controlled bear tag;

(e) One valid cougar (mountain lion) tag;

(f) One valid eastern additional general cougar (mountain lion) tag;

(g) One valid pronghorn antelope tag.

(4) Except as provided in OAR chapter 635, division 090, and except as provided in 635-075-0010, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid deer bow tag;

(b) One valid western Oregon deer tag;

(c) One valid 100 series controlled buck hunt tag;

(d) One valid 600 series controlled antlerless deer tag in addition to one of (4)(a)–(4)(c) and (4)(e);

(e) One valid 100 series "left over" controlled deer tag;

(f) One valid 600 series "left over" controlled deer tag;

(5) Except as provided in OAR Chapter 635, Division 090, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid Cascade elk tag;

(b) One valid Coast First Season elk tag;

(c) One valid Coast Second Season elk tag;

(d) One valid Rocky Mountain elk — first season tag,

(e) One valid Rocky Mountain elk — second season tag;

(f) One valid elk bow tag;

(g) One valid controlled elk hunt tag;

(6) In addition to the tags described in OAR 635-065-0015(5), a person during an annual hunting season may obtain or possess only one valid 200 series "leftover" controlled elk tag.

(7) Except as provided in OAR 635-067-0032 thru 635-067-0034, a person may obtain and possess only one bighorn sheep ram tag in a lifetime.

(8) A person may obtain and possess only one Rocky Mountain goat tag in a lifetime.

(9) It is unlawful for any person to issue or to possess any game mammal tag which has been backdated.

(10) Any game mammal tag having an issue date subsequent to the last day authorized for issue of such tag as listed in "Oregon Big Game Regulations" for the current season is a void tag. Exception: Members of the armed forces returning to the state after the deadline shall be permitted to purchase general season tags for themselves at the Salem headquarters and regional offices of the department.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89, Renumbered from 635-65-780; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 6-17-97, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 54-2000(Temp), f. & cert. ef. 8-28-00 thru 12-31-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 52-2001(Temp) f. & cert. ef. 6-27-01 thru 12-24-01; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 66-2009, f. & cert. ef. 6-10-09

635-067-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2009 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2009 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted arms and ammunition are established in OAR chapter 635, division 065. Controlled hunt tag numbers for 2009 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 067 by reference.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 60-2008, f. & cert. 6-12-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 66-2009, f. & cert. ef. 6-10-09

635-068-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting western Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2009 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 068 by reference.

(3) OAR chapter 635, division 068 incorporates, by reference, the requirements for hunting western Oregon deer set out in the document entitled "2009 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2009 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western Oregon deer. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 39-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001. f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 121-2003, f. 12-4-03, cert. ef. 1-19-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 124-2004, f. 12-21-04, cert. ef. 3-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 131-2005, f. 12-1-05, cert. ef. 3-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 125-2006, f. 12-4-06, cert. ef. 3-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 116-2007, f. 10-31-07, cert. ef. 3-1-08; DFW 60-2008, f. & cert. 6-12-08; DFW 13-2009, f. 2-19-09, cert. ef. 3-1-09; DFW 66-2009, f. & cert. ef. 6-10-09

635-069-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting eastern Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2009 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 069 by reference.

(3) OAR chapter 635, division 069 incorporates, by reference, the requirements for hunting eastern Oregon deer set out in the document entitled "2009 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2009 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting eastern Oregon deer. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 40-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 32-1999(Temp), f. & cert. ef. 5-4-99 thru 10-31-99; DFW 34-1999(Temp), f. & cert. ef. 5-12-99 thru 10-31-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 20-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 7-2003, f. 1-17-03, cert. ef. 2-1-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, cert. ef. 2-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. 12-7-06, cert. ef. 2-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 60-2008, f. & cert. 6-12-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 66-2009, f. & cert. ef. 6-10-09

635-070-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Cascade and Coast elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2009 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 070 by reference.

(3) OAR chapter 635, division 070 incorporates, by reference, the requirements for hunting western Oregon elk set out in the document entitled "2009 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2009 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western Oregon elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 41-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 119-2003, f. 12-4-03, cert. ef. 4-1-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 8-2004(Temp), f. & cert. ef. 2-2-04 thru 7-31-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 107-2004(Temp), f. & cert. ef 10-18-04 thru 11-27-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. 12-1-05, cert. ef. 4-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 126-2006, f. 12-7-06, cert. ef. 4-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 115-2007, f. 10-31-07, cert. ef. 4-1-08; DFW 60-2008, f. & cert. 6-12-08; DFW 31-2009, f. 3-23-09, cert. ef. 4-1-09; DFW 66-2009, f. & cert. ef. 6-10-09

635-071-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Rocky Mountain elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2009 are listed in Tables 1 and 2 and are adopted and incorporated in OAR chapter 635, division 071 by reference.

(3) OAR chapter 635, division 071 incorporates, by reference, the requirements for hunting Rocky Mountain elk set out in the document entitled "2009 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2009 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting Rocky Mountain elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 42-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003,

f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 1-2004(Temp), f. & cert. ef. 1-13-04 thru 7-9-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04, Administrative correction 11-22-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. 12-1-05, cert. ef. 4-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 126-2006, f. 12-7-06, cert. ef. 4-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 115-2007, f. 10-31-07, cert. ef. 4-1-08; DFW 60-2008, f. & cert. 6-12-08; DFW 31-2009, f. 3-23-09, cert. ef. 4-1-09; DFW 66-2009, f. & cert. ef. 6-10-09

635-073-0000
Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for bow and muzzleloader hunting and controlled deer and elk youth hunts; pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2009 for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 073 by reference.

(3) OAR chapter 073 incorporates, by reference, the requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts set out in the document entitled "2009 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2009 Oregon Big Game Regulations," in addition to OAR chapter 635, to determine all applicable requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 21-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, cert. ef. 2-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. 12-7-06, cert. ef. 2-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 60-2008, f. & cert. 6-12-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 66-2009, f. & cert. ef. 6-10-09

635-075-0005
Registration, Application and Tag Issuance Procedures and Limits for All Controlled Hunts

(1) A landowner shall submit a landowner preference registration form to be eligible for a landowner preference tag. A landowner can have only one registration form on file with the department. The registration form is an affidavit certifying ownership, number of acres owned, the county and Wildlife Management Unit where the property is located. This registration form registers the individual and remains valid until the individual registered no longer qualifies as a landowner as defined under OAR 635-045-0002, writes to the department requesting the registration form be deleted, or the department notifies the landowner that a renewal is required.

(2) In addition to having a landowner preference registration form on file with the department, a landowner shall submit a tag distribution form annually. The tag distribution form shall list the names of the landowner, stockholder(s), partner(s), and their immediate family members to receive tags for pronghorn antelope, and the names of the landowner, stockholder(s), partner(s), their immediate family members, and those persons of the landowners' choosing to receive landowner preference tags for deer and elk.

(3) Landowners shall submit registration forms and tag distribution forms prior to September 15 for all controlled 100 series buck deer and bull elk hunts, and through the day prior to the season openings for 600 series anterlerless deer, antlerless elk, and doe/fawn pronghorn antelope hunts.

(4) Registration forms and tag distribution forms are available at no charge in any office of the department.

(5) Registration forms, tag distribution forms, and applications shall be received at the Salem headquarters office of the department prior to issuance of any landowner preference tag, except as provided for in OAR 635-075-0007. Landowners are not required to submit proof of ownership with their registration form. Landowners shall be required to submit proof of ownership at the request of the department or the Oregon State Police acting on behalf of the department.

(6) A landowner, stockholder(s), partner(s), and immediate family and those persons of the landowners' choosing wishing to also apply for controlled hunt tags shall apply by the May 15 controlled hunt deadline. Listing a hunt choice other than a landowner preference choice is not required.

(7) Everyone shall follow controlled hunt application procedures and regulations as described in OAR division 060.

(8) The number of landowner preference tags issued is based upon a landowner's acreage. Landowner Preference tags shall be allocated by the following minimum acreage requirements:

TAGS	MINIMUM ACREAGE	HUNT TYPE
2	40	all hunts except eastern Oregon buck deer, eastern Oregon bull elk, either-sex elk, and doe/fawn pronghorn antelope hunts
2	160	all hunts
3	1,200	all hunts
4	2,500	all hunts
5	5,000	all hunts
6	10,000	all hunts
8	20,000	all hunts
10	40,000	all hunts
12	80,000	all hunts
14	160,000 and greater	all hunts

(9) Landowner preference tags for the hunting of deer or elk may be issued to any person of the landowner's choosing, and shall be used for the taking of antlerless animals except as described in OAR 635-075-0005(8). Season dates of the transferred landowner preference tags shall be the same dates as the original tag.

(10) Landowner preference tags for the hunting of antlered deer or elk that are issued to a person of the landowner's choosing who is not a member of the landowner's, partner's, or stockholder's immediate family may be used to take an antlered animal only as follows:

(a) If the landowner is eligible for two, three, or four preference tags, one of those tags may be so used.

(b) If the landowner is eligible for five, six or seven preference tags, two of those tags may be so used.

(c) If the landowner is eligible for eight, nine or 10 preference tags, three of those tags may be so used.

(d) If the landowner is eligible for 11 or 12 preference tags, four of those tags may be so used.

(e) If the landowner is eligible for 13 or 14 preference tags, five of those tags may be so used.

(11) A landowner who is qualified to receive landowner hunting preference tags may request two additional tags for providing public access and/or two additional tags for wildlife habitat programs. This request shall be made to the Access and Habitat Board with supporting evidence that the access is significant and the habitat programs benefit wildlife. The board may recommend that the commission grant the request. These tags may not be applied to the options as defined in OAR 635-075-0005(8).

(12) No one shall receive both a controlled hunt tag and a landowner preference tag for the same type of hunt. Landowner hunting preference tags shall not be issued to any person successful in the controlled hunt drawing for the same type of hunt.

(13) Landowner preference tags, except as described in OAR 635-075-0007, 635-075-0010, and 635-075-0015 shall only be issued from the headquarters office of the department following the controlled hunt drawings.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 35-1982, f. & ef. 6-7-82; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 48-1987, f. & ef. 7-6-87; FWC 20-1988, f. & cert. ef. 3-10-88; FWC 45-1988, f. & cert. ef. 6-13-88; FWC 98-1988, f. & cert. ef. 10-6-88; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 99-1992, f. & cert. ef. 9-25-92; FWC 10-1994, f. & cert. ef. 2-24-94; FWC 14-1994(Temp), f. & cert. ef. 3-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 131-2008, f. & cert. ef. 10-14-08; DFW 42-2009(Temp), f. 5-4-09, cert. ef 5-5-09 thru 10-31-09; DFW 66-2009, f. & cert. ef. 6-10-09

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Rule Caption: Nehalem Basin Closes to Chinook Retention From 6-15-09 through 7-31-09.
Adm. Order No.: DFW 67-2009(Temp)
Filed with Sec. of State: 6-9-2009
Certified to be Effective: 6-15-09 thru 10-31-09
Notice Publication Date:
Rules Amended: 635-014-0090
Rules Suspended: 635-014-0090(T)
Subject: Amended rule closes the Nehalem Basin (including South and North forks and associated tributaries of the Nehalem River) to the retention of summer Chinook salmon. Current permanent rule has Nehalem Bay open for spring Chinook April 1–July 31, 2009; Nehalem River open for spring Chinook May 23–July 31, 2009; and

North Fork Nehalem River open for spring Chinook May 23-July 31, 2009. Rule modifications are consistent with 1) the conservation approach being taken for management of 2009 fall fisheries in the Nehalem Basin; 2) current permanent regulations protecting wild spring Chinook in the adjacent Tillamook Bay and Nestucca basins; and 3) with the long-term management approach currently being evaluated by the District as part of the draft *Coastal Spring/Summer Chinook Conservation Plan*.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-014-0090
Inclusions and Modifications

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

(2) Fishhawk Lake is open for trout angling May 23 through October 31, 2009;

(a) Retention of trout is allowed, 2 per day; 2 daily limits in possession; 8-inch minimum length;

(b) Angling restricted to artificial flies and lures only May 23 through August 31, 2009.

(3) Nehalem Basin (including South Fork Nehalem River; North Fork Nehalem River; and associated tributaries) is closed to angling for Chinook salmon from June 15 through July 31, 2009.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f, 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert, ef, 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 43-2009(Temp), f. 5-5-09, cert. ef. 5-22-09 thru 10-31-09; DFW 67-2009(Temp), f. 6-9-09, cert. ef. 6-15-09 thru 10-31-09

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Rule Caption: Columbia River Recreational Spring Fishery Re-opens from Tongue-Rocky Points Upstream to I-5 Bridge.
Adm. Order No.: DFW 68-2009(Temp)
Filed with Sec. of State: 6-11-2009
Certified to be Effective: 6-12-09 thru 6-16-09
Notice Publication Date:
Rules Amended: 635-023-0125
Rules Suspended: 635-023-0125(T)
Subject: This amended rule re-opens the steelhead and jack Chinook salmon fisheries in the mainstem Columbia River from Tongue Point/Rocky Point upstream to the I-5 Bridge beginning June 12, 2009. Revisions are consistent with Joint State Action taken June 10, 2009 by the Columbia River Compact agencies of Oregon and Washington.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0125
Spring Sport Fishery

(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) Notwithstanding all other specifications and restrictions in the 2009 Oregon Sport Fishing Regulations:

(a) Effective 12:01 a.m. Friday, June 12, 2009, retention of sockeye, adipose fin-clipped steelhead and adipose fin-clipped jack Chinook is allowed in the mainstem Columbia River from the Tongue Point/Rocky Point line upstream to the I-5 Bridge. All sockeye are considered adults and are included in the daily bag limit for adults.

(b) Previously adopted summer season fisheries scheduled to begin June 16, 2009 remain in place under OAR 635-023-0128.

(3) Catch Limits:

(a) Adipose fin-clipped jack Chinook salmon, adipose fin-clipped steelhead and sockeye salmon may be retained.

(b) All adult Chinook salmon, non-adipose fin-clipped jacks and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) The combined daily bag limit is two adults and five jacks.

(4) For the mainstem Columbia River salmon and steelhead fishery upstream of the Rocky Point-Tongue Point line to McNary Dam from February 15 through June 15, 2009, it is *unlawful* when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board registration, to totally remove from the water any salmon or steelhead required to be released.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert.ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-15-07, cert. ef. 5-16-07 thru 7-30-07; DFW 37-2007(Temp), f. & cert. ef. 5-31-07 thru 7-30-07; DFW 39-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 13-2008(Temp), f. 2-21-08, cert. ef. 2-25-08 thru 8-22-08; DFW 17-2008(Temp), f. & cert. ef. 2-27-08 thru 8-22-08; DFW 35-2008(Temp), f. 4-17-08, cert. ef. 4-21-08 thru 8-22-08; DFW 49-2008(Temp), f. & cert. ef. 5-13-08 thru 6-15-08; Administrative correction 7-22-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 10-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 6-15-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 48-2009(Temp), f. 5-14-09, cert. ef. 5-15-09 thru 6-16-09; DFW 68-2009(Temp), f. 6-11-09, cert. ef. 6-12-09 thru 6-16-09

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Rule Caption: Summer Recreational Sockeye Fishery in the Mainstem Columbia River.
Adm. Order No.: DFW 69-2009(Temp)
Filed with Sec. of State: 6-11-2009
Certified to be Effective: 6-16-09 thru 7-31-09
Notice Publication Date:
Rules Amended: 635-023-0128
Subject: This amended rule provides a recreational sockeye fishery in the Columbia River from Tongue Point/Rocky Point upstream to the Oregon/Washington border upstream of McNary Dam. Modifications are consistent with action taken June 10, 2009 by the Columbia River Compact agencies of Oregon and Washington.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0128
Summer Sport Fishery

(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) Notwithstanding all other specifications and restrictions in the **2009 Oregon Sport Fishing Regulations**:

(a) Effective June 16 through July 31, 2009, the mainstem Columbia River is open to the retention of sockeye and jack Chinook salmon from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to the Oregon/Washington border.

(b) Effective June 22 through July 5, 2009, or until the harvest guideline is achieved; the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam is open to the retention of adult Chinook salmon; and

(c) Effective July 1 through July 31, 2009, or until the harvest guideline is achieved; the mainstem Columbia River from Bonneville Dam to the Oregon/Washington border is open to the retention of adult Chinook salmon.

(d) The combined daily bag limit for adult salmon and adipose finclipped steelhead is two fish.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; 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; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 69-2009(Temp), f. 6-11-09, cert. ef. 6-16-09 thru 7-31-09

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Rule Caption: Allow Commercial Sales of Dressed Salmon and Steelhead by tribal Members to Commercial Wholesale Dealers.
Adm. Order No.: DFW 70-2009(Temp)
Filed with Sec. of State: 6-15-2009
Certified to be Effective: 6-16-09 thru 12-12-09
Notice Publication Date:
Rules Amended: 635-006-0212, 635-006-0215, 635-006-0225
Subject: These amended rules allow Tribal Fisherman to sell gutted and gilled Columbia River salmon and steelhead to licensed commercial wholesale fish dealers, canners, and buyers. The wholesale fish dealers, canners, and buyers must report in round weight on the Fish Receiving Ticket using the conversion factor 1.17 to one.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-006-0212
Fish Receiving Ticket — Salmon

For all salmon, the following requirements apply in addition to those listed in OAR 635-006-0210:

(1) Fish receiving tickets shall be completed at time of landing and the original copy forwarded within four consecutive days following the landing to the Oregon Department of Fish and Wildlife.

(2) For troll-caught salmon, fish receiving tickets shall show the number of days fished during the trip in which the salmon were caught.

(3) It is lawful for licensed wholesale fish dealers, canners, or buyers to purchase from tribal fishers, referred to in OAR 635-041-0005, gilled and gutted Columbia River salmon lawfully taken during commercial Treaty Indian fishing seasons. The licensed wholesale dealer must submit round weights on the Fish Receiving Ticket by multiplying the weights of gilled and gutted salmon by the conversion factor listed in OAR 635-006-0215 for tribal Columbia River salmon and steelhead.

Stat. Auth.: ORS 506.119, 506.129, 508.530 & 508.535

Stats. Implemented: ORS 506.129, 508.025, 508.040 & 508.550

Hist.: FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 44-2006(Temp), f. & cert. ef. 6-19-06 thru 12-15-06; Administrative correction 12-16-06; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08; Administrative correction 1-23-09; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09

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 canners, or shellfish canners receiving food fish or shellfish from licensed commercial 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, gutted and headed — 1.60.

(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

635-006-0225
Purchase, Record, Report, and Sale of Steelhead Trout and Walleye from Treaty Indian Fisheries

(1) Steelhead trout and walleye lawfully taken by treaty Indians during commercial fishing seasons may be purchased by licensed wholesale

fish dealers, canners, or buyers pursuant to restrictions set forth in sections (2) through (5) of this rule. In addition, steelhead trout and walleye taken lawfully by treaty Indians during commercial fishing seasons may be purchased and/or possessed by any individual pursuant to restrictions set forth in section (6) of this rule.

(2) The wholesale fish dealer, canner, or buyer, shall at the time of purchase, enter the purchase of steelhead trout and walleye on a Department Columbia River Fish Receiving Ticket. Information required to be entered on the Fish Receiving Ticket shall be the same as required by OAR 635-006-0210 and 635-006-0212 for each purchase of food fish.

(3) The record keeping and reporting requirements for food fish as set forth in OAR 635-006-0200 through 635-006-0215 shall apply to all steelhead trout and walleye purchases. The round weights of all gilled and gutted steelhead trout must be converted by the licensed wholesale fish dealer, canner, or buyer by using the conversion factor listed in 635-006-0215 for Tribal Columbia River salmon and steelhead trout.

(4) In addition to the records required in connection with the purchase of steelhead trout, and walleye, a record of all sales of steelhead trout and walleye shall be maintained by licensed wholesale fish dealers, canners, or buyers for a period of three years and shall be subject to inspection by the Department, the Director's authorized agent or the Oregon State Police. Such record of sales shall include as a minimum:

(a) Name and address of each person to whom either steelhead or walleye are sold;

(b) Quantity in pounds of each sale identified as whole or round weight or dressed weight;

(c) Date of each delivery.

(5) It is *unlawful* for any wholesale fish dealer, canner, or buyer in possession of legally purchased steelhead trout or walleye from treaty Indians to sell or distribute such fish in Oregon except to another wholesale fish dealer, canner, or buyer.

(6) Steelhead trout and walleye taken lawfully by treaty Indians during commercial fishing seasons may be purchased from a treaty Indian and/or possessed by any individual so long as said fish are accompanied by a written document listing treaty Indian taker's name, tribal enrollment number, number of fish, approximate weight of each fish, date and location where taken, date of sale, and purchaser's name. It is *unlawful* for any individual other than a treaty Indian to sell steelhead trout or walleye. The provisions in this section (6) apply to individuals other than licensed wholesale fish dealers, canners and buyers.

Stat. Auth.: ORS 506.119, 508.530 & 509.031
Stats. Implemented: ORS 498.022, 506.129, 508.535 & 508.550
Hist.: FWC 39, f. & ef. 1-23-76, Renumbered from 625-040-0150, Renumbered from 635-036-0595; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 41-1995, f. 5-23-95, cert. ef. 5-24-95; FWC 51-1997(Temp), f. & cert. ef. 8-27-97; DFW 73-1998, f. & cert. ef. 8-28-98; DFW 32-2008(Temp), f. & cert. ef. 4-1-08 thru 9-27-08; 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

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Rule Caption: Columbia River treaty Tribal Summer Salmon Gill Net Fishery Opens.
Adm. Order No.: DFW 71-2009(Temp)
Filed with Sec. of State: 6-15-2009
Certified to be Effective: 6-16-09 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 spring-summer Treaty Indian gill net fishery which begins at 6:00 a.m. Tuesday, June 16, 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. Two 84 hour (3.5 days) fishing periods were adopted. Revisions are consistent with action taken by the Columbia River Compact agencies of Oregon and Washington on June 10, 2009.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0076
Spring-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 16 through 6:00 p.m. Friday, June 19, 2009 (84 hours) and from 6:00 a.m. Monday, June 22 through 6:00 p.m. Thursday, June 25, 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

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Rule Caption: Implementation of Columbia River Commercial Summer Chinook Gill Net Fishery.
Adm. Order No.: DFW 72-2009(Temp)
Filed with Sec. of State: 6-15-2009
Certified to be Effective: 6-18-09 thru 7-31-09
Notice Publication Date:
Rules Amended: 635-042-0027
Subject: This rule will implement a commercial summer Chinook salmon gill net fishery in the Columbia River mainstem consistent with provisions of the US v. Oregon management agreement. Implementation is consistent with action taken June 10, 2009 by the Columbia River Compact agencies of Oregon and Washington.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0027
Summer Salmon Season

(1)(a) Chinook, coho and sockeye salmon; white sturgeon; and shad may be taken by gill net for commercial purposes in all of Zones 1 thru 3, from the mouth of the Columbia River upstream to the Longview Bridge. Open fishing periods in this area are:

(b) Thursday, June 18, from 6:00 p.m. to 6:00 a.m. Friday, June 19, 2009 (12 hours).

(2) Chinook, coho and sockeye salmon; white sturgeon; and shad may be taken by gill net for commercial purposes in all of Zones 1 thru 5, from the mouth of the Columbia River upstream to a line projected from a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse 1) in a straight line through the western tip of Pierce Island, to a deadline marker on the Washington bank at Beacon Rock (as identified in OAR 635-042-0001). Open fishing periods in this area are:

(a) Wednesday, June 24, from 7:00 p.m. to 5:00 a.m. Thursday, June 25, 2009 (10 hours); and

(b) Tuesday, June 30, from 7:00 p.m. to 5:00 a.m. Wednesday, July 1, 2009 (10 hours).

(3) It is *unlawful* to use a gill net having a mesh size less than 8 inches. It will be legal to have onboard a commercial vessel more than one net provided the nets are of mesh size legal for the fishery, or the net has a minimum mesh size of 9 inches and the length of any one net does not exceed 1,500 feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if poperly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(4) A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The weekly sturgeon sales limit applies to mainstem and Select Area fisheries.

(5) Allowable sales include Chinook, coho, sockeye, white sturgeon and shad. All steelhead must be released immediately.

(6) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-A, Cowlitz River, Kalama A, Lewis A, Washougal River and Sandy River sanctuaries are in effect during open fishing periods as applicable.

Stat. Auth.: ORS 496.118, 506.109 & 506.129
Stats. Implemented: ORS 506.119 & 507.030
Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 47-2006(Temp), f. 6-20-06, cert. ef. 6-26-06 thru 7-31-06; DFW 51-2006(Temp), f. & cert. ef. 6-29-06 thru 7-31-06; DFW 57-2006(Temp), f. 7-5-06, cert. ef. 7-6-06 thru 7-31-06; DFW 63-2006(Temp), f. 7-14-2006, cert. ef. 7-16-06 thru 7-31-06; DFW 68-2006(Temp), f. 7-28-06, cert. ef. 7-30-06 thru 7-31-06; Administrative correction 8-22-06; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 52-2007(Temp), f. & cert. ef. 7-6-07 thru 7-31-07; DFW 63-2008(Temp), f. 6-13-08, cert. ef. 6-24-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 75-2008(Temp), f. 7-3-08, cert. ef. 7-7-08 thru 7-31-08; Administrative correction 8-21-08; DFW 72-2009(Temp), f. 6-15-09, cert. ef. 6-18-09 thru 7-31-09

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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 11-2009(Temp)
Filed with Sec. of State: 6-1-2009
Certified to be Effective: 6-1-09 thru 11-27-09
Notice Publication Date:
Rules Amended: 461-135-1175
Subject: 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. The income limit had been 135 percent prior to this amendment.
Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-1175
Senior Farm Direct Nutrition Program

(1) The Senior Farm Direct Nutrition Program (SFDNP) provides farm direct checks to low income individuals.

(2) An individual is eligible for SFDNP if the individual meets all of the following eligibility criteria on April 1 of the calendar year in which benefits are sought:

(a) Has countable income (see OAR 461-001-0000) less than 115 percent of the Federal Poverty Level as listed in 461-155-0295.

(b) Receives Medicaid or Food Stamp benefits.

(c) Is homeless or resides in their own home or rental property.

(d) Is age 60 or older.

(3) This program is funded by a grant from the United States Department of Agriculture. The Department determines the allotment amount on an annual basis, based on the grant allocation received from the United States Department of Agriculture and the number of eligible individuals.

(4) The Department may not issue more than one SFDNP allotment per participant, per year.

(5) SFDNP begins June 1 each year and ends on October 31 each year. In order to qualify for the program, the Department must receive the applicant's letter of interest by September 15 of the year in question.

(6) See OAR 461-145-0190 to determine the treatment of this benefit in the eligibility process for other programs.

Stat. Auth.: ORS 409.050, 410.070, 411.060 & 411.070
Stats. Implemented: ORS 410.070, 411.060 & 411.070
Hist.: SSP 8-2006, f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 11-2009(Temp), f. & cert. ef. 6-1-09 thru 11-27-09

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

Rule Caption: January 1, 2009 Rule Revisions — rule omitted from standard filing.
Adm. Order No.: DMAP 11-2009
Filed with Sec. of State: 6-1-2009
Certified to be Effective: 6-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 410-122-0202
Rules Repealed: 410-122-0202(T)
Subject: The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. Having temporarily amended OAR 410-122-0202, effective January 1, 2009, DMAP permanently amended the rule to change the title of the rule to "Positive Airway Pressure Devices for Adults," require downloadable report of PAP device compliance & therapy and add new inclusion criteria for coverage.

Other text is revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-122-0202
Positive Airway Pressure (PAP) Devices for Adult Obstructive Sleep Apnea (OSA)

(1) Indications and Limitations of Coverage and Medical Appropriateness: The Division of Medical Assistance Programs (DMAP) may cover a single level positive airway pressure (CPAP) device for adults (age 19 or older) with OSA when the following criteria are demonstrated on polysomnography:

(a) The apnea-hypopnea index (AHI) or Respiratory Disturbance Index (RDI) is greater than or equal to 15 events per hour with a minimum of 30 events; or

(b) The AHI or RDI is greater than or equal to 5 and less than 15 events per hour with a minimum of 10 events and documentation of:

(A) Excessive daytime sleepiness as documented by a score of greater than 10 on the Epworth Sleepiness Scale, impaired cognition, mood disorders or insomnia; or

(B) Hypertension, ischemic heart disease or history of stroke; and

(c) The client or their caregiver has received instruction from the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider of the PAP device and accessories in the proper use and care of the equipment;

(d) A respiratory assist device (RAD) without backup rate (E0470) may be covered for adults with OSA when:

(A) The criteria in (1)(a)–(c) are met; and

(B) A single level (E0601) positive airway pressure device has been tried and proven ineffective, based on a therapeutic trial;

(e) If a CPAP device is tried and found ineffective during the initial three month home trial, substitution of a RAD does not require a new sleep study;

(f) If a CPAP device has been used for more than three months and the client is switched to a RAD, a clinical re-evaluation is required, but a new sleep study is not required. A new three month trial would begin for use of the RAD;

(g) Coverage, coding and documentation requirements for the use of RADs for diagnoses other than OSA are addressed in 410-122-0205 Respiratory Assist Devices;

(h) Auto-CPAP (APAP) as a second or third line alternative therapy for OSA when the following criteria are met:

(A) The level of fixed CPAP required is at least 10cms H2O as evidenced by an in-laboratory, technician-attended CPAP titration during polysomnography: and

(B)The client is intolerant of high fixed CPAP pressures (>10cms H2O) despite documented client education and interventions to improve client comfort and compliance. These interventions should include:

(i) The use of a topical nasal corticosteroid spray or anticholinergic spray if nasal complaints are significant; and

(ii) Changes made by a nurse or technician, in consultation with the attending physician, to the CPAP circuit or mask, using different nose masks, face masks, nasal pillows or head harnesses as appropriate to achieve maximum client comfort;

(i) A three month trial (rental) period for CPAP is required prior to purchase;

(j) Rental charges apply toward purchase;

(k) Continued coverage of E0470 or E0601 beyond the first three months of therapy: Ongoing rental beyond the first three months when conditions of coverage are met is an option in lieu of purchase when medically appropriate and cost effective;

(l) For extended use of a PAP device beyond the first three months of initial therapy, the following documentation is required:

(A) Objective evidence of adherence to use of the PAP device, including a summary of PAP compliance report through a direct download of usage data; and

(B) Phone consultation record by the treating practitioner's medical staff which supports clinical benefit including client tolerance, compliance and efficacy and symptoms of OSA are improved; or

(C) When objective data does not support compliance and efficacy, a face-to-face visit with the treating practitioner clearly specifying a treatment plan with measurable goals to improve adherence to treatment;

(m) The clinical re-evaluation would occur between the 61st and 91st day following the initiation of CPAP;

(n) If the practitioner re-evaluation does not occur until after the 91st day but the evaluation demonstrates that the client is benefiting from PAP therapy as defined in criteria, continued coverage of the PAP device will commence with the date of that re-evaluation;

(o) If a CPAP device was used more than three months and the client is switched to a RAD, then the clinical re-evaluation would occur between the 61st and 91st day following initiation of the RAD;

(p) Polysomnographic studies must be scored according to the recommended rules as described in the American Academy of Sleep Medicine (AASM) Manual for the Scoring of Sleep and Associated Events;

(q) Payment Authorization: From the initial date of service through the second date of service, PAP device rental and only related accessories necessary for the effective use of the PAP device during this time period and subject to rule limitations may be dispensed without prior authorization (PA). The provider is still responsible to ensure all rule requirements are met. Payment authorization (i.e., a payment authorization number for billing) is required prior to submitting claims and will be given once all required documentation has been received and any other applicable rule requirements have been met. Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040. All subsequent services starting with the third date of service require PA;

(r) An order refill does not have to be approved by the ordering practitioner; however, a client or their caregiver must request specific ongoing PAP supplies and accessories, subject to rule limitations and requirements, before they are dispensed. The DMEPOS provider must not automatically dispense a quantity of supplies and accessories on a predetermined regular basis, even if the client has "authorized" this in advance;

(s) It is the provider's responsibility to monitor appropriate and effective use of the device as ordered by the treating practitioner. When the equipment is not being used as prescribed, the provider must stop billing for the equipment and related accessories and supplies;

(t) For auto-titrating CPAP devices, use HCPCS code E0601;

(u) Products must be coded as published by the Pricing, Data Analysis and Coding (PDAC) Contractor by the Centers for Medicare and Medicaid Services;

(v) For a PAP device dispensed prior to January 1, 2009, if the initial coverage criteria in effect at the time were met and the criteria for coverage after the first three months that were in effect at the time were met, the device will continue to be covered for dates of service on or after January 1, 2009 as long as the client continues to compliantly use the device;

(w) For a client using a PAP device prior to Oregon Health Plan (OHP) enrollment, continuing coverage for the device and related accessories may be authorized on a case-by-case basis by the appropriate authorizing unit;

(x) The following services are not covered:

(A) PAP devices when conditions of coverage as described in this rule are not met;

(B) Unattended auto-CPAP (APAP) as an alternative to technician-titrated CPAP in clients with OSA, or for the treatment of clients with the following conditions:

(i) Central apnea;

(ii) Congestive heart failure;

(iii) Lung disease (e.g., chronic obstructive pulmonary disease);

(iv) Nocturnal O2 desaturation due to conditions other than OSA;

(v) Absence of snoring (either natural or secondary to palatal surgery);

(C) A RAD with backup rate.

(2) Accessories:

(a) Accessories used with aPAP device are covered when the coverage criteria for the device are met;

(b) Accessories are separately reimbursable at the time of initial issue and when replaced;

(c) Either a non-heated (E0561) or heated (E0562) humidifier is covered when ordered by the treating practitioner for use with a covered PAP device (E0470, E0601);

(d) The following represents the usual maximum amount of accessories expected to be medically appropriate:

(A) A4604 — 1 per 3 months;
(B) A7027 — 1 per 3 months;
(C) A7028 — 2 per month;
(D) A7029 — 2 per month;
(E) A7030 — 1 per 3 months;
(F) A7031 — 1 per month;
(G) A7032 — 2 per month;
(H) A7033 — 2 per month;
(I) A7034 — 1 per 3 months;
(J) A7035 — 1 per 6 months;
(K) A7036 — 1 per 6 months;
(L) A7037 — 1 per 3 months;
(M) A7038 — 2 per month;
(N) A7039 — 1 per 6 months;
(O) A7046 — 1 per 6 months.

(3) Guidelines:

(a) Polysomnography is the continuous and simultaneous monitoring and recording of various physiological and pathophysiological parameters of sleep with physician review, interpretation, and report. It must include sleep staging, which is defined to include a 1-4 lead electroencephalogram (EEG), and electro-oculogram (EOG), submental electromyogram (EMG) and an electrocardiogram (ECG). It must also include at least the following additional parameters of sleep: airflow, respiratory effort, and oxygen saturation by oximetry. It may be performed as either a whole night study for diagnosis only or as a split night study to diagnose and initially evaluate treatment;

(b) For the purposes of this rule, polysomnographic studies must be performed in an attended, facility-based sleep study laboratory, and not in the home or in a mobile facility. These labs must be qualified providers of Medicare services and comply with all applicable state regulatory requirements;

(c) Polysomnographic studies must not be performed by a DMEPOS provider;

(d) Apnea is defined as the cessation of airflow for at least 10 seconds documented on a polysomnogram;

(e) Hypopnea is defined as an abnormal respiratory event lasting at least 10 seconds with at least a 30% reduction in thoracoabdominal movement or airflow as compared to baseline, and with at least a 4% decrease in oxygen saturation;

(f) The AHI is defined as the average number of episodes of apnea and hypopnea per hour of sleep without the use of a positive airway pressure device;

(g)The RDI is defined as the average number of apneas plus hypopneas per hour of recording without the use of a positive airway pressure device;

(h) If the AHI or RDI is calculated based on less than two hours of continuous recorded sleep, the total number of recorded events used to calculate the AHI must be at least the number of events that would have been required in a two hour period (i.e., must reach 30 events without symptoms or 10 events with symptoms);

(i) Adherence to therapy is defined as use of PAP four hours or more per night on 70% of nights during a consecutive thirty day period anytime during the first three months of initial usage.

(4) Documentation Requirements:

(a) For PAP device rental:

(A) Initial coverage: Prior to the third date of service, submit the following:

(i) A facility-based polysomnogram report as described in this rule and scored as described in (1)(p) that supports a diagnosis of OSA ;

(ii) For a RAD, specific documentation from the treating practitioner that a CPAP was tried and shown to be ineffective;

(B) For extended rental use of a PAP device beyond the first three months of initial therapy, submit the following documentation no sooner

than the 61st day after initiating therapy and prior to the fourth date of service:

(i) Objective evidence of adherence to use of the PAP device, including a summary of PAP compliance report through a direct download of usage data; and

(ii) Phone consultation record by the treating practitioner's medical staff which supports clinical benefit including client tolerance, compliance and efficacy and symptoms of OSA are improved; or

(iii) When objective data does not support compliance and efficacy, a face-to-face visit with the treating practitioner clearly specifying a treatment plan with measurable goals to improve adherence to treatment;

(b) For PAP device purchase: Submit the following:

(A) A facility-based polysomnogram report as described in this rule and scored as described in (1)(q) that supports a diagnosis of OSA ; and

(B) After the initial three month trial period:

(i) Objective evidence of adherence to use of the PAP device, including a summary of PAP compliance report through a direct download of usage data; and

(ii) Phone consultation record by the treating practitioner's medical staff which supports clinical benefit including client tolerance, compliance and efficacy and symptoms of OSA are improved; or

(iii) When objective data does not support compliance and efficacy, a face-to-face visit with the treating practitioner clearly specifying a treatment plan with measurable goals to improve adherence to treatment;

(C) Any other medical documentation that supports indications of coverage;

(c) If a CPAP device was used more than three months and the client is switched to a RAD, documentation of adherence to therapy must be submitted during the three month trial with the RAD;

(d) For a client using a PAP device prior to OHP enrollment, submit the following:

(A) Documentation of clinical benefit including client tolerance, compliance and efficacy and that symptoms of OSA are improved from the client's treating practitioner; and

(B) A facility-based polysomnogram report as described in this rule that supports a diagnosis of OSA, if available.

(5) **Table 122-0202** — PAP Devices.

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

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

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 76-2004, f. 9-30-04, cert. ef. 10-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 44-2008(Temp), f. 12-17-08, cert. ef. 1-1-09 thru 6-15-09; DMAP 11-2009, f. & cert. ef. 6-1-09

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Rule Caption: MMIS Alternative Process and Procedures — Releases 1, 2 & 3.
Adm. Order No.: DMAP 12-2009
Filed with Sec. of State: 6-12-2009
Certified to be Effective: 6-12-09
Notice Publication Date: 5-1-2009
Rules Amended: 410-120-0027
Rules Repealed: 410-120-0027(T)
Subject: The General Rules Program Administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services to certain clients. DMAP permanently amended 410-120-0027 to facilitate communication that is an exception to normal and ongoing communication and needs to be covered in rule. This means that the referenced document will be in place on a permanent basis while each individual Release will specify individual beginning effective dates and will be ongoing until further notice. This rule is revised to reference the document, MMIS Alternative Process and Procedures, dated May 1, 2009, that includes Release #1, Pharmacy Payments During MMIS Enrollment Data Correction — effective retroactive to January 1, 2009; Release #2 — MMIS Transitional Issues/temporary protocols, effective retroactive to January 16 2009, and Release #3, Prepaid Health Plan Supplemental Payment Processing — effective May 1, 2009.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0027
MMIS Alternative Process and Procedure

(1) Consistent and in accordance with OAR 407-120-0400 DHS MMIS Replacement Communication Plan, follow criteria outlined in the "MMIS Alternative Process and Procedures", dated January 12, 2009 with Release #1, Pharmacy Payments During MMIS Enrollment Data Correction, dated January 12, 2009, Release #2, MMIS transitional issues/temporary protocols, dated January 16, 2009 and Release #3 Prepaid Health Plan Supplemental Payment Processing included in rule by reference and found on the DHS Web page: http://www.oregon.gov/DHS/healthplan/tools_prov/mmis-altpro.pdf.

(2) This rule and the information found in the referenced documents take precedence over existing rules in Chapter 410.

Stat. Auth.: ORS 409.025, 409.040, 409.050, 409.110 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 2-2009(Temp), f. & cert. ef. 12-12-09 thru 7-1-09; DMAP 3-2009(Temp), f. & cert. ef. 1-16-09 thru 7-1-09; DMAP 9-2009(Temp), f. 4-29-09, cert. ef. 5-1-09 thru 7-1-09; DMAP 12-2009, f. & cert. ef. 6-12-09

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Rule Caption: Clarify provider appeals process including claim re-determination in coordination with Department wide rules chapter 407.
Adm. Order No.: DMAP 13-2009
Filed with Sec. of State: 6-12-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 410-120-0000, 410-120-1560, 410-120-1570, 410-120-1580, 410-120-1600
Rules Repealed: 410-120-1680, 410-120-1700
Subject: The General Rules program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to clients. DMAP amended 410-120-0000 to insert the revised definition for "Emergency Ambulance Transportation." DMAP amended or repealed the remainder of rules listed above as a coordination effort in provider appeals rules related to administrative reviews and contested case hearings. Text is condensed and clarified. Rule 410-120-1570 — claims re-determinations, includes more detailed process steps regarding reviews. There is no change to existing policy, just a clarification of the type of claims eligible for re-determination. Other text is revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0000
Acronyms and Definitions

Identification of acronyms and definitions within this rule specifically pertain to their use within the Department of Human Services (DHS), Division of Medical Assistance Programs (DMAP) administrative rules. This rule does not include an exhaustive list of DMAP acronyms and definitions. For more information, see DMAP Oregon Health Plan (OHP) program OAR 410-141-0000, Acronyms and Definitions, and any appropriate governing acronyms and definitions in DHS chapter 407 administrative rules, or contact DMAP.

(1) AAA — Area Agency on Aging.

(2) Abuse — Provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the DMAP, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to DMAP.

(3) Acupuncturist — A person licensed to practice acupuncture by the relevant state licensing board.

(4) Acupuncture services — Services provided by a licensed acupuncturist within the scope of practice as defined under state law.

(5) Acute — A condition, diagnosis or illness with a sudden onset and that is of short duration.

(6) Acquisition cost — Unless specified otherwise in individual program administrative rules, the net invoice price of the item, supply or equipment, plus any shipping and/or postage for the item.

(7) Addiction and Mental Health Division (AMH) — A division within DHS that administers mental health and addiction programs and services.

(8) Adequate record keeping — Documentation that supports the level of service billed. See 410-120-1360, Requirements for Financial, Clinical, and Other Records, and the individual provider rules.

(9) Administrative medical examinations and reports — Examinations, evaluations, and reports, including copies of medical

records, requested on the DMAP 729 form through the local Department of Human Services (DHS) branch office or requested or approved by DMAP to establish client eligibility for a medical assistance program or for case-work planning.

(10) Adverse event — An undesirable and unintentional, though not unnecessarily unexpected, result of medical treatment.

(11) All-inclusive rate — The nursing facility rate established for a facility. This rate includes all services, supplies, drugs and equipment as described in OAR 411-070-0085, and in the DMAP Pharmaceutical Services program administrative rules and the Home Enteral/Parenteral Nutrition and IV Services program administrative rules, except as specified in OAR 410-120-1340, Payment.

(12) Allied agency — Local and regional governmental agency and regional authority that contracts with DHS to provide the delivery of services to covered individual. (e.g., local mental health authority, community mental health program, Oregon Youth Authority, Department of Corrections, local health departments, schools, education service districts, developmental disability service programs, area agencies on aging (AAAs), federally recognized American Indian tribes).

(13) Ambulance — A specially equipped and licensed vehicle for transporting sick or injured persons which meets the licensing standards of DHS or the licensing standards of the state in which the ambulance provider is located.

(14) Ambulatory Surgical Center (ASC) —A facility licensed as an ASC by DHS.

(15) American Indian/Alaska Native (AI/AN) —A member of a federally recognized Indian tribe, band or group, an Eskimo or Aleut or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601, or a person who is considered by the Secretary of the Interior to be an Indian for any purpose.

(16) American Indian/Alaska Native (AI/AN) clinic —A clinic recognized under Indian Health Services (IHS) law or by the Memorandum of Agreement between IHS and the Centers for Medicare and Medicaid Services (CMS).

(17) Ancillary services — Services supportive of or necessary to the provision of a primary service (e.g., anesthesiology is an ancillary service necessary for a surgical procedure); Typically, such medical services are not identified in the definition of a condition/treatment pair, but are medically appropriate to support a service covered under the OHP benefit package; ancillary services and limitations are specified in the OHP (Managed Care) administrative rules related to the Oregon Health Services Commission's Prioritized List of Health Services (410-141-0480 through 410-141-0520), the General Rules Benefit Packages (410-120-1210), Exclusions (410-120-1200) and applicable individual program rules.

(18) Anesthesia services — Administration of anesthetic agents to cause loss of sensation to the body or body part.

(19) Atypical provider — Entity able to enroll as a Billing Provider (BP) or performing provider for medical assistance programs related non-health care services but which does not meet the definition of health care provider for National Provider Identification (NPI) purposes.

(20) Audiologist —A person licensed to practice audiology by the State Board of Examiners for Speech Pathology and Audiology.

(21) Audiology —The application of principles, methods and procedures of measurement, testing, appraisal, prediction, consultation, counseling and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory training, speech reading and hearing aid evaluation, or other behavior related to hearing impairment.

(22) Automated Voice Response (AVR) — A computer system that provides information on clients' current eligibility status from DMAP by computerized phone or Web-based response.

(23) Benefit Package — The package of covered health care services for which the client is eligible.

(24) Billing Agent or Billing Service —Third party or organization that contracts with a provider to perform designated services in order to facilitate an Electronic Data Interchange (EDI) transaction on behalf of the Provider.

(25) Billing provider (BP) — A person, agent, business, corporation, clinic, group, institution, or other entity who submits claims to and/or receives payment from DMAP on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider.

(26) Buying Up —The practice of obtaining client payment in addition to the DMAP or managed care plan payment to obtain a non-covered service or item. (See 410-120-1350 Buying Up)

(27) By Report (BR) — Services designated, as BR require operative or clinical and other pertinent information to be submitted with the billing as a basis for payment determination. This information must include an adequate description of the nature, and extent of need for the procedure. Information such as complexity of symptoms, final diagnosis, pertinent physical findings, diagnostic and therapeutic procedures, concurrent problems, and follow-up care will facilitate evaluation.

(28) Children, Adults and Families Division (CAF) — A division within DHS, responsible for administering self-sufficiency and child-protective programs.

(29) Children's Health Insurance Program (CHIP) — A federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by DMAP.

(30) Chiropractor — A person licensed to practice chiropractic by the relevant state licensing board.

(31) Chiropractic services — Services provided by a licensed chiropractor within the scope of practice, as defined under state law and Federal regulation.

(32) Citizen/Alien-Waived Emergency Medical (CAWEM) — Aliens granted lawful temporary resident status, or lawful permanent resident status under the Immigration and Nationality Act, are eligible only for emergency services and limited service for pregnant women. Emergency services for CAWEM are defined in OAR 410-120-1210 (3)(f).

(33) Claimant — a person who has requested a hearing.

(34) Client — A person who is currently receiving medical assistance (also known as a recipient).

(35) Clinical Social Worker — A person licensed to practice clinical social work pursuant to State law.

(36) Contiguous Area — The area up to 75 miles outside the border of the State of Oregon.

(37) Contiguous area provider —A provider practicing in a contiguous area.

(38) Co-payments — The portion of a claim or medical, dental or pharmaceutical expense that a client must pay out of their own pocket to a provider or a facility for each service. It is usually a fixed amount that is paid at the time service is rendered. (See 410-120-1230 Client Copayment)

(39) Cost effective — The lowest cost health care service or item that, in the judgment of DMAP staff or its contracted agencies, meets the medical needs of the client.

(40) Current Dental Terminology (CDT) — A listing of descriptive terms identifying dental procedure codes used by the American Dental Association.

(41) Current Procedural Terminology (CPT) — The physicians' CPT is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other health care providers.

(42) Date of receipt of a claim — The date on which DMAP receives a claim, as indicated by the Internal Control Number (ICN) assigned to a claim. Date of receipt is shown as the Julian date in the 5th through 7th position of the ICN.

(43) Date of service — The date on which the client receives medical services or items, unless otherwise specified in the appropriate provider rules. For items that are mailed or shipped by the provider, the date of service is the date on which the order was received, the date on which the item was fabricated, or the date on which the item was mailed or shipped.

(44) Dental emergency services — Dental services provided for severe tooth pain, unusual swelling of the face or gums, or an avulsed tooth.

(45) Dental Services — Services provided within the scope of practice as defined under state law by or under the supervision of a dentist.

(46) Dentist — A person licensed to practice dentistry pursuant to state law of the state in which he/she practices dentistry, or a person licensed to practice dentistry pursuant to Federal law for the purpose of practicing dentistry as an employee of the Federal government.

(47) Denturist — A person licensed to practice denture technology pursuant to State law.

(48) Denturist services — Services provided, within the scope of practice as defined under State law, by or under the personal supervision of a denturist.

(49) Dental hygienist — A person licensed to practice hygiene under the direction of a licensed professional within the scope of practice pursuant to State law.

(50) Dental hygienist with Limited Access Certification (LAC) — A person licensed to practice dental hygiene with LAC pursuant to State law.

(51) Department — DHS or its Division of Medical Assistance Programs (DMAP).

(52) Department of Human Services (DHS) — The Department or DHS or any of its programs or offices means the Department of Human Services established in ORS Chapter 409, including such divisions, programs and offices as may be established therein. Wherever the former Office of Medical Assistance Programs or OMAP is used in contract or in administrative rule, it shall mean the Division of Medical Assistance

Programs (DMAP). Wherever the former Office of Mental Health and Addiction Services or OMHAS is used in contract or in rule, it shall mean the Addictions and Mental Health Division (AMHD). Wherever the former Seniors and People with Disabilities or SPD is used in contract or in rule, it shall mean the Seniors and People with Disabilities Division (SPD). Wherever the former Children Adults and Families or CAF is used in contract or rule, it shall mean the Children, Adults and Families Division (CAF). Wherever the former Health Division is used in Contract or in rule, it shall mean the Public Health Division (PHD).

(53) Department representative — A person who represents the Department and presents the position of the Department in a hearing.

(54) Diagnosis code — As identified in the International Classification of Diseases, 9th revision, Clinical Modification (ICD-9-CM), the primary diagnosis code is shown in all billing claims, unless specifically excluded in individual provider rule(s). Where they exist, diagnosis codes shall be shown to the degree of specificity outlined in OAR 410-120-1280, Billing.

(55) Diagnosis Related Group (DRG) — A system of classification of diagnoses and procedures based on the ICD-9-CM.

(56) Division of Medical Assistance Programs (DMAP) — A division within DHS; DMAP is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP -Title XXI), and several other programs.

(57) DMAP member — An OHP Client enrolled with a PHP.

(58) Durable Medical Equipment, Prosthetics, Orthotics and and Medical Supplies (DMEPOS) - Equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose. Examples include wheelchairs, respirators, crutches and custom built orthopedic braces. Medical supplies are non-reusable items used in the treatment of illness or injury. Examples of medical supplies include diapers, syringes, gauze bandages and tubing.

(59) Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services (aka, Medicheck) — The Title XIX program of EPSDT services for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help DMAP clients and their parents or guardians effectively use them.

(58) Electronic Data Interchange (EDI) — The exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, using bulk transmission processes and other formats as the Department designates for EDI transactions. For purposes of rules 407-120-0100 through 407-120-0200, EDI does not include electronic transmission by web portal.

(59) EDI submitter —An individual or an entity authorized to establish an electronic media connection with DHS to conduct and EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner.

(60) Electronic Verification System (EVS) eligibility information that has met the legal and technical specifications of DMAP in order to offer eligibility information to enrolled providers of DMAP.

(61) Emergency department —The part of a licensed hospital facility open 24 hours a day to provide care for anyone in need of emergency treatment.

(62) Emergency medical condition — a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. An emergency medical condition is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a health care professional) and includes cases in which the absence of immediate medical attention would not in fact have had the adverse results described in the previous sentence. (This definition does not apply to clients with CAWEM benefit package. CAWEM emergency services are governed by OAR 410-120-1210 (3) (f) (B)).

(63) Emergency Medical transportation — Transportation necessary for a client with an emergency medical condition, as defined in this rule, and requires a skilled medical professional such as an Emergency Medical Technician (EMT) and immediate transport to a site, usually a hospital, where appropriate emergency medical service is available.

(64) Evidence-based medicine- is the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients. The practice of evidence based medicine means integrating individual clinical expertise with the best available external clinical evidence from systematic research. By individual clinical expertise we mean the proficiency and judgment that individual clinicians acquire through clinical experience and clinical practice. Increased expertise is reflected in many ways, but especially in more effective and efficient diagnosis and in the more thoughtful identification and compassionate use of individual patients' predicaments, rights, and preferences in making clinical decisions about their care. By best available external clinical evidence we mean clinically relevant research, often from the basic sciences of medicine, but especially from patient centered clinical research into the accuracy and precision of diagnostic tests (including the clinical examination), the power of prognostic markers, and the efficacy and safety of therapeutic, rehabilitative, and preventive regimens. External clinical evidence both invalidates previously accepted diagnostic tests and treatments and replaces them with new ones that are more powerful, more accurate, more efficacious, and safer. (Source: BMJ 1996;312:71-72 (13 January))

(65) False claim — A claim that a provider knowingly submits or causes to be submitted that contains inaccurate, misleading or omitted information and such inaccurate, misleading or omitted information would result, or has resulted, in an overpayment.

(66) Family planning services- Services for clients of child bearing age (including minors who can be considered to be sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(67) Federally Qualified Health Center (FQHC) —A federal designation for a medical entity which receives grants under Section 329, 330, or 340 of the Public Health Service Act; or a facility designated as a FQHC by Centers for Medicare and Medicaid (CMS) upon recommendation of the U.S. Public Health Service.

(68) Fee-for-service provider —A medical provider who is not reimbursed under the terms of a DMAP contract with a Prepaid Health Plan (PHP), also referred to as a Managed Care Organization (MCO). A medical provider participating in a PHP may be considered a fee-for-service provider when treating clients who are not enrolled in a PHP.

(69) Fraud — An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

(70) Fully dual eligible — For the purposes of Medicare Part D coverage (42 CFR 423.772), Medicare clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by DHS for full medical assistance coverage.

(71) General Assistance (GA) — Medical assistance administered and funded 100% with State of Oregon funds through OHP.

(72) Healthcare Common Procedure Coding System (HCPCS)— A method for reporting health care professional services, procedures, and supplies. HCPCS consists of the Level l — American Medical Association's Physician's Current Procedural Terminology (CPT), Level II — National codes, and Level III — Local codes. DMAP uses HCPCS codes; however, DMAP uses Current Dental Terminology (CDT) codes for the reporting of dental care services and procedures.

(73) Health Maintenance Organization (HMO) — A public or private health care organization which is a federally qualified HMO under Section 1310 of the U.S. Public Health Services Act. HMOs provide health care services on a capitated, contractual basis.

(74) Hearing aid dealer — A person licensed by the Board of Hearing Aid Dealers to sell, lease or rent hearing aids in conjunction with the evaluation or measurement of human hearing and the recommendation, selection, or adaptation of hearing aids.

(75) Home enteral nutrition — Services provided in the client's place of residence to an individual who requires nutrition supplied by tube into the gastrointestinal tract, as described in the Home Enteral/Parenteral Nutrition and IV Services program provider rules.

(76) Home health agency —A public or private agency or organization which has been certified by Medicare as a Medicare home health agency and which is licensed by DHS as a home health agency in Oregon, and meets the capitalization requirements as outlined in the Balanced Budget Act (BBA) of 1997.

(77) Home health services — Part-time or intermittent skilled nursing services, other therapeutic services (physical therapy, occupational therapy, speech therapy), and home health aide services made available on a visiting basis in a place of residence used as the client's home.

(78) Home intravenous services — Services provided in the client's place of residence to an individual who requires that medication (antibiotics, analgesics, chemotherapy, hydrational fluids, or other intravenous medications) be administered intravenously as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(79) Home parenteral nutrition — Services provided in the client's residence to an individual who is unable to absorb nutrients via the

gastrointestinal tract, or for other medical reasons, requires nutrition be supplied parenterally as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(80) Hospice — a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare, accredited by the Oregon Hospice Association, and is listed in the Hospice Program Registry.

(81) Hospital — A facility licensed by the Office of Public Health Systems as a general hospital which meets requirements for participation in the OHP under Title XVIII of the Social Security Act. DMAP does not consider facilities certified by the CMS as long- term care hospitals, long term acute care hospitals or religious non-medical facilities as hospitals for reimbursement purposes. Out-of-state hospitals will be considered hospitals for reimbursement purposes if they are licensed as a short term acute care or general hospital by the appropriate licensing authority within that state, and if they are enrolled as a provider of hospital services with the Medicaid agency within that state.

(82) Hospital-based professional services — Professional services provided by licensed practitioners or staff based on a contractual or employee/employer relationship and reported as a cost on the Hospital Statement of Reasonable Cost report for Medicare and the Calculation of Reasonable Cost (DMAP 42) report for DMAP.

(83) Hospital laboratory —A laboratory providing professional technical laboratory services as outlined under laboratory services, in a hospital setting, as either an inpatient or outpatient hospital service whose costs are reported on the hospital's cost report to Medicare and to DMAP.

(84) Indian Health Program — Any Indian health service facility, any Federally recognized Tribe or Tribal organization, or any FQHC with a 638 designation.

(85) Individual Adjustment Request Form (DMAP 1036) — Form used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

(86) Inpatient hospital services — Services that are furnished in a hospital for the care and treatment of an inpatient. (See DMAP Hospital Services program administrative rules in chapter 410, division 125 for inpatient covered services.)

(87) Institutional Level of Income Standards (ILIS) — Three times the amount SSI pays monthly to a person who has no other income and who is living alone in the community. This is the standard used for Medicaid eligible individuals to calculate eligibility for long-term nursing care in a nursing facility, Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and individuals on ICF/MR waivers or eligibility for services under Seniors and People with Disabilities' (SPD) Home and Community Based Waiver.

(88) Institutionalized — A patient admitted to a nursing facility or hospital for the purpose of receiving nursing and/or hospital care for a period of 30 days or more.

(89) International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) (including volumes 1, 2, and 3, as revised annually). A book of diagnosis codes used for billing purposes when treating and requesting reimbursement for treatment of diseases.

(90) Laboratory — A facility licensed under ORS 438 and certified by CMS, Department of Health and Human Services (DHHS), as qualified to participate under Medicare, to provide laboratory services (as defined in this rule) within or apart from a hospital. An entity is considered to be a laboratory if the entity derives materials from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings. If an entity performs even one laboratory test, including waived tests for these purposes, it is considered to be a laboratory, under the Clinical Laboratory Improvement Act (CLIA).

(91) Laboratory services —Those professional and technical diagnostic analyses of blood, urine, and tissue ordered by a physician or other licensed practitioner of the healing arts within his/her scope of practice as defined under State law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, hospital, or independent laboratory.

(92) Licensed Direct Entry Midwife — A practitioner who has acquired the requisite qualifications to be registered and/or legally licensed to practice midwifery by the DHS Public Health Division.

(93) Liability insurance — Insurance that provides payment based on legal liability for injuries or illness. It includes, but is not limited to, automobile liability Insurance, uninsured and underinsured motorist insurance, homeowner's liability Insurance, malpractice insurance, product liability insurance, Worker's Compensation, and general casualty insurance. It also includes payments under state wrongful death statutes that provide payment for medical damages.

(94) Managed Care Organization (MCO) — Contracted health delivery system providing capitated or prepaid health services, also known as a Prepaid Health Plan (PHP). An MCO is responsible for providing, arranging and making reimbursement arrangements for covered services as governed by state and federal law. An MCO may be a Chemical Dependency Organization (CDO), Fully Capitated Health Plan (FCHP), Dental Care Organization (DCO), Mental Health Organization (MHO), or Physician Care Organization (PCO).

(95) Maternity Case Management — A program available to pregnant clients. The purpose of Maternity Case Management is to extend prenatal services to include non-medical services, which address social, economic and nutritional factors. For more information refer to the DMAP Medical-Surgical Services program administrative rules.

(96) Medicaid — A federal and state funded portion of the medical assistance programs established by Title XIX of the Social Security Act, as amended, administered in Oregon by DHS.

(97) Medical assistance eligibility confirmation — Verification through the Electronic Verification System (EVS), AVR, Secure Web site or Electronic Data Interchange (EDI), or an authorized DHS representative.

(98) Medical services — Care and treatment provided by a licensed medical provider directed at preventing, diagnosing, treating or correcting a medical problem.

(99) Medical transportation — Transportation to or from covered medical services.

(100) Medically appropriate — Services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community, evidence-based medicine and professional standards of care as effective;

(c) Not solely for the convenience of an OHP client or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies which can be safely provided to an DMAP client or Primary Care Manager (PCM) Member in the PHP's or PCM's judgment.

(101) Medicare — A federally administered program offering health insurance benefits for persons aged 65 or older and certain other aged or disabled persons. This program includes:

(a) Hospital Insurance (Part A) for Inpatient services in a hospital or skilled nursing facility, home health care, and hospice care; and

(b) Medical Insurance (Part B) for physicians' services, outpatient hospital services, home health care, end-stage renal dialysis, and other medical services and supplies;

(c) Prescription drug coverage (Part D) — Covered Part D drugs include prescription drugs, biological products, insulin as described in specified paragraphs of section 1927(k) of the Social Security Act, and vaccines licensed under section 351 of the Public Health Service Act; also includes medical supplies associated with the injection of insulin; Part D covered drugs prohibit Medicaid Title XIX Federal Financial Participation (FFP). For limitations, see DMAP Pharmaceutical Services program administrative rules in chapter 410, division 121.

(102) Medicheck for Children and Teens — Services also known as Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services — The Title XIX program of EPSDT services for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help DMAP clients and their parents or guardians effectively use them.

(103) National Provider Identification (NPI) — Federally directed provider number mandated for use on HIPAA covered transactions; individuals, provider organizations and subparts of provider organizations that meet the definition of health care provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI; Medicare covered entities are required to apply for an NPI.

(104) Naturopath —A person licensed to practice naturopathy pursuant to State law.

(105) Naturopathic services — Services provided within the scope of practice as defined under State law.

(106) Non-covered services — Services or items for which DMAP is not responsible for payment or reimbursement. Non-covered services are identified in:

(a) OAR 410-120-1200, Excluded Services and Limitations; and,

(b) 410-120-1210, Medical Assistance Benefit Packages and Delivery System;

(c) 410-141-0480, OHP Benefit Package of Covered Services;

(d) 410-141-0520, Prioritized List of Health Services; and

(e) Any other applicable DMAP administrative rules.

(107) Nurse Anesthetist, C.R.N.A. — A registered nurse licensed in the State of Oregon who is currently certified by the American Association of Nurse Anesthetists Council on Certification.

(108) Nurse Practitioner — A person licensed as a registered nurse and certified by the Board of Nursing to practice as a Nurse Practitioner pursuant to State law.

(109) Nurse Practitioner services — Services provided within the scope of practice of a Nurse Practitioner as defined under State law and by rules of the Board of Nursing.

(110) Nursing facility — A facility licensed and certified by the DHS SPD and defined in OAR 411-070-0005.

(111) Nursing services — Health care services provided to a patient by a registered professional nurse or a licensed practical nurse under the direction of a licensed professional within the scope of practice as defined by State law.

(112) Nutritional counseling — Counseling which takes place as part of the treatment of a person with a specific condition, deficiency or disease such as diabetes, hypercholesterolemia, or phenylketonuria.

(113) Occupational Therapist — A person licensed by the State Board of Examiners for Occupational Therapy.

(114) Occupational Therapy —The functional evaluation and treatment of individuals whose ability to adapt or cope with the task of living is threatened or impaired by developmental deficiencies, physical injury or illness, aging process, or psychological disability; the treatment utilizes task-oriented activities to prevent or correct physical and emotional difficulties or minimize the disabling effect of these deficiencies on the life of the individual.

(115) Optometric services — Services provided, within the scope of practice of optometrists as defined under State law.

(116) Optometrist —A person licensed to practice optometry pursuant to State law.

(117) Oregon Youth Authority (OYA) — The state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(118) Out-of-State providers —Any provider located outside the borders of the State of Oregon:

(a) Contiguous area providers are those located no more than 75 miles from the border of the State of Oregon;

(b) Non-contiguous area providers are those located more than 75 miles from the borders of the State of Oregon.

(119) Outpatient hospital services — Services that are furnished in a hospital for the care and treatment of an outpatient. For information on outpatient-covered services, see DMAP Hospital Services administrative rules found in chapter 410, division 125.

(120) Overdue claim — A valid claim that is not paid within 45 days of the date it was received.

(121) Overpayment — Payment(s) made by DMAP to a Provider in excess of the correct DMAP payment amount for a service. Overpayments are subject to repayment to DMAP.

(122) Overuse — Use of medical goods or services at levels determined by DMAP medical staff and/or medical consultants to be medically unnecessary or potentially harmful.

(123) Panel — The Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999.

(124) Payment Authorization —Authorization granted by the responsible DHS agency, office or organization for payment prior or subsequent to the delivery of services, as described in these General Rules and the appropriate program rules. See the individual program rules for services requiring authorization.

(125) Peer Review Organization (PRO) — An entity of health care practitioners of services contracted by the State to review services ordered or furnished by other practitioners in the same professional field.

(126) Pharmaceutical Services — Services provided by a Pharmacist, including medications dispensed in a pharmacy upon an order of a licensed practitioner prescribing within his/her scope of practice.

(127) Pharmacist — A person licensed to practice pharmacy pursuant to state law.

(128) Physical Capacity Evaluation — An objective, directly observed measurement of a person's ability to perform a variety of physical tasks combined with subjective analysis of abilities of the person.

(129) Physical Therapist — A person licensed by the relevant State licensing authority to practice Physical Therapy.

(130) Physical Therapy — Treatment comprising exercise, massage, heat or cold, air, light, water, electricity or sound for the purpose of correcting or alleviating any physical or mental disability, or the performance of tests as an aid to the assessment, diagnosis or treatment of a human being. Physical Therapy shall not include radiology or electrosurgery.

(131) Physician — A person licensed to practice medicine pursuant to state law of the state in which he/she practices medicine, or a person licensed to practice medicine pursuant to federal law for the purpose of practicing medicine under a contract with the federal government.

(132) Physician Assistant — A person licensed as a Physician Assistant in accordance with ORS 677. Physician Assistants provide Medical Services under the direction and supervision of an Oregon licensed Physician according to a practice description approved by the Board of Medical Examiners.

(133) Physician Services — Services provided, within the scope of practice as defined under state law, by or under the personal supervision of a Physician.

(134) Podiatric Services — Services provided within the scope of practice of Podiatrists as defined under state law.

(135) Podiatrist — A person licensed to practice podiatric medicine pursuant to state law.

(136) Post-Payment Review — Review of billings and/or other medical information for accuracy, medical appropriateness, level of service or for other reasons subsequent to payment of the claim.

(137) Practitioner — A person licensed pursuant to state law to engage in the provision of health care services within the scope of the Practitioner's license and/or certification.

(138) Premium Sponsorship — Premium donations made for the benefit of one or more specified DMAP Clients (See 410-120-1390).

(139) Prepaid Health Plan (PHP) —A managed health, dental, chemical dependency, or mental health organization that contracts with DMAP and/or AMH on a case managed, prepaid, capitated basis under OHP. PHP's may be a Chemical Dependency Organization (CDO), Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), or Physician Care Organization (PCO)

(140) Primary Care Physician — A Physician who has responsibility for supervising, coordinating and providing initial and primary care to patients, initiating Referrals for consultations and specialist care, and maintaining the continuity of patient care.

(141) Primary Care Provider (PCP) —Any enrolled medical assistance Provider who has responsibility for supervising, coordinating, and providing initial and primary care within their scope of practice for identified Clients. PCPs initiate Referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of Medically Appropriate Client care.

(142) Prior Authorization (PA) — Payment Authorization for specified Medical Services or items given by DMAP staff, or its contracted agencies prior to provision of the service. A Physician Referral is not a PA.

(143) Prioritized List of Health Services — Also referred to as the Prioritized List, the Oregon Health Services Commission's (HSC) listing of health services with "expanded definitions" of Ancillary Services and Preventive Services and the HSC practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The Prioritized List governs medical assistance programs' health services and Benefit Packages pursuant to these General Rules (OAR 410-120-0000 et seq.) and OAR 410-141-0480 through 410-141-0520.

(144) Private Duty Nursing Services — Nursing Services provided within the scope of license by a registered nurse or a licensed practical nurse, under the general direction of the patient's Physician to an individual who is not in a health care facility.

(145) Provider — An individual, facility, institution, corporate entity, or other organization which supplies health care services or items, also termed a performing Provider, or bills, obligates and receives reimbursement on behalf of a performing Provider of services, also termed a Billing Provider (BP). The term Provider refers to both Performing Providers and BP(s) unless otherwise specified.

(146) Provider Organization — a group practice, facility, or organization that is:

(a) An employer of a Provider, if the Provider is required as a condition of employment to turn over fees to the employer; or

(b) The facility in which the service is provided, if the Provider has a contract under which the facility submits claims; or

(c) A foundation, plan, or similar organization operating an organized health care delivery system, if the Provider has a contract under which the organization submits the claim; and

(d) Such group practice, facility, or organization is enrolled with DHS, and payments are made to the group practice, facility or organization.

(e) If such entity solely submits billings on behalf of Providers and payments are made to each Provider, then the entity is an agent.

(See Subparts of Provider Organization)

(147) Public Health Clinic —A clinic operated by county government.

(148) Public Rates — The charge for services and items that Providers, including Hospitals and Nursing Facilities, made to the general public for the same service on the same date as that provided to DMAP Clients.

(149) Qualified Medicare Beneficiary (QMB) —A Medicare beneficiary, as defined by the Social Security Act and its amendments.

(150) Qualified Medicare and Medicaid Beneficiary (QMM) — A Medicare Beneficiary who is also eligible for DMAP coverage.

(151) Quality Improvement Organization (QIO) — An entity that has a contract with CMS under Part B of Title XI to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare and Medicaid Clients; formerly known as a Peer Review Organization.

(152) Radiological Services —Those professional and technical radiological and other imaging services for the purpose of diagnosis and treatment ordered by a Physician or other licensed Practitioner of the healing arts within the scope of practice as defined under state law and provided to a patient by or under the direction of a Physician or appropriate licensed Practitioner in an office or similar facility, Hospital, or independent radiological facility.

(153) Recipient — A person who is currently eligible for medical assistance (also known as a Client).

(154) Recreational therapy- recreational or other activities that are diversional in nature (includes, but is not limited to, social or recreational activities or outlets).

(155) Recoupment — An accounts receivable system that collects money owed by the Provider to DMAP by withholding all or a portion of a Provider's future payments.

(156) Referral — The transfer of total or specified care of a Client from one Provider to another. As used by DMAP, the term Referral also includes a request for a consultation or evaluation or a request or approval of specific services. In the case of Clients whose medical care is contracted through a Prepaid Health Plan (PHP), or managed by a Primary Care Physician, a Referral is required before non-emergency care is covered by the PHP or DMAP.

(157) Remittance Advice (RA) — The automated notice a Provider receives explaining payments or other claim actions. It is the only notice sent to Providers regarding claim actions.

(158) Request for Hearing — A clear expression, in writing, by an individual or representative that the person wishes to appeal a Department decision or action and wishes to have the decision considered by a higher authority.

(159) Retroactive Medical Eligibility — Eligibility for medical assistance granted to a Client retroactive to a date prior to the Client's application for medical assistance.

(160) Sanction — An action against Providers taken by DMAP in cases of Fraud, misuse or Abuse of DMAP requirements.

(161) School Based Health Service — A health service required by an Individualized Education Plan (IEP) during a child's education program which addresses physical or mental disabilities as recommended by a Physician or other licensed Practitioner.

(162) Seniors and People with Disabilities Division (SPD) — An Office of DHS responsible for the administration of programs for seniors and people with disabilities.

(163) Service Agreement — An agreement between DMAP and a specified Provider to provide identified services for a specified rate. Service Agreements may be limited to services required for the special needs of an identified Client. Service Agreements do not preclude the requirement for a Provider to enroll as a Provider.

(164) Sliding Fee Schedule — A fee schedule with varying rates established by a Provider of health care to make services available to indigent and low-income individuals. The Sliding Fee Schedule is based on ability to pay.

(165) Social Worker — A person licensed by the Board of Clinical Social Workers to practice clinical social work.

(166) Speech-Language Pathologist — A person licensed by the Oregon Board of Examiners for Speech Pathology.

(167) Speech-Language Pathology Services — The application of principles, methods, and procedure for the measuring, evaluating, predicting, counseling or instruction related to the development and disorders of speech, voice, or language for the purpose of preventing, habilitating, rehabilitating, or modifying such disorders in individuals or groups of individuals.

(168) Spend-Down — The amount the Client must pay for medical expenses each month before becoming eligible for medical assistance under the Medically Needy Program. The spend-down is equal to the difference between the Client's total countable income and Medically Needy program income limits.

(169) State Facility — A Hospital or training center operated by the State of Oregon, which provides long-term medical or psychiatric care.

(170) Subparts (of a Provider Organization) — For NPI application, Subparts of a health care Provider Organization would meet the definition of health care Provider (45 CFR 160.103) if it were a separate legal entity and if it conducted HIPAA-covered transactions electronically, or has an entity do so on its behalf, could be components of an organization or separate physical locations of an organization.

(171) Subrogation — Right of the State to stand in place of the Client in the collection of Third Party Resources (TPR).

(172) Supplemental Security Income (SSI) — A program available to certain aged and disabled persons which is administered by the Social Security Administration through the Social Security office.

(173) Surgical Assistant — A person performing required assistance in surgery as permitted by rules of the State Board of Medical Examiners.

(174) Suspension — A Sanction prohibiting a Provider's participation in DHS medical assistance programs by deactivation of the Provider's DMAP assigned billing number for a specified period of time. No payments, Title XIX or State Funds, will be made for services provided during the Suspension. The number will be reactivated automatically after the Suspension period has elapsed.

(175) Targeted Case Management (TCM)- Activities that will assist the Client in a target group in gaining access to needed medical, social, educational and other services. This includes locating, coordinating, and monitoring necessary and appropriate services. TCM services often provided by Allied Agency Providers.

(176) Termination —A Sanction prohibiting a Provider's participation in DMAP's programs by canceling the Provider's DMAP assigned billing number and agreement. No payments, Title XIX or State Funds, will be made for services provided after the date of Termination. Termination is permanent unless:

(a) The exceptions cited in 42 CFR 1001.221 are met; or

(b) Otherwise stated by DMAP at the time of Termination.

(177) Third Party Resource (TPR) — A medical or financial resource which, under law, is available and applicable to pay for Medical Services and items for a DMAP Client.

(178) Transportation — See Medical Transportation.

(179) Type A Hospital — A Hospital identified by the Office of Rural Health as a Type A Hospital.

(180) Type B AAA Unit — A Type B Area Agency on Aging (AAA) funded by Oregon Project Independence (OPI), Title III — Older Americans Act, and Title XIX of the Social Security Act.

(181) Type B Hospital — A Hospital identified by the Office of Rural Health as a Type B Hospital.

(182) Usual Charge (UC) —The lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The Provider's charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month's charges;

(b) The Provider's lowest charge per unit of service on the same date that is advertised, quoted or posted. The lesser of these applies regardless of the payment source or means of payment;

(c) Where the Provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200% of the federal poverty level, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to Third Party Resources (TPR) are to be considered.

(183) Utilization Review (UR) —The process of reviewing, evaluating, and assuring appropriate use of medical resources and services. The review encompasses quality, quantity, and appropriateness of medical care to achieve the most effective and economic use of health care services.

(184) Valid Claim —An invoice received by DMAP or the appropriate Department office for payment of covered health care services rendered to an eligible Client which:

(a) Can be processed without obtaining additional information from the Provider of the goods or services or from a TPR; and

(b) Has been received within the time limitations prescribed in these General Rules (OAR 410 Division 120).

(185) Vision Services — Provision of corrective eyewear, including ophthalmological or optometric examinations for determination of visual acuity and vision therapy and devices.

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

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1981, f. 1-23-81, ef. 3-1-81; AFS 33-1981, f. 6-23-81, ef. 7-1-81; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82, for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 57-1982, f. 6-28-82, ef. 7-1-82; AFS 81-1982, f. 8-30-82, ef. 9-1-82; AFS 4-1984, f. & ef. 2-1-84; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 13-1987, f. 3-31-

87, ef. 4-1-87; AFS 7-1988, f. & cert. ef. 2-1-88; AFS 69-1988, f. & cert. ef. 12-5-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0005; HR 25-1991(Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 11-2000, f. & cert. ef. 6-23-00; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007 f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 13-2009 f. 6-12-09, cert. ef. 7-1-09

410-120-1560
Provider Appeals

(1) For purposes of Division of Medical Assistance Programs (DMAP) provider appeal rules in chapter 410, division 120 the following terms and definitions are used:

(a) "Provider" means a person or entity enrolled with DMAP, or under contract with DHS that is subject to these DMAP rules, that has requested an appeal in relation to health care, items, drugs or services provided or requested to be provided to a Client on a fee-for-service basis or under contract with DHS where that contract expressly incorporates these rules;

(b) "Provider Applicant" means a person or entity that has submitted an application to become an enrolled Provider with DMAP but the application has not been approved;

(c) "Prepaid Health Plan" has the meaning in OAR 410-141-0000, except to the extent that Mental Health Organizations (MHO) have separate procedures applicable to Provider grievances and appeals;

(d) "Prepaid Health Plan Provider" means a person or entity enrolled with DMAP but that provided health care services, supplies or items to a Client enrolled with a PHP, including both Participating Providers and Non-participating Providers as those terms are defined in OAR 410-141-0000, except that services provided to a Client enrolled with an MHO shall be governed by the Provider grievance and appeal procedures administered by the Office of Mental Health and Addiction Services;

(e) The "Provider Appeal Rules" refers to the rules in OAR 410-120-1560 to 410-120-1700, describing the availability of appeal procedures and the procedures applicable to each appeal procedure.

(f) "Non-participating provider" has the meaning in OAR 410-141-0000

(2) A Division of Medical Assistance Programs (DMAP) enrolled Provider may appeal a DMAP decision in which the Provider is directly adversely affected such as the following:

(a) A denial or limitation of payment allowed for services or items provided;

(b) A denial of provider's application for new or continued participation in the Medical Assistance Program; or

(c) Sanctions imposed, or intended to be imposed, by the Medical Assistance program on a provider or provider entity; and

(d) DMAP overpayment determinations made under OAR 410-120-1397.

(3) Client appeals of Actions must be handled in accordance with OAR 140-120-1860 and 410-120-1865.

(4) A Provider appeal is initiated by filing a timely request in writing for review with DMAP.

(a) A Provider appeal request is not required to follow a specific format as long as it provides a clear written expression from a Provider or Provider Applicant expressing disagreement with a DMAP decision or from a Prepaid Health Plan (PHP) Provider expressing disagreement with a decision by a PHP.

(b) The request should identify the decision made by DMAP or a PHP that is being appealed and the reason the Provider disagrees with that decision.

(c) A Provider appeal request is timely if it is received by DMAP within 180 calendar days of the date of the DMAP decision or the date of the PHP decision on the Provider's appeal to the PHP.

(5) Types and methods for Provider Appeals are listed below.

(a) A Division of Medical Assistance Programs (DMAP) denial of or limitation of payment allowed, DMAP claim decision including prior authorization decision, or DMAP Overpayment determination for services or items provided to a Client must be appealed as Claim Re-determinations under OAR 410-120-1570.

(b) A notice of Sanctions imposed, or intended to be imposed, the effect of the notice of Sanction is, or will be, to deny suspend or revoke a provider number necessary to participate in the medical assistance on a Provider, or Provider Applicant is entitled to appeal under OAR 410-120-1600 A Provider that is entitled to appeal a notice of Sanction as a contested case may request administrative review instead of contested case hearing if the Provider submits a written request for administrative review of the notice of Sanction and agrees in writing to waive the right to a contested case hearing and DMAP agrees to review the appeal of the notice of Sanction as an administrative review.

(c) All Provider appeals of DMAP decisions not described in paragraphs (4)(a) or (b) are handled as administrative reviews in accordance with OAR 410-120-1580, unless DMAP issues an order granting a contested case hearing.

(6) Decisions that adversely affect a Provider may be made by different program areas within DHS.

(a) Decisions issued by the Office of Payment Accuracy and Recovery (OPAR) or the DHS information security office shall be appealed in accordance with the process described in the notice,

(b)Other program areas within DHS that have responsibility for administering medical assistance funding, such as nursing home care or community mental health and developmental disabilities program services, may make decisions that adversely affect a Provider. Those Providers are subject to the Provider grievance or appeal processes applicable to those payment or program areas.

(c) Some decisions that adversely affect a Provider are issued on behalf of DMAP by DHS contractors such as the DMAP pharmacy benefits manager, by entities performing statutory functions related to the medical assistance programs such as the Drug Use Review Board, or by other entities in the conduct of program integrity activities applicable to the administration of the medical assistance programs. For these decisions made on behalf of DMAP in which DMAP has legal authority to make the final decision in the matter, a Provider may appeal such a decision to DMAP as an administrative review and DMAP may accept such review.

(d) This rule does not apply to contract administration issues that may arise solely between DMAP and a PHP. Such issues shall be governed by the terms of the applicable contract.

(e) DMAP provides limited Provider appeals for Prepaid Health Plan Providers (PHP Providers) or non-participating providers concerning a decision by a Prepaid Health Plan (PHP). In general, the relationship between a PHP and PHP Providers is a contract matter between them. Client appeals are handled under the client appeal rules, not Provider appeal rules.

(i) The PHP Provider seeking a Provider Appeal must have a current valid provider enrollment agreement with DMAP and, unless the Provider is a non-participating provider, must also have a contract with the Prepaid Health Plan as a PHP Provider; and

(ii) The PHP Provider or non-participating provider must have exhausted the applicable appeal procedure established by the PHP and the request for Provider appeal must include a copy of the written decision(s) of the PHP that is being appealed from and a copy of any PHP policy being applied in the appeal; and

(iii) The PHP Provider appeal or non-participating provider appeal from a PHP decision is limited to issues related to the scope of coverage and authorization of services under the Oregon Health Plan, including whether services are included as covered on the Prioritized List, guidelines, and in the OHP Benefit package. The DMAP Provider appeal process does not include PHP payment or claims reimbursement amount issues, except in relation to non-participating provider matters governed by DMAP rule.

(iv) A timely Provider appeal must be made within 30 calendar days from the date of the PHP's decision and include evidence that the PHP was sent a copy of the Provider appeal. In every Provider appeal involving a PHP decision, the PHP will be treated as a participant in the appeal.

(7) In the event a request for Provider appeal is not timely, DMAP will determine whether the failure to file the request was caused by circumstances beyond the control of the Provider, Provider Applicant or PHP Provider. In determining whether to accept a late request for review, DMAP requires the request to be supported by a written statement that explains why the request for review is late. DMAP may conduct such further inquiry as DMAP deems appropriate. In determining timeliness of filing a request for review, the amount of time that DMAP determines accounts for circumstances beyond the control of the Provider is not counted. DMAP may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness.

(8) The burden of presenting evidence to support a Provider Appeal is on the Provider, Provider Applicant or PHP Provider.

(a) Consistent with OAR 410-120-1360, payment on a claim will only be made for services that are adequately documented and billed in accordance with OAR 410-120-1280 and all applicable administrative rules related to covered services for the Client's benefit package and establishing the conditions under which services, supplies or items are covered, such as the Prioritized List, medical appropriateness and other applicable standards.

(b) Eligibility for enrollment and for continued enrollment is based on compliance with applicable rules, the information submitted or required to

be submitted with the application for enrollment and the enrollment agreement, and the documentation required to be produced or maintained in accordance with OAR 410-120-1360.

(9) Provider appeal proceedings, if any, will be held in Salem, unless otherwise stipulated to by all parties and agreed to by DMAP.

Stat. Auth.: ORS 409.050, 409.010, 409.110 & 414.065
Stats. Implemented: ORS 409.010
Hist.: AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-44, ef. 9-1-84; AFS 51-1985, f. 8-16-85, ef. 9-1-85; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0191; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0780; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 41-2000, f. & cert. ef. 12-1-00; OMAP 19-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 13-2009 f. 6-12-09, cert. ef. 7-1-09

410-120-1570
Claim Re-Determinations

(1) If a Department of Human Services (DHS) Division of Medical Assistance Program (DMAP) provider disagrees with an initial claim determination, they may request either a technical or a medical re-determination, but not both. The provider must choose which type of review is being requested.

(a) The DMAP will not treat a technical review as a medical review request, or a medical review request as a technical review request.

(b) This rule does not apply to actions that result in a Notice of Action that must be provided to the OHP Client. If the decision under review requires any notice to the OHP Client under applicable rules (OAR 410-120-1860, 410-414-0263), the procedures for notices and hearings must be followed.

(2) The request to reopen an initial claim determination for a technical or medical re-determination review must be made through DMAP Provider Services unit in writing or via telephone (followed with written request and materials required under this rule and provided within 7 calendar days of the date of the telephone request). All requests and required materials for either technical or medical re-determination must be received by the DMAP Provider Services unit within 180 days from the DMAP original claims adjudication decision.

(3) Technical re-determination reviews do not include medical re-determination review under (4) below.

(a) Technical reviews address such issues as;

(A) Mathematical or mechanical errors;

(B) Transposed procedure or diagnosis codes;

(C) Inaccurate data entry;

(D) Misapplication of a fee schedule;

(E) Computer errors;

(F) Denial of claims as duplicates that the party believes were incorrectly identified as a duplicate; or

(G) Incorrect data items, such as provider number, use of a modifier or date of service, unit changes or incorrect charges;

(H) Errors with the Medicaid Management Information System (MMIS) (i.e. a code is missing in MMIS that the Oregon Health Services Commission (HSC) has placed on the Prioritized List of Health Services;

(I) Services not funded in the OHP Benefit package;

(J) Services provided without the required prior-authorization, except for those authorization subject to provision outlined in OAR 410-120-1280(2)(a)(C);

(K) Service denials related to program rules and limitations;

(b) The written request for technical re-determination review must include applicable claims submission, remittance advice data, and any additional information or explanation necessary to describe the alleged error. This information must be submitted to DMAP at the time of the request for technical re-determination review. DMAP may request additional information from the provider that it finds relevant to the request under review. DMAP will respond to the request for technical re-determination review in writing.

(4) Medical re-determination reviews do not include technical re-determination review under (3) above. The provider requesting a medical re-determination review must submit the request in writing to DMAP, Provider Services Unit within 90 days from the DMAP decision.

(a) The request for medical re-determination review of a claim denial must include a letter of explanation identifying the specific re-determination denial issue identified in (b).with the specific service, supply or item being denied and include all relevant codes and detailed justification for funding of the denied service. At the time of request, the provider must include a copy of the denial decision or remittance advice that describes the basis for the claim denial under re-determination, and any information pertinent to the resolution of the medical re-determination review dispute, including medical documentation and any applicable evidence-based practice literature that is consistent with the decision under review. DMAP will conduct the review, including any further inquiry that DMAP deems appropriate.

(b) A provider requesting medical re-determination review must demonstrate one or more of the following reasons that would allow coverage in the particular case:

(A) A below-the-line condition/treatment pair is justified under the co-morbid rule OAR 410-141-0480(8);

(B) A treatment that is part of a covered complex procedure, that is considered medically appropriate and related to an existing funded condition;

(C) A service not listed on the HSC Prioritized List may be covered under OAR 410-141-0480(10);

(D) A service is a Medically appropriate diagnostic services;

(E) A service satisfies the Citizen/Alien-Waived Emergency Medical (CAWEM) emergency services criteria;

(F) A service satisfies the prudent layperson definition of emergency medical condition;

(G) A service is intended to prolong survival or palliate symptoms, due to expected length of life consistent with the HSC Statement of Intent for Comfort/Palliative Care; or

(H) A service should be covered where denial was due to technical errors and omissions with the Oregon Health Services Commission's (HSC) Prioritized List of approved Health Services.

(c) At the time their request for review is made, providers, physicians and suppliers are responsible for providing the technical or medical information needed to adjudicate their claims, including relevant medical records and evidence-based practice data to support the position being asserted on review. Medical review will not be completed unless the claim has no technical errors. DMAP may request additional information that it finds relevant to the review.

(5) Technical or medical re-determination review is based on the DMAP review of documentation and applicable law. DMAP does not provide a face-to-face meeting with providers as part of the review process.

(a) The provider is responsible for the timely submission of its review request and all information pertinent to conducting the review, consistent with the requirements of this rule.

(b) DMAP will notify a provider requesting a technical or medical review of a denial of the review request if:

(A) The provider did not submit a timely request;

(B) The required information is not provided at the same time the request is submitted;

(C) The provider fails to submit requested information within the required timelines.

(6) If the recipient is enrolled in a Prepaid Health Plan (PHP) and the claim was denied by a PHP, the provider requesting review must contact the PHP in accordance with 410-120-1560.

(7) The department's final decision under this rule is the final decision on appeal. Under ORS 183.484, this decision is an order in other than a contested case. ORS 183.484 and the procedures in OAR 137-004-0080 to 137-004-0092 apply to the department's final decision under this rule.

Stat. Auth.: ORS 409.050, 409.010, 409.110 & 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 19-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 13-2009 f. 6-12-09, cert. ef. 7-1-09

410-120-1580
Provider Appeals — Administrative Review

(1) An administrative review is a Provider Appeal process that allows an opportunity for the Administrator of the Division of Medical Assistance Programs (DMAP) or designee to review a DMAP decision affecting the Provider, Provider Applicant, or Prepaid Health Plan (PHP) Provider, where administrative review is appropriate and consistent with these Provider appeal rules OAR 410-120-1560.

(2) Administrative review is an appeal process under OAR 410-120-1560 that addresses primarily legal or policy issues that may arise in the context of a DMAP decision that adversely affects the Provider and that is not otherwise reviewed as a Claim re-determination, a Contested Case, or Client appeal.

(a) If DMAP finds that the appeal should be handled as a different form of Provider Appeal or as a Client appeal, the Administrator or designee will notify the Provider of this determination.

(b) Within the time limits established by DMAP in the administrative review, the Provider, Provider Applicant or PHP Provider must provide DMAP (and any PHP, if applicable) with a copy of all relevant records, DMAP or PHP decisions, and other materials relevant to the appeal.

(3) If the Administrator or designee decides that a meeting between the Provider, Provider Applicant or PHP Provider (and PHP, if applicable) and DMAP staff will assist the review, the Administrator or designee will:

(a) Notify the Provider requesting the review of the date, time, and place the meeting is scheduled;

(b) Notify the PHP (when Client is enrolled in a PHP) of the date, time, and place the meeting is scheduled. The PHP is not required to participate, but is invited to participate in the process.

(4) The review meeting will be conducted in the following manner:

(a) It will be conducted by the DMAP Administrator, or designee;

(b) No minutes or transcript of the review will be made;

(c) The Provider requesting the review does not have to be represented by counsel during an administrative review meeting and will be given ample opportunity to present relevant information;

(d) DMAP staff will not be available for cross-examination, but DMAP staff may attend and participate in the review meeting;

(e) Failure to appear without good cause constitutes acceptance of DMAP's determination;

(f) The Administrator may combine similar administrative review proceedings, including the meeting, if the Administrator determines that joint proceedings may facilitate the review;

(g) The DMAP Administrator or designee may request the Provider, Provider Applicant or PHP Provider making the appeal to submit, in writing, new information that has been presented orally. In such an instance, a specific date for receiving such information will be established.

(5) The results of the administrative review will be sent to the participants, involved in the review, and to the PHP when review involved a PHP Provider, in writing, within 30 calendar days of the conclusion of the administrative review proceeding, or such time as may be agreed to by the participants and DMAP.

(6) The department's final decision on administrative review is the final decision on appeal and binding on the parties. Under ORS 183.484, this decision is an order in other than a contested case. ORS 183.484 and the procedures in OAR 137-004-0080 to 137-004-0092 apply to the department's final decision on administrative review.

Stat. Auth.: ORS 409.040, 409.50, 409.110
Stats. Implemented: ORS 414.065
Hist.: AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-44, ef. 9-1-84; AFS 51-1985, f. 8-16-85, ef. 9-1-85; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0191 & 461-013-0220; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0800; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 19-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 73-2003, f. & cert. ef. 10-1-03; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 13-2009 f. 6-12-09, cert. ef. 7-1-09

410-120-1600
Provider Appeals — Contested Case Hearings

(1) A contested case procedure is a hearing that is conducted by the Office of Administrative Hearings where a contested case is appropriate and consistent with the Provider Appeal rules OAR 410-120-1560. If the request for contested case hearing was timely filed but should have been filed as a claim reconsideration or Administrative Review, or Client Appeal, DMAP will refer the request to the proper appeal procedure and notify the Provider, Provider Applicant or PHP Provider.

(2) Contested case hearings are conducted in accordance with the Attorney General's model rules at OAR 137-003-0501 to 137-003-0700.

(3) The party to a Provider contested case hearing is the Provider, Provider Applicant or PHP Provider who requested the appeal. In the event that DMAP determines that a PHP Provider is entitled to a Contested Case Hearing under OAR 410-120-1560, the PHP Provider and the PHP are parties to the hearing. A Provider, PHP Provider or PHP that is a corporation may be represented by any of the persons identified in ORS 410.190.

(4) Informal Conference: DMAP may notify the Provider(s) Provider Applicant or PHP Provider (and PHP, if applicable) of the time and place of an informal conference, without the presence of the Administrative Law Judge (ALJ). The purposes of this informal conference are:

(a) To provide an opportunity to settle the matter;

(b) To make sure the parties and DHS understand the specific reason for the action of the hearing request;

(c) To give the parties and DHS an opportunity to review the information which is the basis for action;

(d) To give the parties and DHS the chance to correct any misunderstanding of the facts; and

(e) The Provider, Provider Applicant or PHP Provider (or PHP, if applicable) may, at any time prior to the hearing date, request an additional informal conference with DMAP and DHS representative(s), which may be granted if DMAP finds at its sole discretion, the additional informal conference will facilitate the Contested Case Hearing process or resolution of disputed issues.

(5) Contested Case Hearing: The Administrative Law Judge (ALJ) will conduct the contested case hearing using the Attorney General's Model Rules at OAR 137-003-0501 to 137-003-0700.

(a) The burden of presenting evidence to support a Provider Appeal is on the Provider, Provider Applicant or PHP Provider that requested the Appeal. Consistent with OAR 410-120-1360, payment on a claim will only be made for services that are adequately documented and billed in accordance with OAR 410-120-1280 and all applicable administrative rules related to covered services for the Client's benefit package and establishing the conditions under which services, supplies or items are covered, such as the Prioritized List, medical appropriateness and other applicable standards.

(b) Subject to the DMAP approval under OAR 137-003-0525, the ALJ will determine the location of the Contested Case Hearings.

(6) Proposed and Final Orders: The ALJ is authorized to serve a proposed order on all parties and DMAP unless prior to the hearing, DMAP notifies the ALJ that a final order may be served by the ALJ.

(a) If the ALJ issues a proposed order, and the proposed order is adverse to a party, the party may file written exceptions to the proposed order to be considered by DMAP, or the ALJ when the ALJ is authorized to issue the final order. The exceptions must be in writing and received by DMAP, or the ALJ when the ALJ is authorized to issue the final order, not later than 10 calendar days after the date of the proposed order is issued by the ALJ. No additional evidence may be submitted without prior approval of DMAP.

(b) The proposed order issued by the ALJ will become a final order if no exceptions are filed within the time specified in subsection (a) of this rule, unless DMAP notifies the parties and the ALJ that DMAP will issue the final order. After receiving the exceptions or argument, if any, DMAP may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, DMAP may issue an amended proposed order.

(c) Procedures applicable to default orders for withdrawal of a hearing request, failure to timely request a hearing, failure to appear at a hearing, or other default, are governed by the Attorney General's Model Rules, OAR 137-003-0670 — 137-003-0672.

(d) The final order is effective immediately upon being signed or as otherwise provided in the order.

(7) All Contested Case Hearing decisions are subject to the procedures established in OAR 137-003-675 to 137-003-0700 and to judicial review under ORS 183.482 in the Court of Appeals.

Stat. Auth.: ORS 409.040, 409.050, 409.110 & 409.120
Stats. Implemented: ORS 414.065
Hist.: AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-44, ef. 9-1-84; AFS 51-1985, f. 8-16-85, ef. 9-1-85; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0191 & 461-013-0225; HR 19-1990, f. & cert. ef. 7-9-90; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0820; OMAP 41-2000, f. & cert. ef. 12-1-00; OMAP 19-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 73-2003, f. & cert. ef. 10-1-03; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; DMAP 13-2009 f. 6-12-09, cert. ef. 7-1-09

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Rule Caption: July revisions for: Semi-annual Practitioner Managed Prescription Drug Plan list update, Prior Authorization (PA) changes, and billing requirement updates.
Adm. Order No.: DMAP 14-2009
Filed with Sec. of State: 6-12-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 410-121-0000, 410-121-0032, 410-121-0040, 410-121-0150, 410-121-0155
Subject: The Pharmaceutical Services program rules (Division 121) govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP amended the administrative rules listed above to clarify current policies and procedures for pharmacy providers to ensure DMAP OARs are not open to interpretation by the provider or outside parties and to help eliminate confusion possibly resulting in non-compliance. DMAP amended as follows:

410-121-0000: clarify language related to the CMS and Supplemental Rebates;

410-121-0032: clarify language to reflect the net cost of drugs and placement on the Preferred Drug List (PDL);

410-121-0040: changes to PA list based on DUR Board recommendations;

410-121-0150: clarify billing requirements related to the National Prescriber Identifier (NPI);

DMAP also amended 410-121-0155 to reflect new reimbursement rates for drugs provided by the DMAP contracted mail order pharmacy provider.

Text is revised to improve readability and take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0000
Foreword and Definition of Terms

(1) The Pharmaceutical Services Oregon Administrative Rules (OARs) are designed to assist providers in preparing claims for services provided to Division of Medical Assistance Programs' (DMAP) fee-for-service clients. Providers must use Pharmaceutical OARs in conjunction with the General Rules OARs (chapter 410, division 120) for Oregon Medical Assistance Programs.

(2) Pharmaceutical services delivered through managed care plans contracted with DMAP, under the Oregon Health Plan (OHP), are subject to the policies and procedures established in the OHP Administrative Rules (chapter 410, division 141) and by the specific managed health care plans.

(3) Definition of Terms:

(a) Actual Acquisition Cost: The net amount paid per invoice line item to a supplier. This net amount does not include separately identified discounts for early payment;

(b) Average Net Price: The average of Net Price (definition below) of all drugs in an identified Plan Drug List (PDL) (definition below) class or group.

(c) Average Manufacturer's Price (AMP): The average price at which manufacturers sell medication to wholesalers and retail pharmacies, as further clarified in 42 CFR 447;

(d) Bulk Dispensing: Multiple doses of medication packaged in one container labeled as required by pertinent Federal and State laws and rules.

(e) Centers for Medicare and Medicaid Services (CMS) Basic Rebate: The quarterly payment by the manufacturer of a drug pursuant to the Manufacturer's CMS Medicaid Drug Rebate Agreement made in accordance with Section 1927 (c)(3) of the Social Security act (42 U.S.C. 1396r-8(c)(1) and 42 U.S.C. 1396r-8 (c)(3). See 410-121-0157;

(f) CMS CPI Rebate: The quarterly payment by the manufacturer pursuant to the Manufacturer's CMS Medicaid Drug Rebate Agreement made in accordance with Section 1927 (c)(2) of the Social Security act (42 U.S.C. 1396r-8(c)(2)

(g) Community Based Care Living Facility: For the purposes of the Division of Medical Assistance Programs (DMAP) Pharmacy Program, a home, facility, or supervised living environment licensed or certified by the state of Oregon which provides 24 hour care, supervision, and assistance with medication administration. These include, but are not limited to:

(A) Supportive Living Facilities;

(B) 24-Hour Residential Services;

(C) Adult Foster Care;

(D) Semi-independent Living Programs;

(E) Assisted Living and Residential Care Facilities;

(F) Group Homes and other residential services for people with developmental disabilities or needing mental health treatment; and

(G) Inpatient hospice;

(h) Compounded Prescriptions:

(A) A prescription that is prepared at the time of dispensing and involves the weighting of at least one solid ingredient that must be a reimbursable item or a legend drug in a therapeutic amount;

(B) Compounded prescription is further defined to include the Oregon Board of Pharmacy definition of Compounding (see OAR 855-006-0005);

(i) Dispensing: Issuance of a prescribed quantity of an individual drug entity by a licensed pharmacist;

(j) Drug Order/Prescription:

(A) A medical practitioner's written or verbal instructions for a patient's medications; or

(B) A medical practitioner's written order on a medical chart for a client in a nursing facility;

(k) Durable Medical Equipment and supplies (DME): Equipment and supplies as defined in OAR 410-122-0010, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;

(l) Estimated Acquisition Cost (EAC): The estimated cost at which the pharmacy can obtain the product listed in OAR 410-121-0155;

(m) Intermediate Care Facility: A facility providing regular health-related care and services to individuals at a level above room and board, but less than hospital or skilled nursing levels as defined in ORS 442.015;

(n) Long Term Care Facility: Includes skilled nursing facilities and intermediate care facilities with the exclusions found in ORS 443.400 to 443.455;

(o) Maintenance medication: Drugs that have a common indication for treatment of a chronic disease and the therapeutic duration is expected to exceed one year. This is determined by a First DataBank drug code maintenance indicator of "Y" or "1";

(p) Net Price: The amount a drug costs DHS and calculated using the following formula. "Estimated Acquisition Cost — CMS Basic Rebate — CMS CPI Rebate — State Supplemental Rebate";

(q) Managed Access Program (MAP): The Managed Access Program (MAP) is a system of determining, through a series of therapeutic and clinical protocols, which drugs require authorizations prior to dispensing:

(A) OAR 410-121-0040 lists the drugs or categories of drugs requiring prior authorization (PA);

(B) The practitioner, or practitioner's licensed medical personnel listed in OAR 410-121-0060, may request a PA;

(r) Nursing Facility: An establishment that is licensed and certified by the DHS Seniors and People with Disabilities Division (SPD) as a Nursing Facility;

(s) Plan Drug List: The PDL consists of prescription drugs in selected classes that DHS, in consultation with the Health Resources Commission (HRC), has determined represent effective drug(s) available at the best possible price. (See details for the DMAP PMPD PDL in OAR 410-121-0030);

(t) Point-of-Sale (POS): A computerized, claims submission process for retail pharmacies that provides on-line, real-time claims adjudication;

(u) Prescription Splitting: Any one or a combination of the following actions:

(A) Reducing the quantity of a drug prescribed by a licensed practitioner for prescriptions not greater than 34 days (see OAR 410-121-0146);

(B) Billing the agency for more than one dispensing fee when the prescription calls for one dispensing fee for the quantity billed;

(C) Separating the ingredients of a prescribed drug and billing the agency for separate individual ingredients, with the exception of compounded medications (see OAR 410-121-0146); or

(D) Using multiple 30-day cards to dispense a prescription when a lesser number of cards will suffice;

(v) State Supplemental Rebates: DMAP and CMS approved discounts paid by manufacturers per unit of drug. These rebates are authorized by the Social Security Act section 42 USC 1396r-8(a)(1) and are in addition to federal rebates mandated by the Omnibus Budget Rehabilitation Act (OBRA 90) and the federal rebate program;

(w) Unit Dose: A sealed, single unit container of medication, so designed that the contents are administered to the patient as a single dose, direct from the container, and dispensed following the rules for unit dose dispensing system established by the Oregon Board of Pharmacy.

[ED NOTE: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050, 409.110 & 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 1-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09

10-121-0032
Supplemental Rebate Agreements

(1) Supplemental Rebate Agreements are negotiated for specific drug products between the Division of Medical Assistance Programs (DMAP) and pharmaceutical manufacturers. Manufacturers may submit Supplemental Rebate offers for consideration to include their drug(s) on the Practitioner's-Managed Prescription Drug Plan (PMPDP) Plan Drug List (PDL), OAR 410-121-0030:

(a) Manufacturers must submit Supplemental Rebate Agreements on the agreement template approved by the Centers for Medicare and Medicaid Services (CMS). This template is available on the Department of Human Services Web site;

(2) Manufacturers may offer Supplemental Rebates by submitting the completed template to DMAP:

(a) Manufacturers may be allowed to submit Supplemental Rebate offers for drugs recommended for inclusion on the PDL by the Health Resources Commission;

(b) The PDL will include drugs in the class that are Medicaid reimbursable and which the Food and Drug Administration (FDA) has determined to be safe and effective if the relative cost is less than the Average Net Price. If pharmaceutical manufacturers enter into supplemental rebate agreements with DHS that reduce the cost of their drug below that of the Average Net Price for the class, DHS, in consultation with the HRC recommendations, may include their drug on the PDL;

(3) Manufacturers may submit a Supplemental Rebate Agreement offer by:

(a) Obtaining the CMS-approved template from the DHS website, and;

(b) Submitting the completed Supplemental Rebate Agreement with attachment B listing the drugs offered to DMAP. The manufacturers may submit up to three separate attachment B drug lists with the Supplemental Rebate Agreement offer.

(4) Acceptance of the offer:

(a) DMAP may notify the manufacturer of the acceptance of the offer(s);

(b) Supplemental Agreements will be executed after signed by all parties, approved by CMS if required, and added to the PMPDP Plan Drug List by the Administrative rule process.

Stat. Auth.: ORS 409.010, 409.025, 409.040, 409.050, 409.110 & 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 97-2004, f. 12-30-04, cert. ef. 1-1-05; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09

410-121-0040
Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining Prior Authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures required in OAR 410-121-0060.

(2) All drugs and categories of drugs, including but not limited to those drugs and categories of drugs that require PA as described in this rule, are subject to the following requirements for coverage:

(a) Each drug must be prescribed for conditions funded by OHP in a manner consistent with the Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication will not be covered unless there is a co-morbid condition for which coverage would be extended. The use of the medication must meet corresponding treatment guidelines, be included within the client's benefit package of covered services, and not otherwise excluded or limited.

(b) Each drug must also meet other criteria applicable to the drug or category of drug in these Pharmacy Provider rules, including PA requirements imposed in this rule.

(3) The Department of Human Services (DHS) may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs for which DHS requires PA for this purpose are listed in Table 410-121-0040-1, with their approval criteria.

(4) DHS may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as recommended by the Drug Use Review (DUR) Board and adopted by the Department in this rule (see OAR 410-121-0100 for a description of the DUR program). The drugs and categories of drugs for which DHS requires PA for this purpose are included in Table 410-121-0040-2, with their approval criteria.

(5) PA is required for brand name drugs that have two or more generically equivalent products available. Criteria for approval are:

(a) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria.

(b) If (5)(a) does not apply, the prescribing practitioner must document that the use of the generically equivalent drug is medically contraindicated, and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(6) PA may not be required

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by DHS or,

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09

410-121-0150
Billing Requirements

(1) When billing the Division of Medical Assistance Programs (DMAP) for drug products, the provider must:

(a) Not bill in excess of the usual and customary charge to the general public;

(b) Indicate the National Drug Code (NDC), as it appears on the package from which the prescribed medications are dispensed;

(c) Bill the actual metric decimal quantity dispensed;

(d) When clients have other insurances, bill the other insurances as primary and DMAP as secondary;

(e) When clients have Medicare prescription drug coverage, bill Medicare as primary and DMAP as secondary.

(2) When submitting a paper claim, the provider must accurately furnish all information required on the 5.1 Universal Claims Form.

(3) The prescribing provider's National Provider Identifier (NPI) is mandatory on all fee-for-service client drug prescription claims. Claims will deny for a missing or invalid prescriber NPI. An exception to this includes, but is not limited to a Prescribing provider who does not have an NPI for billing, but who prescribes fee-for-service prescriptions for clients under prepaid health plans (PHP), long-term care, or other capitated contracts. This provider is to be identified with the:

(a) Non-billing NPIassigned for prescription writing only;

(b) Clinic or facility NPI until an individual NPI is obtained; or

(c) Supervising physician's NPI when billing for prescriptions written by the physician assistant, physician students, physician interns, or medical professionals who have prescription writing authority;

(4) Billing for Death With Dignity services:

(a) Claims for Death With Dignity services cannot be billed through the Point-of-Sale system;

(b) Services must be billed directly to DMAP, even if the client is in a PHP;

(c) Prescriptions must be billed on a 5.1 Universal Claims Form paper claim form using an NDC number. Claims should be submitted to the address indicated at the DMAP Supplemental Information for Pharmaceutical Services.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: AFS 15-1987, f. 3-31-87, ef. 4-1-87; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0093; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0240; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 44-1998(Temp), f. 12-1-98, cert. ef. 12-1-98 thru 5-1-99; OMAP 11-1999(Temp), f. & cert. ef. 4-1-99 thru 9-1-99; OMAP 25-1999, f. & cert. ef. 6-4-99; OMAP 5-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 7-2002, f. & cert. ef. 4-1-02; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09

410-121-0155
Reimbursement

(1) Definitions. For the purposes of this rule:

(a) "Billed amount" is the usual and customary amount billed by the provider; and

(b) "Estimated Acquisition Cost" (EAC) is the lesser of:

(A) The Centers for Medicare and Medicaid Services' (CMS) federal upper limits (FUL) for payment;

(B) The Oregon Maximum Allowable Cost (OMAC);

(C) Discounted Average Wholesale Price (AWP);

(i) For retail pharmacies: eighty-five percent of AWP of the drug;

(ii) For institutional pharmacies: eighty-nine percent of AWP for long-term care clients in a nursing facility or community based living facility; or

(iii) For contracted mail order pharmacy: seventy-nine percent of AWP for single-source drugs, thirty-two percent of AWP for multiple-source drugs and eighty percent of AWP for injectable drugs.

(c) "Applicable copayments" are defined in Oregon Administrative Rule (OAR) 410-120-1230.

(2) The Division of Medical Assistance Programs (DMAP) will revise its EAC file weekly. Pharmacies must make available to DMAP any information necessary to determine the pharmacy's actual acquisition cost of drug products dispensed to DMAP clients.

(3) Payment for covered fee-for-service drug products will be the lesser of the billed amount or the EAC of the generic form, minus applicable copayments, plus a professional dispensing fee.

(4) Payment for trade name forms of multiple source products:

(a) Will be the lesser of the billed amount or the Discounted AWP of the trade name form, minus applicable copayments, plus a professional dispensing fee;

(b) DMAP will only pay if the prescribing practitioner has received a prior authorization for the trade name drug.

(6) No professional dispensing fee is allowed for dispensing pill splitters/cutters.

(7) Payment for pill splitters/cutters with a National Drug Code (NDC) number will be the lesser of the billed amount or the EAC.

(a) A practitioner prescription is not required.

(b) DMAP will only pay for one pill splitter/cutter per client in a twelve-month period.

Stat. Auth.: ORS 184.750, 184.770, 409.050, 411, 414.065 & 42 CFR 447.205
Stats. Implemented: ORS 414.065
Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 846(Temp), f. & ef. 7-1-77; PWC 858, f. 10-14-77, ef. 11-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 15-1979(Temp), f. 6-29-79, ef. 7-1-79; AFS 41-1979, f. & ef. 11-1-79; AFS 15-1981, f. 3-5-81, ef. 4-1-81; AFS 35-1981(Temp), f. 6-26-81, ef. 7-1-81; AFS 53-1981(Temp), f. & ef. 8-14-81; AFS 70-1981, f. 9-30-81, ef. 10-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices. AFS 74-1982 (Temp), f. 7-22-81, ef. 8-1-82; AFS 99-1982, f. 10-25-82, ef. 11-1-82; AFS 113-1982(Temp), f. 12-28-82, ef. 1-1-83; AFS 13-1983, f. & ef. 3-21-83; AFS 51-1983(Temp), f. 9-30-83, ef. 10-1-83; AFS 56-1983, f. 11-17-83, ef. 12-1-83; AFS 18-1984, f. 4-23-84, ef. 5-1-84; AFS 53-1985, f. 9-20-85, ef. 10-1-85; AFS 42-1986(Temp), f. 6-10-86, ef. 7-1-86; AFS 52-1986, f. & ef. 7-2-86; AFS 12-1987, f. 3-3-87, ef. 4-1-87; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0100; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0250; HR 20-1991, f. & cert. ef. 4-16-91; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 32-2002, f. & cert. ef. 8-1-02; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 5-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09

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Rule Caption: July 1, 2009 Rule revisions.
Adm. Order No.: DMAP 15-2009
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Rules Amended: 410-122-0080, 410-122-0180, 410-122-0186, 410-122-0205, 410-122-0208, 410-122-0320, 410-122-0325, 410-122-0340, 410-122-0375, 410-122-0400, 410-122-0420, 410-122-0500, 410-122-0520, 410-122-0580, 410-122-0590, 410-122-0600, 410-122-0620, 410-122-0700, 410-122-0720
Subject: The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP amended as follows:

410-122-0080, Conditions of Coverage, Limitations, Restrictions and Exclusions: Removes cough stimulating devices as an exclusion of coverage. Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor.

410-122-0180, Healthcare Common Procedure Coding System (HCPCS) Level II Coding: Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor.

410-122-0186, Payment Methodology: Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor. Clarifies some prior authorization requirements and miscellaneous code requirements.

Clarifies verification requirements for items billed with codes A4649 (surgical supply; miscellaneous), E1399 (durable medical equipment, miscellaneous) and K0108 (wheelchair component or accessory, not otherwise specified) when no specific HCPCS code is available and an item category is not specified in Division 122 rules.

410-122-0205, Respiratory Assist Devices: Allows one unit of A7030 (full face mask used with positive airway pressure device) every three months instead of one unit every six months.

410-122-0208, Suction Pumps: Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor.

410-122-0320, Manual Wheelchair Base: Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor.

410-122-0325, Motorized/Power Wheelchair Base: Changes Assistive Technology Practitioner (ATP) and Assistive Technology Supplier (ATS) to Assistive Technology Professional (ATP), the new designation as directed from Rehabilitation Engineering and Assistive Technology Society of North America (RESNA). Clarifies that K0040 (adjustable angle footplate) may be billed with K0848 through K0864 (Group 3 power wheelchairs). Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor.

410-122-0340, Wheelchair Options/Accessories: Adds E2313 (power wheelchair accessory, harness for upgrade for expandable controller, including all fasteners). Clarifies which wheelchair options/accessories codes may be billed separately. Replaces E2618 (wheelchair accessory, solid seat support base (replaces sling seat), for use with manual wheelchair or power wheelchair) with E2231 (manual wheelchair accessory, solid seat support base (replaces sling seat), includes any type mounting hardware).

410-122-0375, Walkers: Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor.

410-122-0400, Pressure Reducing Support Surfaces: Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor.

410-122-0420, Hospital Bed Accessories. Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor.

410-122-0500, Transcutaneous Electrical Nerve Stimulator (TENS): Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor.

410-122-0520, Glucose Monitors and Diabetic Supplies: Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor.

410-122-0580, Bath Supplies: Changes Assistive Technology Practitioner (ATP) to Assistive Technology Professional (ATP), the new designation as directed from Rehabilitation Engineering and Assistive Technology Society of North America (RESNA).

410-122-0590, Patient Lifts: Adds: "The areas within the client's residence where the lift will be utilized must be able to accommodate and allow for the effective use of the lift. DMAP does not reimburse for adapting the living quarters."

410-122-0600, Toilet Supplies: Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor.

410-122-0620, Surgical Dressing: Deletes A4250 (urine test or reagent strips or tablets).

410-122-0700, Negative Pressure Wound Therapy Pumps: Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor.

410-122-0720, Pediatric Wheelchairs: Updates reference to Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor. Changes Assistive Technology Practitioner (ATP) and Assistive Technology Supplier (ATS) to Assistive Technology Professional (ATP), the new designation as directed from Rehabilitation Engineering and Assistive Technology Society of North America (RESNA).

Other text is revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-122-0080
Conditions of Coverage, Limitations, Restrictions and Exclusions

(1) The Division of Medical Assistance Programs (DMAP) may pay for durable medical equipment, prosthetics, orthotics and medical supplies (DMEPOS) when the item meets all the criteria in this rule, including all of the following conditions. The item:

(a) Has been approved for marketing by the Food and Drug Administration (FDA) and is otherwise generally considered to be safe and effective for the purpose intended;

(b) Is reasonable and medically appropriate for the individual client;

(c) Is primarily and customarily used to serve a medical purpose;

(d) Is generally not useful to a person in the absence of illness or injury;

(e) Is appropriate for use in a client's home;

(f) Specifically, for durable medical equipment, can withstand repeated use; i.e., could normally be rented, and used by successive clients;

(g) Meets the coverage criteria as specified in this division and subject to service limitations of DMAP rules;

(h) Is requested in relation to a diagnosis and treatment pair that is above the funding line on the Prioritized List of Health Services, OAR 410-141-0520, consistent with treatment guidelines for the Prioritized List of Health Services, and not otherwise excluded under OAR 410-141-0500; and

(i) Is included in the OHP Client's benefit package of covered services.

(2) Conditions for Medicare-Medicaid Services:

(a) When Medicare is the primary payer for a covered service and when DMAP DMEPOS coverage criteria differs from Medicare coverage criteria, DMAP DMEPOS coverage criteria are waived, except as provided in subsection (b) of this section, and only if the item is requested in relation to a diagnosis and treatment pair that is above the funding line on the Prioritized List of Health Services, OAR 410-141-0520, consistent with treatment guidelines for the Prioritized List of Health Services, and not otherwise excluded under OAR 410-141-0500; and included in the OHP Client's benefit package of covered services;

(b) If Medicare is the primary payer and Medicare denies payment, an appeal to Medicare must be filed timely prior to submitting the claim to DMAP for payment. If Medicare denies payment based on failure to submit a timely appeal, DMAP may reduce any amount DMAP determines could have been paid by Medicare;

(c) If Medicare denies payment on appeal, DMAP will apply DMEPOS coverage criteria in this rule to determine whether the item or service is covered under the Oregon Health Plan.

(3) DMAP will not cover DMEPOS items when the item or the use of the item is:

(a) Not primarily medical in nature;

(b) For personal comfort or convenience of client or caregiver;

(c) A self-help device;

(d) Not therapeutic or diagnostic in nature;

(e) Used for precautionary reasons (e.g., pressure-reducing support surface for prevention of decubitus ulcers);

(f) Inappropriate for client use in the home (e.g., institutional equipment like an oscillating bed);

(g) For a purpose where the medical effectiveness is not supported by evidence-based clinical practice guidelines; or

(h) Reimbursed as part of the all-inclusive rate in a nursing facility, or as part of a home and community based care waiver service, or by any other public, community or third party resource.

(4) In addition to the particular requirements in this rule, particular coverage criteria, limitations and restrictions for durable medical equipment, prosthetics, orthotics and supplies are specified in the appropriate rule. To the extent that codes are identified in these rules or in fee schedules, the codes are provided as a mechanism to facilitate payment for covered items and supplies consistent with OAR 410-122-0186, but codes do not determine coverage. If prior authorization is required, the request must document that prior authorization was obtained in compliance with the rules in this division.

(5) DMEPOS providers must have documentation on file that supports coverage criteria are met.

(6) Billing records must demonstrate that the provider has not exceeded any limitations and restrictions in rule. DMAP may require additional claim information from the provider consistent with program integrity review processes.

(7) Documentation described in (4), (5) and (6) above must be made available to DMAP on request.

(8) To identify non-covered items at a code level, providers can refer to the DMAP fee schedule, subject to the limitation that fee schedules and codes do not determine coverage, and are solely provided as a mechanism to facilitate payment for covered services and supplies consistent with OAR 410-122-0186. If an item or supply is not covered for an OHP Client in accordance with these rules, there is no basis for payment regardless of whether there is a code for the item or supply on the fee schedule.

(9) Some benefit packages do not cover equipment and supplies (see OAR 410-120-1210 Medical Assistance Benefit Packages and Delivery System).

(10) Buy-ups are prohibited. Advanced Beneficiary Notices (ABN) constitute a buy-up and are prohibited. Refer to the DMAP General Rules (chapter 410 division 120) for specific language on buy-ups.

(11) Equipment purchased by DMAP for a client is the property of the client.

(12) Rental charges, starting with the initial date of service, regardless of payer, apply to the purchase price.

(13) A provider who supplies rented equipment is to continue furnishing the same item throughout the entire rental period, except under documented reasonable circumstances.

(14) Before renting, providers should consider purchase for long-term requirements.

(15) DMAP will not pay DMEPOS providers for medical supplies separately while a client is under a home health plan of care and covered home health care services.

(16) DMAP will not pay DMEPOS providers for medical supplies separately while a client is under a hospice plan of care where the supplies are included as part of the written plan of care and for which payment may otherwise be made by Medicare, DMAP or other carrier.

(17) The items listed in Table 122-0080 generally do not meet the requirements under DMEPOS rules for purchase, rent or repair of equipment or items. A request for equipment or an item on this list will not be granted until all criteria in this rule are met.

(18) See General Rules, OAR 410-120-1200 Excluded Services and Limitations for more information on general scope of coverage and limitations.

(19) **Table 122-0080**

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

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

Stats. Implemented: ORS 414.065

Hist.: AFS 3-1982, f. 1-20-82, ef. 2-1-82; AFS 6-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 24-1990(Temp), f. & cert. ef. 7-27-90; HR 6-1991, f. & cert. ef. 1-18-91, Renumbered from 461-024-0020; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 26-1994, f. & cert. ef. 7-1-94; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0180

Healthcare Common Procedure Coding System (HCPCS) Level II Coding

(1) The Healthcare Common Procedure Coding System (HCPCS) level II is a comprehensive and standardized system that classifies similar products that are medical in nature into categories for the purpose of efficient claims processing. For each alphanumeric HCPCS code, there is descriptive terminology that identifies a category of like items. These codes are used primarily for billing purposes. The Centers for Medicare and Medicaid Services (CMS) maintain and distribute HCPCS Level II Codes.

(2) HCPCS is a system for identifying items and services. It is not a methodology or system for making coverage or payment determinations. The existence of a code does not, of itself, determine coverage or non-coverage for an item or service. While these codes are used for billing purposes, decisions regarding the addition, deletion, or revision of HCPCS codes are made independently of the process for making coverage and payment determinations for medical services.

(3) The Division of Medical Assistance Programs (DMAP) uses the HCPCS Level II Code Set to ensure that claims are processed in an orderly and consistent manner.

(4) When requesting authorization and submitting claims, DMEPOS providers must use these codes to identify the items they are billing. The descriptor that is assigned to a code represents the definition of the items and services that can be billed using that code.

(5) This rule division may not contain all code updates needed to report medical services and supplies.

(6) For the most up-to-date information on code additions, changes, or deletions, refer to the fee schedule posted on the DMAP Web site.

(7) The DMAP fee schedule lists all of the current HCPCS codes in an alphanumeric index.

(8) Newly established temporary codes and effective dates for their use are also posted on the DMAP Web site at <http://www.oregon.gov/DHS/healthplan/data_pubs/feeschedule/main.shtml>.

(9) CMS updates permanent national codes annually on January 1st.

(10) CMS may add, change, or delete temporary national codes on a quarterly basis.

(11) The Medicare Pricing, Data Analysis and Coding (PDAC) contractor is responsible for assisting DMEPOS providers and manufacturers in determining which HCPCS code should be used to describe DMEPOS items.

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

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

Stats. Implemented: ORS 414.065

Hist.: AFS 6-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 7-1990, f. 3-30-89, cert. ef. 4-1-89, Renumbered from 461-024-0200; HR 13-1991, f. & cert. ef. 3-1-91, Renumbered from 410-122-0100; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 11-1998,

f. & cert. ef. 4-1-98; OMAP 12-1999(Temp), f. & cert. ef. 4-1-99 thru 9-1-99; OMAP 26-1999, f. & cert. ef. 6-4-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 54-2001(Temp), f. 10-31-01, cert. ef. 11-1-01 thru 4-15-02; OMAP 63-2001, f. 12-28-01, cert. ef. 1-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0186
Payment Methodology

(1) The Division of Medical Assistance Programs (DMAP) utilizes a payment methodology for covered durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) which is generally based on Medicare's fee schedule.

(2) Payment is calculated using the DMAP fee schedule amount, the manufacturer's suggested retail price (MSRP) or the actual charge submitted, whichever is lowest.

(3) DMAP reimburses for the lowest level of service, which meets medical appropriateness. See OAR 410-120-1280 Billing and 410-120-1340 Payment.

(4) Reimbursement for durable medical equipment, miscellaneous (E1399) and other wheelchair accessories (K0108) is capped as follows:

(a) E1399 — $5772.00;

(b) K0108 — $11,913.41.

(5) Reimbursement for codes E1399 and K0108 is determined as either:

(a) 80% of the Manufacturer's Suggested Retail Price (MSRP); or,

(b) If the MSRP is not available, the lowest amount of the following, plus 20 percent:

(A) Manufacturer's invoice; or

(B) Manufacturer's wholesale price; or

(C) Acquisition cost; or

(D) Manufacturer's bill to provider;

(c) If (5) (a) or (b) are not available, reimbursement will be the "estimated price" plus 20 percent. An "estimated price" is the price the provider expects the manufacturer to charge.

(6) When requesting prior authorization (PA) for items billed at or above $100, the DMEPOS provider:

(a) Must submit a copy of:

(A) The items from (5) (a-c) that will be used to bill; and,

(B) Name of the manufacturer, description of the item, including product name/model name and number and technical specifications;

(b) May be required to submit a picture of the item.

(7) The DMEPOS provider must submit verification for items billed with codes A4649 (surgical supply; miscellaneous), E1399 (durable medical equipment, miscellaneous) and K0108 (wheelchair component or accessory, not otherwise specified) when no specific Healthcare Common Procedure Coding System (HCPCS) code is available and an item category is not specified in Chapter 410, Division 122 rules. Verification can come from an organization such as the Medicare Pricing, Data Analysis and Coding (PDAC) contractor.

(8) DMAP may review items that exceed the maximum allowable/cap on a case-by-case basis. For these situations, the provider must submit the following documentation:

(a) Documentation that supports the client meets all of the coverage criteria for the less costly alternative; and,

(b) A comprehensive evaluation by a licensed clinician (who is not an employee of or otherwise paid by a provider) which clearly explains why the less costly alternative is not sufficient to meet the client's medical needs, and;

(c) The expected hours of usage per day, and;

(d) The expected outcome or change in client's condition.

(9) For codes A4649, E1399 and K0108 when $150.00 or less per each unit: (a) Only items that have received an official product review coding decision from an organization such as PDAC with codes A4649, E1399 or K0108 may be billed to DMAP. These products may be listed in the PDAC Durable Medical Equipment Coding System Guide (DMECS) DMEPOS Product Classification Lists;

(b) Subject to service limitations of DMAP rules;

(c) PA is not required.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0205
Respiratory Assist Devices

(1) As referenced in this policy, non-invasive positive pressure respiratory assistance (NPPRA) is the administration of positive air pressure, using a nasal and/or oral mask interface which creates a seal, avoiding the use of more invasive airway access (e.g., tracheostomy).

(2) Indications and Coverage — General:

(a) The "treating prescribing practitioner" must be one who is qualified by virtue of experience and training in non-invasive respiratory assistance, to order and monitor the use of respiratory assist devices (RAD);

(b) For the purpose of this policy, polysomnographic studies must be performed in a sleep study laboratory, and not in the home or in a mobile facility. The sleep study laboratory must comply with all applicable state regulatory requirements;

(c) For the purpose of this policy, arterial blood gas, sleep oximetry and polysomnographic studies may not be performed by a durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) provider. For purposes of this policy's coverage and payment guidelines, a DMEPOS provider is not considered a qualified provider or supplier of these tests;

(d) If there is discontinuation of usage of E0470 or E0471 device at any time, the provider is expected to ascertain this, and stop billing for the equipment and related accessories and supplies.

(3) Coverage criteria for E0470 and E0471 devices — Table 122-0205-1.

(4) Documentation:

(a) The following documentation must be submitted with the request for prior authorization (PA) and the original kept on file by the provider:

(A) An order for all equipment and accessories including the client's diagnosis, an ICD-9-CM code signed and dated by the treating prescribing practitioner;

(B) Summary of events from the polysomnogram, if required in this rule under the indications and coverage section or Table 122-0205-1;

(C) Arterial blood gas results, if required under the indications and coverage section or Table 122-0205-1;

(D) Sleep oximetry results, if required under the indications and coverage section or Table 122-0205-1;

(E) Treating prescribing practitioner statement regarding medical symptoms characteristic of sleep-associated hypoventilation, including, but not limited to daytime hypersomnolence, excessive fatigue, morning headache, cognitive dysfunction, and dyspnea;

(F) Other treatments that have been tried and failed. To be submitted in addition to the above at the fourth month review.

(b) A copy of the Evaluation of Respiratory Assist Device (DMAP 2461) completed and signed by the client, family member or caregiver;

(c) Clients currently using BiPapS and BiPap ST are not subject to the new criteria.

(5) **Table 122-0205-1**, Respiratory Assist Devices.

(6) **Table 122-0205-2**, Procedure Codes.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0208
Suction Pumps

(1) Indications and Limitations of Coverage:

(a) Use of a home model respiratory suction pump may be covered for a client who has difficulty raising and clearing secretions secondary to:

(A) Cancer or surgery of the throat or mouth; or

(B) Dysfunction of the swallowing muscles; or

(C) Unconsciousness or obtunded state; or

(D) Tracheostomy; or

(E) Neuromuscular conditions.

(b)When a respiratory suction pump (E0600) is covered, tracheal suction catheters are separately payable supplies. In most cases, in the home setting, sterile catheters are medically appropriate only for tracheostomy suctioning. Three suction catheters per day are covered for medically appropriate tracheostomy suctioning, unless additional documentation is provided. When a tracheal suction catheter is used in the oropharynx, which is not sterile, the catheter can be reused if properly cleansed and/or disinfected. In this situation, the medical appropriateness for more than three catheters per week requires additional documentation;

(c) Sterile saline solution (A4216, A4217) may be covered and separately payable when used to clear a suction catheter after tracheostomy suctioning. It is not usually medically appropriate for oropharyngeal suctioning. Saline used for tracheal lavage is not covered;

(d) Supplies (A4628) are covered and are separately payable when they are medically appropriate and used with a medically appropriate suction pump (E0600) in a covered setting;

(e) When a suction pump (E0600) is used for tracheal suctioning, other supplies (e.g., cups, basins, gloves, solutions, etc.) are included in the tracheal care kit code, A4625 (see OAR 410-122-0209 for details). When a suction pump is used for oropharyngeal suctioning, these other supplies are not medically appropriate;

(f) The suction device must be appropriate for home use without technical or professional supervision. Those using the suction apparatus must be sufficiently trained to adequately, appropriately and safely use the device.

(2) A client's medical record must reflect the need for the supplies dispensed and billed. The medical record must be kept on file by the DME provider and made available to the Division of Medical Assistance Programs (DMAP) upon request.

(3) A portable or stationary home model respiratory suction pump (E0600) is an electric aspirator designed for oropharyngeal and tracheal suction.

(4) A portable or stationary home model gastric suction pump (E2000) is an electric aspirator designed to remove gastrointestinal secretions.

(5) A tracheal suction catheter is a long, flexible catheter.

(6) An oropharyngeal catheter is a short, rigid (usually) plastic catheter of durable construction.

(7) Code E0600 must not be used for a suction pump used with gastrointestinal tubes.

(8) Code E2000 must be used for a suction pump used with gastrointestinal tubes.

(9) Providers should contact the Medicare Pricing, Data Analysis and Coding (PDAC) contractor for guidance on the correct coding of these items.

(10) When billing for quantities of supplies greater than those described in the policy as the usual maximum amounts, there must be clear documentation in the client's medical records corroborating the medical appropriateness for the higher utilization. DMAP may request copies of the client's medical records that corroborate the order and any additional documentation that pertains to the medical appropriateness of items and quantities billed.

(3) Table 122-0208, Suction Pumps.

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

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

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 76-2003, f. & cert. ef. 10-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0320

Manual Wheelchair Base

(1) Indications and Limitations of Coverage and/or Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a manual wheelchair when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADL); places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform a MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010, Definitions, for complete definition of MRADL;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for use of the manual wheelchair that is being requested;

(D) Use of a manual wheelchair will significantly improve the client's ability to move within the home to the areas customarily used for their MRADL so that the client can complete these MRADLs within a reasonable time frame;

(E) The client is willing to use the requested manual wheelchair in the home, and will use it on a regular basis in the home;

(F) The client has either:

(i) Sufficient upper extremity function and other physical and mental capabilities needed to safely self-propel the requested manual wheelchair in the home, during a typical day. Proper assessment of upper extremity function should consider limitations of strength, endurance, range of motion, coordination, presence of pain, and deformity or absence of one or both upper extremities; or

(ii) A caregiver who is available, willing, and able to provide assistance with the wheelchair;

(b) DMAP may authorize a manual wheelchair for any of the following situations, only when conditions of coverage as specified in (1) (a) of this rule are met:

(A) When the wheelchair can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a manual wheelchair will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a manual wheelchair may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive noncompliance, whether willing or involuntary, can be grounds for denial of manual wheelchair coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a manual wheelchair;

(B) For a purchase request, when a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement cost;

(C) When a covered, client-owned wheelchair is in need of repair, DMAP may pay for one month's rental of a wheelchair. (See OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing).

(c) DMAP does not reimburse for another wheelchair if the client has a medically appropriate wheelchair, regardless of payer;

(d) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting living quarters;

(e) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, and wheelchair gloves;

(f) Reimbursement for wheelchair codes includes all labor charges involved in the assembly of the wheelchair, as well as support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education, and ongoing assistance with the use of the wheelchair;

(g) DMAP may cover an adult tilt-in-space wheelchair (E1161) when a client meets all of the following conditions:

(A) A standard base with a reclining back option will not meet the client's needs;

(B) Is dependent for transfers;

(C) Spends a minimum of six hours a day in a wheelchair;

(D) The client's plan of care addresses the need to change position at frequent intervals and the client is not left in the tilt position most of the time; and

(E) Has one of the following:

(i) High risk of skin breakdown;

(ii) Poor postural control, especially of the head and trunk;

(iii) Hyper/hypotonia;

(iv) Need for frequent changes in position and has poor upright sitting;

(h) One month's rental for a manual adult tilt-in-space wheelchair (E1161) may be covered for a client residing in a nursing facility when all of the following conditions are met:

(A) The anticipated nursing facility length of stay is 30 days or less;

(B) The conditions of coverage for a manual tilt-in-space wheelchair as described in (1) (g) (A) (E) are met;

(C)The client is expected to have an ongoing need for this same wheelchair after discharge to the home setting;

(D) Coverage is limited to one month's rental;

(i) DMAP may cover a standard hemi (low seat) wheelchair (K0002) when a client requires a lower seat height (17" to 18") because of short stature or needing assistance to place his/her feet on the ground for propulsion;

(k) DMAP may cover a lightweight wheelchair (K0003) when a client:

(A) Cannot self-propel in a standard wheelchair using arms and/or legs; and

(B) Can and does self-propel in a lightweight wheelchair.

(j) High-strength lightweight wheelchair (K0004):

(A) DMAP may cover a high-strength lightweight wheelchair (K0004) when a client:

(i) Self-propels the wheelchair while engaging in frequent activities that cannot be performed in a standard or lightweight wheelchair; and/or

(ii) Requires a seat width, depth or height that cannot be accommodated in a standard, lightweight or hemi-wheelchair, and spends at least two hours per day in the wheelchair.

(B) If the expected duration of need is less than three months (e.g., post-operative recovery), a high-strength lightweight wheelchair is rarely medically appropriate;

(l) DMAP may cover an ultra-lightweight wheelchair (K0005) when a client has medical needs that require determination on a case-by-case basis;

(m) DMAP may cover a heavy-duty wheelchair (K0006) when a client weighs more than 250 pounds or has severe spasticity;

(n) DMAP may cover an extra heavy-duty wheelchair (K0007) when a client weighs more than 300 pounds;

(o) For a client residing in a nursing facility, an extra heavy-duty wheelchair (K0007) may only be covered when a client weighs more than 350 pounds;

(p) For more information on coverage criteria regarding repairs and maintenance, see 410-122-0184 Repairs, Maintenance, Replacement and Delivery;

(q) A manual wheelchair for use only outside the home is not covered.

(2) Coding Guidelines:

(a) Adult manual wheelchairs (K0001-K0007, K0009, E1161) have a seat width and a seat depth of 15" or greater;

(b) For codes K0001-K0007 and K0009, the wheels must be large enough and positioned so that the user can self-propel the wheelchair;

(c) In addition, specific codes are defined by the following characteristics:

(A) Adult tilt-in-space wheelchair (E1161):

(i) Ability to tilt the frame of the wheelchair greater than or equal to 45 degrees from horizontal while maintaining the same back-to-seat angle; and

(ii) Lifetime warranty on side frames and crossbraces.

(B) Standard wheelchair (K0001):

(i) Weight: Greater than 36 pounds; and

(ii) Seat height: 19" or greater; and

(iii) Weight capacity: 250 pounds or less.

(C) Standard hemi (low seat) wheelchair (K0002):

(i) Weight: Greater than 36 pounds; and

(ii) Seat height: Less than 19"; and

(iii) Weight capacity: 250 pounds or less.

(D) Lightweight wheelchair (K0003):

(i) Weight: 34-36 pounds; and

(ii) Weight capacity: 250 pounds or less.

(E) High strength, lightweight wheelchair (K0004):

(i) Weight: Less than 34 pounds; and

(ii) Lifetime warranty on side frames and crossbraces.

(F) Ultralightweight wheelchair (K0005):

(i) Weight: Less than 30 pounds;

(ii) Adjustable rear axle position; and

(iii) Lifetime warranty on side frames and crossbraces.

(G) Heavy duty wheelchair (K0006) has a weight capacity greater than 250 pounds;

(H) Extra heavy duty wheelchair (K0007) has a weight capacity greater than 300 pounds.

(d) Coverage of all adult manual wheelchairs includes the following features:

(A) Seat width: 15"-19";

(B) Seat depth: 15"-19";

(C) Arm style: Fixed, swingaway, or detachable, fixed height;

(D) Footrests: Fixed, swingaway, or detachable.

(e) Codes K0003-K0007 and E1161 include any seat height;

(f) For individualized wheelchair features that are medically appropriate to meet the needs of a particular client, use the correct codes for the wheelchair base, options and accessories (see 410-122-0340 Wheelchair Options/Accessories);

(g) For wheelchair frames that are modified in a unique way to accommodate the client, submit the code for the wheelchair base used and submit the modification with code K0108 (wheelchair component or accessory, not otherwise specified);

(h) Wheelchair "poundage" (pounds) represents the weight of the usual configuration of the wheelchair with a seat and back, but without front riggings;

(i) A manual wheelchair with a seat width and/or depth of 14" or less is considered a pediatric size wheelchair and is billed with codes E1231-E1238 or E1229 (see 410-122-0720 Pediatric Wheelchairs) unless determination by the Medicare Pricing, Data Analysis and Coding (PDAC) contractor for the wheelchair is otherwise indicated;

(j) For more information on other features included in the allowance for the wheelchair base, see 410-122-0340 Wheelchair Options/Accessories;

(k) Contact PDAC regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements:

(a) Functional Mobility Evaluation:

(A) Providers must submit medical documentation that supports conditions of coverage in this rule are met for purchase and modifications of all covered, client-owned manual wheelchairs except for K0001, K0002, or K0003 (unless modifications are required).

(B) Information must include, but is not limited to:

(i) Medical justification, needs assessment, order, and specifications for the wheelchair, completed by a physical therapist (PT), occupational therapist (OT), treating physician or nurse practitioner. The person who provides this information must have no direct or indirect financial relationship, agreement or contract with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider requesting authorization; and

(ii) Client identification and rehab technology supplier identification information which may be completed by the DMEPOS provider; and

(iii) Signature and date by the treating physician or nurse practitioner and the PT or OT.

(C) If the information on this form includes all the elements of an order, the provider may submit the completed form in lieu of an order;

(b) Additional documentation:

(A) Information from a PT, OT, treating physician or nurse practitioner that specifically indicates:

(i) The client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(B) Pertinent information from a PT, OT, treating physician or nurse practitioner about the following elements that support coverage criteria are met for a manual wheelchair; only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, manual wheelchair, power-operated vehicle (POV), or power wheelchair and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs, or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and a manual wheelchair or power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Documentation from a PT, OT, treating physician or nurse practitioner that clearly distinguishes the client's abilities and needs within the home from any additional needs for use outside the home since DMAP determines coverage of a wheelchair solely by the client's mobility needs within the home, even though a client who qualifies for coverage of a manual wheelchair may use the wheelchair outside the home; and

(D) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options; and

(E) Detailed information about client-owned equipment (including serial numbers), as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable; and

(F) For the home assessment, prior to delivery of the wheelchair, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a wheelchair. This assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc.; and

(G) All HCPCS codes, including the base, options and accessories, whether prior authorization (PA) is required or not, that will be separately billed;

(c) A written order by the treating physician or nurse practitioner, identifying the specific type of manual wheelchair needed. If the order does not specify the type requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific manual wheelchair that is being ordered and any options and accessories requested. The DMEPOS provider may enter the items on this order. This order must be signed and dated by the treating physician or nurse practitioner, received by the DMEPOS provider and submitted to the authorizing authority;

(d) For purchase of K0001, K0002 or K0003 (without modifications), send documentation listed in (3) (b)(A-E);

(e) For an ultralight wheelchair (K0005), documentation from a PT, OT, treating physician or nurse practitioner that includes a description of the client's mobility needs within the home, even though a client who qualifies for coverage of a manual wheelchair may use the wheelchair outside the home. This may include what types of activities the client frequently encounters and whether the client is fully independent in the use of the wheelchair. Describe the features of the K0005 base which are needed compared to the K0004 base;

(f) When code K0009 is requested, send all information from a PT, OT, treating physician or nurse practitioner that justifies the medical appropriateness for the item;

(g) Any additional documentation that supports indications of coverage are met as specified in this policy;

(h) For a manual wheelchair rental, submit all of the following:

(A) A written order from the treating physician or nurse practitioner, identifying the specific type of manual wheelchair needed:

(i) If the order does not specify the type of wheelchair requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific manual wheelchair that is being ordered and any options and accessories requested;

(ii) The DMEPOS provider may enter the items on this order;

(iii) This order must be signed and dated by the treating physician or nurse practitioner, received by the DMEPOS provider and submitted to the authorizing authority;

(B) HCPCS codes;

(C) Documentation from the DMEPOS provider which supports that the client's home can accommodate and allow for the effective use of the requested wheelchair;

(i) All documentation listed in section (3) of this rule must be kept on file by the DMEPOS provider;

(j) Documentation that coverage criteria have been met must be present in the client's medical records and this documentation must be made available to DMAP on request.

(4) Table 122-0320 – Manual Wheelchair Base.

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

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

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 18-1994(Temp), f. & cert. ef. 4-1-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0325

Motorized/Power Wheelchair Base

(1) Indications and limitations of coverage and medical appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a power wheelchair (PWC) (K0813-K0816, K0820-K0829, K0835-K0843, K0848-K0864, K0898) when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADLs); places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform an MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010, Definitions, for complete definition of MRADLs;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client does not have sufficient upper extremity function to self-propel an optimally-configured manual wheelchair in the home to perform MRADLs during a typical day;

(i) Assessment of upper extremity function should consider limitations of strength, endurance, range of motion or coordination, presence of pain, and deformity or absence of one or both upper extremities;

(ii) An optimally-configured manual wheelchair is one with an appropriate wheelbase, device weight, seating options, and other appropriate non-powered accessories;

(D) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for the operation of the PWC that is being requested;

(E) Use of a PWC will significantly improve the client's ability to move within the home to the areas customarily used for their MRADLs to allow completion of these activities within a reasonable time frame;

(F) The client is willing to use the requested PWC in the home, and the client will use it on a regular basis in the home;

(G) The client has either:

(i) Strength, postural stability, or other physical or mental capabilities insufficient to safely operate a power-operated vehicle (POV) in the home; or

(ii) Living quarters that do not provide adequate access between rooms, maneuvering space, and surfaces for the operation of a POV with a small turning radius;

(H) The client has either:

(i) Sufficient mental and physical capabilities to safely operate the PWC that is being requested; or

(ii) A caregiver who is unable to adequately propel an optimally configured manual wheelchair, but is available, willing, and able to safely operate the PWC that is being requested;

(I) The client's weight is less than or equal to the weight capacity of the PWC that is being requested;

(b) Only when conditions of coverage as specified in (1) (a) of this rule are met, may DMAP authorize a PWC for any of the following situations:

(A) When the PWC can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits, and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a PWC will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a PWC may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive noncompliance, whether willing or involuntary, can be grounds for denial of PWC coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a PWC;

(B) When a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement costs;

(C) When a covered client-owned wheelchair is in need of repair, DMAP may pay for one month's rental of a wheelchair (see OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing);

(c) For a PWC to be covered, the treating physician or nurse practitioner must conduct a face-to-face examination of the client before writing the order and the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider must receive a written report of this examination within 45 days after the face-to-face examination and prior to delivery of the device;

(A) When this examination is performed during a hospital or nursing facility stay, the DMEPOS provider must receive the report of the examination within 45 days after date of discharge;

(B) The physician or nurse practitioner may refer the client to a licensed/certified medical professional, such as a physical therapist (PT) or occupational therapist (OT), to perform part of this face-to-face examination. This person may not be an employee of the DMEPOS provider or have any direct or indirect financial relationship, agreement or contract with the DMEPOS provider. When the DMEPOS provider is owned by a hospital, a PT/OT working in the inpatient or outpatient hospital setting may perform part of the face-to-face examination;

(i) If the client was referred to the PT/OT before being seen by the physician or nurse practitioner, then once the physician or nurse practitioner has received and reviewed the written report of this examination, the physician or nurse practitioner must see the client and perform any additional examination that is needed. The physician's or nurse practitioner's report of the visit should state concurrence or any disagreement with the

PT/OT examination. In this situation, the physician or nurse practitioner must provide the DMEPOS provider with a copy of both examinations within 45 days of the face-to-face examination with the physician or nurse practitioner;

(ii) If the physician or nurse practitioner examined the client before referring the client to a PT/OT, then again in person after receiving the report of the PT/OT examination, the 45-day period begins on the date of that second physician or nurse practitioner visit. However, it is also acceptable for the physician or nurse practitioner to review the written report of the PT/OT examination, to sign and date that report, and to state concurrence or any disagreement with that examination. In this situation, the physician or nurse practitioner must send a copy of the note from his/her initial visit to evaluate the client plus the annotated, signed, and dated copy of the PT/OT examination to the DMEPOS provider. The 45-day period begins when the physician or nurse practitioner signs and dates the PT/OT examination;

(iii) If the PWC is a replacement of a similar item that was previously covered by DMAP or when only PWC accessories are being ordered and all other coverage criteria in this rule are met, a face-to-face examination is not required;

(d) DMAP does not reimburse for another chair if a client has a medically appropriate wheelchair, regardless of payer;

(e) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting the living quarters;

(f) The equipment must be supplied by a DMEPOS provider that employs a Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)-certified Assistive Technology Professional (ATP) who specializes in wheelchairs and who has direct, in-person involvement in the wheelchair selection for the client;

(g) Reimbursement for wheelchair codes include all labor charges involved in the assembly of the wheelchair and all covered additions or modifications. Reimbursement also includes support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education and on-going assistance with use of the wheelchair;

(h) The delivery of the PWC must be within 120 days following completion of the face-to-face examination;

(i) A PWC may not be ordered by a podiatrist;

(j) The following services are not covered:

(i) A PWC for use only outside the home;

(ii) A PWC with a captain's chair for a client who needs a separate wheelchair seat and/or back cushion;

(iii) Items or upgrades that primarily allow performance of leisure or recreational activities including but not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, wheelchair gloves, head lights, and tail lights;

(iv) Power mobility devices, not coded by the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) or does not meet criteria (K0899);

(v) Power wheelchairs, group 4 (K0868-K0871, K0877-K0880, K0884-K0886);

(vi) Power wheelchairs, not otherwise classified (K0898);

(vii) Seat elevator PWCs (K0830, K0831).

(2) Coding Guidelines:

(a) Specific types of PWCs:

(A) A Group 1 PWC (K0813-K0816) or a Group 2 Heavy Duty (HD), Very Heavy Duty (VHD), or Extra Heavy Duty (EHD) wheelchair (K0824-K0829) may be covered when the coverage criteria for a PWC are met;

(B) A Group 2 Standard PWC with a sling/solid seat (K0820, K0822) may be covered when:

(i) The coverage criteria for a PWC are met; and

(ii) The client is using a skin protection and/or positioning seat and/or back cushion that meets the coverage criteria defined in Wheelchair Options/Accessories, 410-122-0340;

(C) A Group 2 Single Power Option PWC (K0835 – K0840) may be covered when the coverage criteria for a PWC are met; and

(i) The client either:

(I) Requires a drive control interface other than a hand or chin-operated standard proportional joystick (examples include but are not limited to head control, sip and puff, switch control); or

(II) Meets the coverage criteria for a power tilt or recline seating system (see Wheelchair Options/Accessories, 410-122-0340) and the system is being used on the wheelchair; and

(ii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT or OT, nurse practitioner or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical appropriateness for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, nurse practitioner or physician may have no financial relationship with the DMEPOS provider;

(D) A Group 2 Multiple Power Option PWC (K0841-K0843) may be covered when the coverage criteria for a PWC are met; and

(i) The client either:

(I) Meets the coverage criteria for a power tilt or recline seating system with three or more actuators (see Wheelchair Options/Accessories, 410-122-0340); or

(II) Uses a ventilator which is mounted on the wheelchair; and

(ii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT, OT, nurse practitioner or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical appropriateness for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, nurse practitioner or physician may have no financial relationship with the DMEPOS provider;

(E) A Group 3 PWC with no power options (K0848-K0855) may be covered when:

(i) The coverage criteria for a PWC are met; and

(ii) The client's mobility limitation is due to a neurological condition, myopathy or congenital skeletal deformity; and

(iii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT or OT, or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical necessity for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, physician or nurse practitioner may have no financial relationship with the DMEPOS provider;

(F) A Group 3 PWC with Single Power Option (K0856-K0860) or with Multiple Power Options (K0861-K0864) may be covered when:

(i) The Group 3 criteria (2)(a)(E) (i-ii) are met; and

(ii) The Group 2 Single Power Option (2)(a)(C)(i)(I) or (II) and (2)(a)(C)(ii) or Multiple Power Options (2)(a)(D)(i)(I) or (II) and (2)(a)(D)(ii) (respectively) are met;

(b) PWC Basic Equipment Package: Each PWC code is required to include the following items on initial issue (i.e., no separate billing/payment at the time of initial issue, unless otherwise noted):

(A) Lap belt or safety belt (E0978);

(B) Battery charger single mode (E2366);

(C) Complete set of tires and casters any type (K0090, K0091, K0092, K0093, K0094, K0095, K0096, K0097, K0099);

(D) Legrests. There is no separate billing/payment if fixed or swingaway detachable non-elevating legrests with/without calf pad (K0051, K0052, E0995) are provided. Elevating legrests may be billed separately;

(E) Fixed/swingaway detachable footrests with/without angle adjustment footplate/platform (K0037, K0040, K0041, K0042, K0043, K0044, K0045, K0052);

(F) K0040 may be billed separately with K0848 through K0864;(G) Armrests. There is no separate billing/ payment if fixed/swingaway detachable non-adjustable armrests with arm pad (K0015, K0019, K0020) are provided. Adjustable height armrests may be billed separately;

(H) Upholstery for seat and back of proper strength and type for patient weight capacity of the power wheelchair (E0981, E0982);

(I) Weight specific components per patient weight capacity;

(J) Controller and Input Device: There is no separate billing/payment if a non-expandable controller and proportional input device (integrated or remote) is provided. If a code specifies an expandable controller as on option (but not a requirement) at the time of initial issue, it may be separately billed;

(c) If a client needs a seat and/or back cushion but does not meet coverage criteria for a skin protection and/or positioning cushion, it may be appropriate to request a captain's chair seat rather than a sling/solid seat/back and a separate general use seat and/or back cushion;

(d) A PWC with a seat width or depth of 14" or less is considered a pediatric PWC base and is coded E1239, PWC, pediatric size, not otherwise specified (see OAR 410-122-0720 Pediatric Wheelchairs);

(e) Contact the the Medicare Pricing, Data Analysis and Coding (PDAC) contractor regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements: Submit all of the following documentation with the prior authorization (PA) request:

(a) A copy of the written report of the face-to-face examination of the client by the physician or nurse practitioner:

(A) This report must include information related to the following:

(i) This client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(iii) Why a manual wheelchair can't meet this client's mobility needs in the home;

(iv) Why a POV/scooter can't meet this client's mobility needs in the home;

(v) This client's physical and mental abilities to operate a PWC safely in the home;

(I) Besides a mobility limitation, if other conditions exist that limit a client's ability to participate in activities of daily living (ADLs), how these conditions will be ameliorated or compensated by use of the wheelchair;

(II) How these other conditions will be ameliorated or compensated sufficiently such that the additional provision of mobility assistive equipment (MAE) will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home.

(B) The face-to-face examination should provide pertinent information about the following elements, but may include other details. Only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, manual wheelchair, POV, or PWC and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment – any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Although a client who qualifies for coverage of a PWC may use that device outside the home, because the DMAP coverage of a wheelchair is determined solely by the client's mobility needs within the home, the examination must clearly distinguish the client's abilities and needs within the home from any additional needs for use outside the home;

(b) The physician's or nurse practitioner's written order, received by the DMEPOS provider within 45 days (date stamp or equivalent must be used to document receipt date) after the physician's or nurse practitioner's face-to-face examination. The order must include all of the following elements:

(A) Client's name;

(B) Description of the item that is ordered. This may be general – e.g., "power wheelchair" or "power mobility device"– or may be more specific;

(i) If this order does not identify the specific type of PWC that is being requested, the DMEPOS provider must clarify this by obtaining another written order which lists the specific PWC that is being ordered and any options and accessories requested.

(ii) The items on this clarifying order may be entered by the DMEPOS provider. This subsequent order must be signed and dated by the treating physician or nurse practitioner, received by the DMEPOS provider and submitted to the authorizing authority, but does not have to be received within 45 days following the face-to-face examination;

(C) Date of the face-to-face examination;

(D) Pertinent diagnoses/conditions and diagnosis codes that relate specifically to the need for the PWC;

(E) Length of need;

(F) Physician's or nurse practitioner's signature;

(G) Date of physician's or nurse practitioner's signature;

(c) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options;

(d) Detailed information about client-owned equipment (including serial numbers) as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable;

(e) For the home assessment, prior to or at the time of delivery of a PWC, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a PWC. Assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc; and

(f) A written document (termed a detailed product description) prepared by the DMEPOS provider and signed and dated by the physician or nurse practitioner that includes:

(i) The specific base (HCPCS code and manufacturer name/model) and all options and accessories (including HCPCS codes), whether PA is required or not, that will be separately billed;

(ii) The DMEPOS provider's charge and the DMAP fee schedule allowance for each separately billed item;

(iii) If there is no DMAP fee schedule allowance, the DMEPOS provider must enter "not applicable";

(iv)The DMEPOS provider must receive the signed and dated detailed product description from the physician or nurse practitioner prior to delivery of the PWC;

(v) A date stamp or equivalent must be used to document receipt date of the detailed product description; and

(g) Any additional documentation that supports indications of coverage are met as specified in this rule;

(h) The DMEPOS provider must keep the above documentation on file;

(i) Documentation that the coverage criteria have been met must be present in the client's medical records and made available to DMAP on request.

(4) Prior Authorization:

(a) All codes in this rule required PA and may be purchased, rented and repaired;

(b) See the DMAP fee schedule for more information;

(c) Codes specified in this rule are not covered for clients residing in nursing facilities;

(d) Rented equipment is considered purchased when the client has used the equipment for 13 months, when the provider's actual charge for purchase is met, when the manufacturer's suggested retail price (MSRP) is met or when the DMAP fee schedule allowable for purchase is met, whichever is the lowest;

(e) For PWCs furnished on a rental basis with dates of services prior to November 15, 2006, use codes K0010, K0011, K0012 and K0014 as appropriate.

(5) Table 122-0325.

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

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

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Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0340

Wheelchair Options/Accessories

(1) Indications and limitations of coverage and medical appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover options and accessories for covered wheelchairs when the following criteria are met:

(A) The client has a wheelchair that meets DMAP coverage criteria; and

(B) The client requires the options/accessories to accomplish their mobility-related activities of daily living (MRADLs) in the home. See 410-122-0010, Definitions, for definition of MRADLs;

(b) DMAP does not cover options/accessories whose primary benefit is allowing the client to perform leisure or recreational activities;

(c) Arm of Chair:

(A) Adjustable arm height option (E0973, K0017, K0018, K0020) may be covered when the client:

(i) Requires an arm height that is different than what is available using nonadjustable arms; and

(ii) Spends at least two hours per day in the wheelchair;

(B) An arm trough (E2209) is covered if the client has quadriplegia, hemiplegia, or uncontrolled arm movements;

(d) Foot rest/Leg rest:

(A) Elevating leg rests (E0990, K0046, K0047, K0053, K0195) may be covered when:

(i) The client has a musculoskeletal condition or the presence of a cast or brace which prevents 90 degree flexion at the knee; or

(ii) The client has significant edema of the lower extremities that requires having an elevating leg rest; or

(iii) The client meets the criteria for and has a reclining back on the wheelchair;

(B) Elevating leg rests that are used with a wheelchair that is purchased or owned by the patient are coded E0990. This code is per leg rest;

(C) Elevating leg rests that are used with a capped rental wheelchair base should be coded K0195. This code is per pair of leg rests;

(e) Nonstandard Seat Frame Dimensions:

(A) For all adult wheelchairs, DMAP includes payment for seat widths and/or seat depths of 15-19 inches in the payment for the base code. These seat dimensions must not be separately billed;

(B) Codes E2201-E2204 and E2340-E2343 describe seat widths and/or depths of 20 inches or more for manual or power wheelchairs;

(C) A nonstandard seat width and/or depth (E2201-E2204 and E2340-E2343) is covered only if the patient's dimensions justify the need;

(f) Rear Wheels for Manual Wheelchairs: Code K0064 (flat free insert) is used to describe either:

(A) A removable ring of firm material that is placed inside of a pneumatic tire to allow the wheelchair to continue to move if the pneumatic tire is punctured; or

(B) Non-removable foam material in a foam filled rubber tire;

(C) K0064 is not used for a solid self-skinning polyurethane tire;

(g) Batteries/Chargers:

(A) Up to two batteries (E2360-E2365) at any one time are allowed if required for a power wheelchair;

(B) Batteries/chargers for motorized/power wheelchairs are separately payable from the purchased wheelchair base;

(h) Seating:

(A) DMAP may cover a general use seat cushion and a general-use wheelchair back-cushion for a client whose wheelchair that meets DMAP coverage criteria;

(B) A skin protection seat cushion may be covered for a client who meets both of the following criteria:

(i) The client has a wheelchair that meets DMAP coverage criteria; and

(ii) The client has either of the following:

(I) Current pressure ulcer or past history of a pressure ulcer on the area of contact with the seating surface; or

(II) Absent or impaired sensation in the area of contact with the seating surface or inability to carry out a functional weight shift due to one of the following diagnoses: spinal cord injury resulting in quadriplegia or paraplegia, other spinal cord disease, multiple sclerosis, other demyelinating disease, cerebral palsy, anterior horn cell diseases including amyotrophic lateral sclerosis), post polio paralysis, traumatic brain injury resulting in quadriplegia, spina bifida, childhood cerebral degeneration, Alzheimer's disease, Parkinson's disease;

(C) A positioning seat cushion, positioning back cushion, and positioning accessory (E0955-E0957, E0960) may be covered for a client who meets both of the following criteria:

(i) The client has a wheelchair that meets DMAP coverage criteria; and

(ii) The client has any significant postural asymmetries due to one of the diagnoses listed in criterion (h) (B)(ii)(II) or to one of the following diagnoses: monoplegia of the lower limb; hemiplegia due to stroke, traumatic brain injury, or other etiology; muscular dystrophy; torsion dystonias; spinocerebellar disease;

(D) A combination skin protection and positioning seat cushion may be covered when a client meets the criteria for both a skin protection seat cushion and a positioning seat cushion;

(E) Separate payment is allowed for a seat cushion solid support base (E2231) with mounting hardware when it is used on an adult manual wheelchair (K0001-K0009, E1161);

(F) There is no separate payment for a solid insert (E0992) that is used with a seat or back cushion because a solid base is included in the allowance for a wheelchair seat or back cushion;

(G) There is no separate payment for mounting hardware for a seat or back cushion;

(H)There is no separate payment for a headrest (E0955, E0966) on a captain's seat on a power wheelchair;

(I) A custom fabricated seat cushion (E2609) and a custom fabricated back cushion (E2617) are cushions that are individually made for a specific patient:

(i) Basic materials include liquid foam or a block of foam and sheets of fabric or liquid coating material:

(I) A custom fabricated cushion may include certain prefabricated components (e.g., gel or multi-cellular air inserts); these components must not be billed separately;

(II) The cushion must have a removable vapor permeable or waterproof cover or it must have a waterproof surface;

(ii) The cushion must be fabricated using molded-to-patient-model technique, direct molded-to-patient technique, CAD-CAM technology, or detailed measurements of the patient used to create a configured cushion:

(I) If foam-in-place or other material is used to fit a substantially prefabricated cushion to an individual client, the cushion must be billed as a prefabricated cushion, not custom fabricated;

(II) The cushion must have structural features that significantly exceed the minimum requirements for a seat or back positioning cushion;

(iii) If a custom fabricated seat and back are integrated into a one-piece cushion, code as E2609 plus E2617;

(J) A custom fabricated seat cushion may be covered if criteria (i) and (iii) are met. A custom fabricated back cushion may be covered if criteria (ii) and (iii) are met:

(i) Client meets all of the criteria for a prefabricated skin protection seat cushion or positioning seat cushion;

(ii) Client meets all of the criteria for a prefabricated positioning back cushion;

(iii) There is a comprehensive written evaluation by a licensed clinician (who is not an employee of or otherwise paid by a durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider) which clearly explains why a prefabricated seating system is not sufficient to meet the client's seating and positioning needs;

(K) A prefabricated seat cushion, a prefabricated positioning back cushion, or a brand name custom fabricated seat or back cushion which has not received a written coding verification as published by the Pricing, Data Analysis and Coding (PDAC) contractor by the Centers for Medicare and Medicaid Services;

or which does not meet the criteria stated in this rule is not covered;

(L) A headrest extension (E0966) is a sling support for the head. Code E0955 describes any type of cushioned headrest;

(M) The code for a seat or back cushion includes any rigid or semi-rigid base or posterior panel, respectively, that is an integral part of the cushion;

(N) A solid insert (E0992) is a separate rigid piece of wood or plastic which is inserted in the cover of a cushion to provide additional support and is included in the allowance for a seat cushion;

(O) A solid support base for a seat cushion is a rigid piece of plastic or other material that is attached with hardware to the seat frame of a wheelchair in place of a sling seat. A cushion is placed on top of the support base. Use code E2231 for this solid support base;

(i) DMAP will only cover accessories billed under the following codes when PDAC has made written confirmation of use of the code for the specific product(s) being billed: E2601-E2608, E2611-E2616, E2620, E2621; E2609 and E2617 (brand-name products), K0108 (for wheelchair cushions):

(A) Information concerning the documentation that must be submitted to PDAC for a Coding Verification Request can be found on the PDAC Web site or by contacting PDAC;

(B) A Product Classification List with products that have received a coding verification can be found on the PDAC Web site;

(j) Code E1028 (swingaway or removable mounting hardware upgrade) may be billed in addition to codes E0955-E0957. It must not be billed in addition to code E0960. It must not be used for mounting hardware related to a wheelchair seat cushion or back cushion code;

(k) Power seating systems:

(A) A power-tilt seating system (E1002):

(i) Includes all the following:

(I) A solid seat platform and a solid back; any frame width and depth;

(II) Detachable or flip-up fixed height or adjustable height armrests;

(III) Fixed or swingaway detachable leg rests;

(IV) Fixed or flip-up footplates;

(V) Motor and related electronics with or without variable speed programmability;

(VI) Switch control that is independent of the power wheelchair drive control interface;

(VII) Any hardware that is needed to attach the seating system to the wheelchair base;

(ii) It does not include a headrest;

(iii) It must have the following features:

(I) Ability to tilt to greater than or equal to 45 degrees from horizontal;

(II) Back height of at least 20 inches;

(III) Ability for the supplier to adjust the seat to back angle;

(IV) Ability to support patient weight of at least 250 pounds.

(B) A power recline seating system (E1003-E1005):

(i) Includes all the following:

(I) A solid seat platform and a solid back;

(II) Any frame width and depth;

(III) Detachable or flip-up fixed height or adjustable height arm rests;

(IV) Fixed or swingaway detachable leg rests;

(V) Fixed or flip-up footplates;

(VI) A motor and related electronics with or without variable speed programmability;

(VII) A switch control that is independent of the power wheelchair drive control interface;

(VIII) Any hardware that is needed to attach the seating system to the wheelchair base;

(ii) It does not include a headrest;

(iii) It must have the following features:

(I) Ability to recline to greater than or equal to 150 degrees from horizontal;

(II) Back height of at least 20 inches;

(III) Ability to support patient weight of at least 250 pounds.

(C) A power tilt and recline seating system (E1006-E1008):

(i) Includes the following:

(I) A solid seat platform and a solid back;

(II) Any frame width and depth; detachable or flip-up fixed height or adjustable height armrests;

(III) Fixed or swing-away detachable leg rests; fixed or flip-up footplates;

(IV) Two motors and related electronics with or without variable speed programmability;

(V) Switch control that is independent of the power wheelchair drive control interface;

(VI) Any hardware that is needed to attach the seating system to the wheelchair base;

(ii) It does not include a headrest;

(iii) It must have the following features:

(I) Ability to tilt to greater than or equal to 45 degrees from horizontal;

(II) Ability to recline to greater than or equal to 150 degrees from horizontal;

(III) Back height of at least 20 inches; ability to support patient weight of at least 250 pounds.

(D) A mechanical shear reduction feature (E1004 and E1007) consists of two separate back panels. As the posterior back panel reclines or raises, a mechanical linkage between the two panels allows the client's back to stay in contact with the anterior panel without sliding along that panel;

(E) A power shear reduction feature (E1005 and E1008) consists of two separate back panels. As the posterior back panel reclines or raises, a separate motor controls the linkage between the two panels and allows the client's back to stay in contact with the anterior panel without sliding along that panel;

(F) A power leg elevation feature (E1010) involves a dedicated motor and related electronics with or without variable speed programmability which allows the leg rest to be raised and lowered independently of the recline and/or tilt of the seating system. It includes a switch control which may or may not be integrated with the power tilt and/or recline control(s);

(l) Codes E2310 and E2311 (Power Wheelchair Accessory):

(A) Describe the electronic components that allow the client to control two or more of the following motors from a single interface (e.g., proportional joystick, touchpad, or non-proportional interface): power wheelchair drive, power tilt, power recline, power shear reduction, power leg elevation, power seat elevation, power standing;

(B) Include a function selection switch that allows the client to select the motor that is being controlled and an indicator feature to visually show which function has been selected;

(C) When the wheelchair drive function is selected the indicator feature may also show the direction that is selected (forward, reverse, left, right). This indicator feature may be in a separate display box or may be integrated into the wheelchair interface;

(D) Payment for the code includes an allowance for fixed mounting hardware for the control box and for the display box (if present);

(E) When a switch is medically appropriate and a client has adequate hand motor skills, a switch would be considered the least costly alternative;

(F) E2310 or E2311 may be considered for coverage when a client does not have hand motor skills or presents with cognitive deficits, contractures or limitation of movement patterns that prevents operation of a switch;

(G) In addition, an alternate switching system must be medically appropriate and not hand controlled (not running through a joystick);

(H) If a wheelchair has an electrical connection device described by code E2310 or E2311 and if the sole function of the connection is for a power seat elevation or power standing feature, it is not covered.

(m) Power Wheelchair Drive Control Systems:

(A) The term interface in the code narrative and definitions describes the mechanism for controlling the movement of a power wheelchair. Examples of interfaces include, but are not limited to, joystick, sip and puff, chin control, head control, etc;

(B) A proportional interface is one in which the direction and amount of movement by the client controls the direction and speed of the wheelchair. One example of a proportional interface is a standard joystick;

(C) A non-proportional interface is one that involves a number of switches. Selecting a particular switch determines the direction of the wheelchair, but the speed is pre-programmed. One example of a non-proportional interface is a sip-and-puff mechanism;

(D) The term controller describes the microprocessor and other related electronics that receive and interpret input from the joystick (or other drive control interface) and convert that input into power output to the motor and gears in the power wheelchair base;

(E) A switch is an electronic device that turns power to a particular function either "on" or "off". The external component of a switch may be either mechanical or non-mechanical. Mechanical switches involve physical contact in order to be activated. Examples of the external components of mechanical switches include, but are not limited to, toggle, button, ribbon, etc. Examples of the external components of non-mechanical switches include, but are not limited to, proximity, infrared, etc. Some of the codes include multiple switches. In those situations, each functional switch may have its own external component or multiple functional switches may be integrated into a single external switch component or multiple functional switches may be integrated into the wheelchair control interface without having a distinct external switch component;

(F) A stop switch allows for an emergency stop when a wheelchair with a non-proportional interface is operating in the latched mode. (Latched mode is when the wheelchair continues to move without the patient having to continually activate the interface.) This switch is sometimes referred to as a kill switch;

(G) A direction change switch allows the client to change the direction that is controlled by another separate switch or by a mechanical proportional head control interface. For example, it allows a switch to initiate forward movement one time and backward movement another time;

(H) A function selection switch allows the client to determine what operation is being controlled by the interface at any particular time. Operations may include, but are not limited to, drive forward, drive backward, tilt forward, recline backward, etc.;

(I) An integrated proportional joystick and controller is an electronics package in which a joystick and controller electronics are in a single box, which is mounted on the arm of the wheelchair;

(J) The interfaces described by codes E2320-E2322, E2325, and E2327-E2330 must have programmable control parameters for speed adjustment, tremor dampening, acceleration control, and braking;

(K) A remote joystick (E2320, E2321) is one in which the joystick is in one box that is mounted on the arm of the wheelchair and the controller electronics are located in a different box that is typically located under the seat of the wheelchair. These codes include remote joysticks that are used for hand control as well as joysticks that are used for chin control. Code E2320 includes any type of proportional remote joystick stick including, but not limited to standard, mini-proportional, compact, and short throw remote joysticks;

(L) When code E2320 or E2321 is used for a chin control interface, the chin cup is billed separately with code E2324;

(M) Code E2320 also describes a touchpad that is an interface similar to the pad-type mouse found on portable computers;

(N) Code E2322 describes a system of 3-5 mechanical switches that are activated by the client touching the switch. The switch that is selected determines the direction of the wheelchair. A mechanical stop switch and a mechanical direction change switch, if provided, are included in the allowance for the code;

(O) Code E2323 includes prefabricated joystick handles that have shapes other than a straight stick – e.g., U shape or T shape – or that have some other nonstandard feature – e.g., flexible shaft;

(P) A sip and puff interface (E2325) is a non-proportional interface in which the client holds a tube in their mouth and controls the wheelchair by either sucking in (sip) or blowing out (puff). A mechanical stop switch is included in the allowance for the code. E2325 does not include the breath tube kit that is described by code E2326;

(Q) A proportional, mechanical head control interface (E2327) is one in which a headrest is attached to a joystick-like device. The direction and amount of movement of the client's head pressing on the headrest control the direction and speed of the wheelchair. A mechanical direction control switch is included in the code;

(R) A proportional, electronic head control interface (E2328) is one in which a client's head movements are sensed by a box placed behind the client's head.

The direction and amount of movement of the client's head (which does not come in contact with the box) control the direction and speed of the wheelchair. A proportional, electronic extremity control interface (E2328) is one in which the direction and amount of movement of the client's arm or leg control the direction and speed of the wheelchair;

(S) A non-proportional, contact switch head control interface (E2329) is one in which a client activates one of three mechanical switches placed around the back and sides of their head. These switches are activated by pressure of the head against the switch. The switch that is selected determines the direction of the wheelchair. A mechanical stop switch and a mechanical direction change switch are included in the allowance for the code;

(T) A non-proportional, proximity switch head control interface (E2330) is one in which a client activates one of three switches placed around the back and sides of their head. These switches are activated by movement of the head toward the switch, though the head does not touch the switch. The switch that is selected determines the direction of the wheelchair. A mechanical stop switch and a mechanical direction change switch are included in the allowance for the code;

(U) Code E2399 (not otherwise classified interface) is appropriately used in the following situations:

(i) An integrated proportional joystick and controller box are being replaced due to damage; or

(ii) The item being replaced is a remote joystick box only (without the controller); or

(iii) The item being replaced is another type of interface, e.g. sip and puff, head control without the controller); or

(iv) The item being replaced is the controller box only (without the remote joystick or other type of interface); or

(v) There is no specific E code that describes the type of drive control interface system that is provided. In this situation, E2399 would be used at the time of initial issue or if the item was being provided as a replacement;

(V) The KC modifier (replacement of special power wheelchair interface):

(i) Is used in the following situations:

(I) Due to a change in the client's condition an integrated joystick and controller is being replaced by another drive control interface – e.g., remote joystick, head control, sip and puff, etc.; or

(II) The client has a drive control interface described by codes E2320-E2322, E2325, or E2327-E2330 and both the interface (e.g., joystick, head control, sip and puff) and the controller electronics are being replaced due to irreparable damage;

(ii) The KC modifier is never used at the time of initial issue of a wheelchair;

(iii) The KC modifier specifically states replacement, therefore, the RP modifier is not required. The KC modifier is not used when billing code E2399;

(n) Other Power Wheelchair Accessories: An electronic interface (E2351) to allow a speech generating device to be operated by the power wheelchair control interface may be covered if the client has a covered speech generating device. (See Division 129, Speech-Language Pathology, Audiology and Hearing Aid Services.);

(o) Miscellaneous Accessories:

(A) Anti-rollback device (E0974) is covered if the client propels himself/herself and needs the device because of ramps;

(B) A safety belt/pelvic strap (E0978) is covered if the client has weak upper body muscles, upper body instability or muscle spasticity that requires use of this item for proper positioning;

(C) A shoulder harness/straps or chest strap (E0960) and a safety belt/pelvic strap (E0978) are covered only to treat a client's medical symptoms:

(i) A medical symptom is defined as an indication or characteristic of a physical or psychological condition;

(ii) E0960 and E0978 are not covered when intended for use as a physical restraint or for purposes intended for discipline or convenience of others;

(D) One example (not all-inclusive) of a covered indication for swing-away, retractable, or removable hardware (E1028) would be to move the component out of the way so that a client could perform a slide transfer to a chair or bed;

(E) A fully reclining back option (E1226) is covered if the client spends at least 2 hours per day in the wheelchair and has one or more of the following conditions/needs:

(i) Quadriplegia;

(ii) Fixed hip angle;

(iii) Trunk or lower extremity casts/braces that require the reclining back feature for positioning;

(iv) Excess extensor tone of the trunk muscles; and/or

(v) The need to rest in a recumbent position two or more times during the day and transfer between wheelchair and bed is very difficult.

(2) Documentation Requirements: Submit documentation that supports coverage criteria in this rule are met and the specified information as follows with the prior authorization (PA) request:

(a) When code K0108 is billed, a narrative description of the item, the manufacturer, the model name or number (if applicable), and information justifying the medical appropriateness for the item;

(b) Options/accessories for individual consideration might include documentation on the client's diagnosis, the client's abilities and limitations as they relate to the equipment (e.g., degree of independence/dependence, frequency and nature of the activities the client performs, etc.), the duration of the condition, the expected prognosis, past experience using similar equipment;

(c) For a custom-fabricated seat cushion:

(A) A comprehensive written evaluation by a licensed clinician (who is not an employee of or otherwise paid by a DMEPOS provider) which clearly explains why a prefabricated seating system is not sufficient to meet the client's seating and positioning needs, and;

(B) Diagnostic reports that support the medical condition;

(C) Dated and clear photographs;

(D) Body contour measurements;

(d) Documentation that the coverage criteria in this rule have been met must be present in the client's medical record. This documentation and any additional medical information from the DMEPOS provider must be made available to DMAP on request.

(3) **Table 122-0340 – 1**.

(4) **Table 122-0340 – 2**.

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

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

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 37-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0375
Walkers

(1) Indications and Limitations of Coverage:

(a) A standard walker (E0130, E0135, E0141, E0143) and related accessories are covered if both of the following criteria are met:

(A) When prescribed by a treating practitioner for a client with a medical condition impairing ambulation and there is a potential for increasing ambulation; and

(B) When there is a need for greater stability and security than provided by a cane or crutches;

(b) For an adult gait trainer, use the appropriate walker code. If a gait trainer has a feature described by one of the walker attachment codes (E0154-E0157), that code may be separately billed;

(c) A heavy duty walker (E0148, E0149) is covered for clients who meet coverage criteria for a standard walker and who weigh more than 300 pounds

(d) A heavy duty, multiple braking system, variable wheel resistance walker (E0147) is covered for clients who meet coverage criteria for a standard walker and who are unable to use a standard walker due to a severe neurologic disorder or other condition causing the restricted use of one hand;

(e) When a walker with an enclosed frame (E0144) is dispensed to a client, documentation must support why a standard folding wheeled walker, E0143, was not provided as the least costly medically appropriate alternative;

(f) Enhancement accessories of walkers are non-covered;

(g) Leg extensions (E0158) are covered only for patients six feet tall or more.

(2) Coding Guidelines:

(a) A wheeled walker (E0141, E0143, E0149) is one with either two, three or four wheels. It may be fixed height or adjustable height. It may or may not include glide-type brakes (or equivalent). The wheels may be fixed or swivel;

(b) A glide-type brake consists of a spring mechanism (or equivalent) which raises the leg post of the walker off the ground when the patient is not pushing down on the frame;

(c) Code E0144 describes a folding wheeled walker which has a frame that completely surrounds the patient and an attached seat in the back;

(d) A heavy duty walker (E0148, E0149) is one which is labeled as capable of supporting patients who weigh more than 300 pounds. It may be fixed height or adjustable height. It may be rigid or folding;

(e) Code E0147 describes a 4-wheeled, adjustable height, folding-walker that has all of the following characteristics:

(A) Capable of supporting patients who weigh greater than 350 pounds;

(B) Hand operated brakes that cause the wheels to lock when the hand levers are released;

(C) The hand brakes can be set so that either or both can lock both wheels;

(D) The pressure required to operate each hand brake is individually adjustable;

(E) There is an additional braking mechanism on the front crossbar;

(F) At least two wheels have brakes that can be independently set through tension adjustability to give varying resistance;

(f) The only walkers that may be billed using code E0147 are those products listed in the Product Classification List on the Medicare Pricing, Data Analysis and Coding (PDAC) contractor's web site;

(g) An enhancement accessory is one which does not contribute significantly to the therapeutic function of the walker. It may include, but is not limited to style, color, hand operated brakes (other than those described in code E0147), or basket (or equivalent);

(h) A4636, A4637, and E0159 are only used to bill for replacement items for covered, patient-owned walkers. Codes E0154, E0156, E0157, and E0158 can be used for accessories provided with the initial issue of a walker or for replacement components. Code E0155 can be used for replacements on covered, patient-owned wheeled walkers or when wheels are subsequently added to a covered, patient-owned non-wheeled walker (E0130, E0135). Code E0155 cannot be used for wheels provided at the time of, or within one month of, the initial issue of a non-wheeled walker;

(i) Hemi-walkers must be billed using code E0130 or E0135, not E1399;

(j) A gait trainer is a term used to describe certain devices that are used to support a client during ambulation;

(k) Column II code is included in the allowance for the corresponding Column I code when provided at the same time and must not be billed separately at the time of billing the Column I code:

(l) See attached Table 122-0375-1

(l) Providers should contact PDAC for guidance on the correct coding of these items.

(3) Documentation: An order for each item billed must be signed and dated by the treating practitioner, kept on file by the DMEPOS provider, and made available to the Division of Medical Assistance Programs (DMAP) upon request. The treating practitioner's records must contain information that supports the medical appropriateness of the item ordered, including height and weight.

(4) Table 122-0375-1 .

(5) Table 122-0375-2.

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

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

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0400

Pressure Reducing Support Surfaces

(1) Indications and limitations of coverage and medical appropriateness:

(a) Group 1 (A4640, E0180-E0182, E0184-E0189, and E0196-E0199):

(A) The Division of Medical Assistance Programs (DMAP) may cover a Group 1 support surface when the client meets:

(i) Criterion (I), or;

(ii) Criteria (II) or (III) and at least one of criteria (IV)-(VII):

(I) Completely immobile — i.e., client cannot make changes in body position without assistance;

(II) Limited mobility — i.e., client cannot independently make changes in body position significant enough to alleviate pressure;

(III) Any stage pressure ulcer on the trunk or pelvis;

(IV) Impaired nutritional status;

(V) Fecal or urinary incontinence;

(VI) Altered sensory perception;

(VII) Compromised circulatory status;

(B) The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) provider must provide a support surface in which the client does not "bottom out";

(C) DMAP does not cover foam overlays or mattresses without a waterproof cover, since these are not considered durable;

(D) DMAP does not cover pressure reducing support surfaces for the prevention of pressure ulcers or pain control;

(E) The allowable rental fee includes all equipment, supplies and services for the effective use of the pressure reducing support surface;

(b) Group 2 (E0193, E0277, and E0371-E0373):

(A) A Group 2 support surface may be covered for up to an initial three month rental period when the client meets:

(i) Criterion (I) and (II) and (III), or;

(ii) Criterion (IV), or;

(iii) Criterion (V) and (VI);

(I) Multiple stage II pressure ulcers located on the trunk or pelvis (ICD-9 707.02 -707.05);

(II) Client has been on a comprehensive ulcer treatment program for at least the past month which includes the following: use of an appropriate Group 1 support surface; education of the client, if appropriate, and caregiver on the prevention and/or management of pressure ulcers; regular assessment by a nurse, physician, or other licensed healthcare practitioner (usually at least weekly for a patient with a stage III or IV ulcer); appropriate turning and positioning; appropriate wound care (for a stage II, III, or IV ulcer); appropriate management of moisture/incontinence; and nutritional assessment and intervention consistent with the overall plan of care;

(III) The ulcers have worsened or remained the same over the past month;

(IV) Large or multiple stage III or IV pressure ulcer(s) on the trunk or pelvis (ICD-9 707.02 -707.05); A large wound is generally any wound of eight square centimeters (length x width) or more. Individual client circumstances may be weighed. Undermining and/or tunneling, anatomic location on the body and the size of the client may be taken into account;

(V) Recent myocutaneous flap or skin graft for a pressure ulcer on the trunk or pelvis (surgery within the past 60 days) (ICD-9 707.02 - 707.05);

(VI) The client has been on a Group 2 or 3 support surface immediately prior to a recent discharge from a hospital or nursing facility (discharge within the past 30 days);

(B) The DMEPOS provider must provide a support surface in which the patient does not "bottom out";

(C) When a Group 2 surface is requested following a myocutaneous flap or skin graft, coverage generally is limited to 60 days from the date of surgery

(D) DMAP may cover continued use of a Group 2 support surface if healing continues;

(E) DMAP does not cover pressure reducing support surfaces for the prevention of pressure ulcers or pain control;

(F) The allowable rental fee includes all equipment, supplies and services for the effective use of the pressure reducing support surface;

(c) DMAP may consider coverage for bariatric pressure reducing support surfaces only coded as E1399 (durable medical equipment, miscellaneous) for a client residing in a nursing facility, subject to service limitations of DMAP rules, only when the following requirements are met:

(A) The client meets the conditions of coverage as specified in this rule; and

(B) The bariatric pressure reducing support surface has been assigned code E1399 by the Medicare Pricing, Data Analysis and Coding (PDAC) contractor;

(d) Group 3: Air-fluidized beds (E0194) are not covered.

(2) Definitions for Group 1 and Group 2:

(a) Bottoming out: Finding that an outstretched hand, placed palm up between the undersurface of the overlay or mattress and the patient's bony prominence (coccyx or lateral trochanter), can readily palpate the bony prominence. This bottoming out criterion should be tested with the client in the supine position with their head flat, in the supine position with their head slightly elevated (no more than 30 degrees), and in the side-lying position;

(b) Plan of care: Written guidelines developed to identify specific problems and needs of the client and interventions/regimen necessary to assist the client to achieve optimal health potential. Developing the plan of care includes establishing measurable client and nursing goals with time lines and determining nursing/caregiver/other discipline-assigned interventions to meet care objectives;

(c) The staging of pressure ulcers used in this rule is as follows:

(A) Stage I - Observable pressure related alteration of intact skin whose indicators as compared to the adjacent or opposite area on the body may include changes in one or more of the following: skin temperature (warmth or coolness), tissue consistency (firm or boggy feel) and/or sensation (pain, itching). The ulcer appears as a defined area of persistent redness in lightly pigmented skin, whereas in darker skin tones, the ulcer may appear with persistent red, blue, or purple hues;

(B) Stage II - Partial thickness skin loss involving epidermis, dermis, or both. The ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater;

(C) Stage III - Full thickness skin loss involving damage to, or necrosis of, subcutaneous tissue that may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue;

(D) Stage IV - Full thickness skin loss with extensive destruction, tissue necrosis, or damage to muscle, bone, or supporting structures (e.g., tendon, joint capsule). Undermining and sinus tracts also may be associated with Stage IV pressure ulcers;

(3) Guidelines:

(a) Group 1:

(A) Codes E0185 and E0197-E0199 termed "pressure pad for mattress" describe non-powered pressure reducing mattress overlays and are designed to be placed on top of a standard hospital or home mattress;

(B) A gel/gel-like mattress overlay (E0185) is characterized by a gel or gel-like layer with a height of two inches or greater;

(C) An air mattress overlay (E0197) is characterized by interconnected air cells having a cell height of three inches or greater that are inflated with an air pump;

(D) A water mattress overlay (E0198) is characterized by a filled height of three inches or greater;

(E) A foam mattress overlay (E0199) is characterized by all of the following:

(i) Base thickness of two inches or greater and peak height of three inches or greater if it is a convoluted overlay (e.g., egg crate) or an overall height of at least three inches if it is a non-convoluted overlay; and

(ii) Foam with a density and other qualities that provide adequate pressure reduction; and

(iii) Durable, waterproof cover;

(F) Codes E0184, E0186, E0187 and E0196 describe non-powered pressure reducing mattresses;

(G) A foam mattress (E0184) is characterized by all of the following:

(i) Foam height of five inches or greater;

(ii Foam with a density and other qualities that provide adequate pressure reduction;

(iii) Durable, waterproof cover; and

(iv) Can be placed directly on a hospital bed frame;

(H) An air, water or gel mattress (E0186, E0187, E0196) is characterized by all of the following:

(i) Height of five inches or greater of the air, water, or gel layer (respectively);

(ii) Durable, waterproof cover; and

(iii) Can be placed directly on a hospital bed frame;

(I) Codes E0180, E0181, E0182, and A4640 describe powered pressure reducing mattress overlay systems (alternating pressure or low air loss) and are characterized by all of the following:

(i) An air pump or blower which provides either sequential inflation and deflation of air cells or a low interface pressure throughout the overlay;

(ii) Inflated cell height of the air cells through which air is being circulated is 2 ½ inches or greater; and

(iii) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling (for alternating pressure overlays), and air pressure provide adequate client lift, reduce pressure and prevent bottoming out;

(J) Alternating pressure mattress overlays or low air loss mattress overlays are coded using codes E0180, E0181, E0182, and A4640;

(K) Code A4640 or E0182 may only be billed when they are provided as replacement components for a client-owned E0180 or E0181 mattress overlay system;

(L) A Column II code is included in the allowance for the corresponding Column I code when provided at the same time: Column I (Column II), E0180 (A4640, E0182), E0181 (A4640, E0182);

(b) Group 2:

(A) Code E0277 describes a powered pressure reducing mattress (alternating pressure, low air loss, or powered flotation without low air loss) which is characterized by all of the following:

(a) An air pump or blower which provides either sequential inflation and deflation of the air cells or a low interface pressure throughout the mattress;

(b) Inflated cell height of the air cells through which air is being circulated is five inches or greater;

(c) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling (for alternating pressure mattresses), and air pressure provide adequate patient lift, reduce pressure and prevent bottoming out;

(d) A surface designed to reduce friction and shear; and

(e) Can be placed directly on a hospital bed frame;

(B) Code E0193 describes a semi-electric or total electric hospital bed with a fully integrated powered pressure reducing mattress which has all the characteristics defined above;

(C) Code E0371 describes an advanced non-powered pressure-reducing mattress overlay which is characterized by all of the following:

(i) Height and design of individual cells which provide significantly more pressure reduction than a group 1 overlay and prevent bottoming out;

(ii) Total height of three inches or greater;

(iii) A surface designed to reduce friction and shear; and

(iv) Documented evidence to substantiate that the product is effective for the treatment of conditions described by the coverage criteria for Group 2 support surfaces;

(D) Code E0372 describes a powered pressure reducing mattress overlay (low air loss, powered flotation without low air loss, or alternating pressure) which is characterized by all of the following:

(i) An air pump or blower which provides either sequential inflation and deflation of the air cells or a low interface pressure throughout the overlay;

(ii) Inflated cell height of the air cells through which air is being circulated is 3 ½ inches or greater;

(iii) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling (for alternating pressure overlays), and air pressure to provide adequate patient lift, reduce pressure and prevent bottoming out; and

(iv) A surface designed to reduce friction and shear;

(E) Code E0373 describes an advanced non-powered pressure reducing mattress which is characterized by all of the following:

(i) Height and design of individual cells which provide significantly more pressure reduction than a group 1 mattress and prevent bottoming out;

(ii) Total height of five inches or greater;

(iii) A surface designed to reduce friction and shear;

(iv) Documented evidence to substantiate that the product is effective for the treatment of conditions described by the coverage criteria for Group 2 support surfaces; and

(v) Can be placed directly on a hospital bed frame;

(F) The only products that may be coded and billed using code E0371 or E0373 are those products for which a written coding determination specifying the use of these codes has been made by PDAC;

(G) Alternating pressure mattresses and low air loss mattresses are coded using code E0277;

(H) Products containing multiple components are categorized according to the clinically predominant component (usually the topmost layer of a multi-layer product). For example, a product with three powered air cells on top of a three foam base would be coded as a powered overlay (code E0180 or E0181), not as a powered mattress (E0277).

(4) Documentation Requirements: Submit the following information with the prior authorization request:

(a) Initial Requests:

(A) For all pressure reducing support surfaces, other than a Group I for a completely immobile client or a Group 2 surface following a myocutaneous flap or skin graft:

(i) An order for each item requested, signed and dated by the attending physician;

ii) Documentation that supports conditions of coverage are met as specified in this rule;

(iii) A plan of care which has been established by the client's physician or home care nurse (by the RN resident care manager for a client in a nursing facility), which generally includes the following:

Education of the client, if appropriate, and caregiver on the prevention and/or management of pressure ulcers;

(II) Regular assessment by a nurse, physician, or other licensed healthcare practitioner;

(III) Appropriate turning and positioning including the number of hours per 24-period that the client will utilize the support surface;

(IV) Appropriate wound care (for a stage II, III, or IV ulcer);

(V) Appropriate management of moisture/incontinence;

(VI) Nutritional assessment and intervention consistent with the overall plan of care by a licensed healthcare practitioner (by a registered dietitian for a client in a nursing facility) within the last 90 days;

(VII) Client's weight and height (approximation is acceptable, if unable to obtain);

(VIII) Description of all pressure ulcers, which includes number, locations, stages, sizes and dated photographs;

(iv) Lab reports, if relevant;

(v) Other treatments and products that have been tried and why they were ineffective; Interventions and goals for stepping down the intensity of support surface therapy;

(vi) For pressure ulcers on extremities, why pressure cannot be relieved by other methods;

(B) For a Group I surface for a completely immobile client:

(a) An order for each item requested, signed and dated by the attending physician;

(b) A plan of care which has been established by the client's physician or home care nurse (by the RN resident care manager for a client in a nursing facility), which generally includes the following:

(I) Education of the client, if appropriate, and caregiver on the prevention of pressure ulcers;

(ii) Regular assessment by a nurse, physician, or other licensed healthcare practitioner

(iii) Appropriate turning and positioning including the number of hours per 24-period that the client will utilize the support surface;

(iv) Appropriate management of moisture/incontinence, if appropriate;

(C) For a Group 2 surface following a myocutaneous flap or skin graft:

(i) An order for each item requested, signed and dated by the treating physician;

(ii) Operative report;

(iii) Hospital discharge summary;

(iv) Plan of care;

(F) Required documentation may not be completed by the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider or anyone in a financial relationship of any kind with the DMEPOS provider;

(G) Medical records must corroborate that all criteria in this rule are met when dispensing and billing for an item in Table 122-0400-1 and Table-122-400-2;

(H) Medical records must be kept on file by the DMEPOS provider and made available to DMAP upon request;

(b) Subsequent Requests: May be authorized contingent on progress towards healing:

(A) For all pressure reducing support surfaces, other than a Group I surface for a completely immobile client or a Group 2 surface following a myocutaneous flap or skin graft:

(i) Progress notes from the attending physician;

(ii) Description of all pressure ulcers, including progress towards healing, by a licensed healthcare practitioner (by the RN resident care manager for a client in a nursing facility) which includes number, locations, stages, sizes and dated photographs;

(iii) Current plan of care;

(iv) Any other relevant documentation;

(B) For a Group I surface for a completely immobile client:

(i) Progress notes from the attending physician;

(ii) Current plan of care;

(iii) Any other relevant documentation;

(C) For a Group 2 surface following a myocutaneous flap or skin graft:

(i) Progress notes from the attending physician;

(ii) Current plan of care;

(iii) Any other relevant documentation.

(4) **Table 122-0400-1** – Group 1

(5) **Table 122-0400-2** – Group 2

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

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

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0420

Hospital Bed Accessories

(1) Table 122-0420, Hospital Bed Accessories Procedure codes — Trapeze Bars:

(a) Indications and Coverage: Trapeze bars are indicated when a client needs this device to sit up because of respiratory condition, to change body position for other medical reasons, or to get in or out of bed;

(b) The Division of Medical Assistance Programs (DMAP) may consider coverage for bariatric trapeze bars only coded as E1399 (durable medical equipment, miscellaneous) for a client residing in a nursing facility), subject to service limitations of DMAP rules, only when the following requirements are met:

(A) The client meets the conditions of coverage as specified in this rule; and

(B) The bariatric trapeze bar has been assigned code E1399 by the Medicare Pricing, Data Analysis and Coding (PDAC) contractor;

(C) Supporting documentation has been submitted to the appropriate authorizing authority for prior authorization;

(c) Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner must be kept on file by the DME provider;

(2) See **Table 122-0420** for procedure codes.

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

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

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0500

Transcutaneous Electrical Nerve Stimulator (TENS)

(1) Indications and Limitations of Coverage and/or Medical Appropriateness: transcutaneous electrical nerve stimulator (TENS) (E0720, E0730) is a device which utilizes electrical current delivered through electrodes placed on the surface of the skin. A TENS unit decreases the client's perception of pain by inhibiting the transmission of afferent pain nerve impulses and/or stimulating the release of endorphins. A TENS unit must be distinguished from other electrical stimulators (e.g., neuromuscular stimulators) which are used to directly stimulate muscles and/or motor nerves.

(2) A TENS unit may be covered for the treatment of:

(a) Acute post-operative pain:

(A) Coverage is usually limited to 30 days from the day of surgery; and,

(B) Payment for more than one month is determined by individual consideration based upon supportive documentation provided by the attending physician; and,

(C) Payment is made only as a rental; and,

(D) Acute pain (less than three months duration) other than post-operative pain is not covered; or,

(b) Chronic, intractable pain:

(A) The pain has been present for at least three months; and,

(B) Other appropriate treatment modalities have been tried and failed; and,

(C) The presumed etiology of the pain is a type that is accepted as responding to TENS therapy. Examples of conditions for which a TENS unit are not considered to be medically appropriate are (not all-inclusive): headache, visceral abdominal pain, pelvic pain, and temporomandibular joint (TMJ) pain; and,

(D) The TENS unit must be used by the client on a trial basis for a minimum of one month (30 days), but not to exceed two months. The trial period is paid as a rental. The trial period must be monitored by the physician to determine the effectiveness of the TENS unit in modulating the pain;

(E) For coverage of a purchase, the physician must determine that the client is likely to derive significant therapeutic benefit from continuous use of the unit over a long period of time. The physician's records must document a reevaluation of the client at the end of the trial period, must indicate how often the client used the TENS unit, the typical duration of use each time, and the results.

(3) Documentation Requirements: Submit the following documentation from the attending or consulting physician with the prior authorization (PA) request:

(a) For both acute post-operative pain and chronic, intractable pain:

(A) A signed and dated order by the treating physician. The physician ordering the TENS unit must be the attending physician or a consulting physician for the disease or condition resulting in the need for the TENS unit; and,

(B) Documentation of multiple medications and/or therapies that have been tried and failed; and,

(C) A new order, when purchase is requested (after the required trial period). The initial date on this order must not overlap the dates of the trial period.

(b) In addition, for a client with acute post-operative pain: date of surgery resulting in acute post-operative pain;

(c) In addition, for a client with chronic, intractable pain: location of the pain, the duration of time the client has had the pain, and the presumed etiology of the pain;

(d) For authorization of quantities of supplies greater than those described in this policy as the usual maximum amounts:

(A) Each request must include documentation supporting the medical appropriateness for the higher utilization; and,

(B) There must be clear documentation in the client's medical records corroborating the medical appropriateness of this amount.

(e) When ordering a 4 lead TENS unit, the client's medical record must document why 2 leads are insufficient to meet the client's needs;

(f) The Division of Medical Assistance Programs (DMAP) may request copies of the client's medical records that corroborate the order and any additional documentation that pertains to the medical appropriateness of items and quantities requested.

(4) Rental Guidelines: During the rental of a TENS unit, supplies for the unit are included in the rental allowance; there is no additional allowance for electrodes, lead wires, batteries, etc.

(5) Purchase Guidelines: If a TENS unit (E0720 or E0730) is purchased, the allowance includes lead wires and one month's supply of electrodes, conductive paste or gel (if needed), and batteries.

(6) Coding Guidelines:

(a) Separate allowance may be made for replacement supplies when they are medically appropriate and are used with a TENS unit that has been purchased and/or approved by DMAP;

(b) If 2 TENS leads are medically appropriate, then a maximum of one unit of Code A4595 would be allowed per month; if 4 TENS leads are necessary, a maximum of two units per month would be allowed;

(c) If the use of the TENS unit is less than daily, the frequency of billing for the TENS supply code should be reduced proportionally;

(d) There is no separate allowance for replacement electrodes (A4556), conductive paste or gel (A4558), replacement batteries (A4630), or a battery charger used with a TENS unit;

(e) Codes A4556 (Electrodes, [e.g., apnea monitor], per pair), A4558 (Conductive paste or gel), and A4630 (Replacement batteries, medically appropriate TENS owned by the client) are not valid for prior authorization. A4595 should be used instead;

(f) For code A4557, one unit of service is for lead wires going to two electrodes. If all the lead wires of a 4 lead TENS unit needed to be replaced, billing would be for two units of service;

(g) Replacement of lead wires (A4557) will be covered when they are inoperative due to damage and the TENS unit is still medically appropriate. Replacement more often than every 12 months is rarely medically appropriate;

(h) A TENS supply allowance (A4595) includes electrodes (any type), conductive paste or gel (if needed, depending on the type of electrode), tape or other adhesive (if needed, depending on the type of electrode), adhesive remover, skin preparation materials, batteries (9 volt or AA, single use or rechargeable), and a battery charger (if rechargeable batteries are used);

(i) Other supplies, including but not limited to the following, are not separately payable: adapters (snap, banana, alligator, tab, button, clip), belt clips, adhesive remover, additional connecting cable for lead wires, carrying pouches, or covers.

(j) Providers should contact the Medicare Pricing, Data Analysis and Coding (PDAC) Contractor for guidance on the correct coding of these items.

(7) **Table 122-0500**.

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

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

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0520

Glucose Monitors and Diabetic Supplies

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover home blood glucose monitors and related diabetic supplies for clients with diabetes who can self-monitor blood glucose (SMBG) or be monitored with assistance;

(b) Coverage of home blood glucose monitors is limited to clients meeting all of the following conditions:

(A) The client has diabetes which is being treated by a practitioner; and

(B) The glucose monitor and related accessories and supplies have been ordered by a practitioner who is treating the client's diabetes; and

(C) The client or caregiver has successfully completed training or is scheduled to begin training in the use of the monitor, test strips, and lancing devices; and

(D) The client or caregiver is capable of using the test results to assure the client's appropriate glycemic control; and

(E) The device is designed for home use;

(c) Home blood glucose monitors with special features (E2100 or E2101) may be covered for clients who meet the basic coverage criteria (1)(b)(A)-(E) of this rule; and:

(A) The treating practitioner certifies that the client has a severe visual impairment (i.e., best corrected visual acuity of 20/200 or worse) requiring use of this special monitoring system; or

(B) For code E2101, the treating practitioner certifies that the client has an impairment of manual dexterity severe enough to require the use of this special monitoring system. Coverage of E2101 for a client with manual dexterity impairments is not dependent upon a visual impairment;

(d) If a glucose monitor is covered, lancets (A4259), blood glucose test reagent strips (A4253), glucose control solutions (A4256), and spring powered devices for lancets (A4258) may also be covered. Coverage limitations for these supplies are as follows:

(A) A4258 – only one spring powered device every six months;

(B) A4253 and A4259 —The durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider of the test strips and lancets must maintain in its records the order from the treating practitioner. Before providing more test strips and lancets, the client must have nearly exhausted their supply. The amount of test strips and lancets covered are based on the needs of the client according to the following utilization guidelines:

(i) Up to 100 test strips and 100 lancets every three months for clients who are not currently being treated with insulin injections;

(ii) Up to 100 test strips and 100 lancets every month for clients who are currently being treated with insulin injections;

(iii) For clients under age 19 with Type I diabetes, up to 155 test strips and 155 lancets every month;

(iv) For clients with gestational diabetes:

(I) Insulin-treated: Up to 155 test strips and 155 lancets per month no longer than 60 days beyond the duration of the pregnancy;

(II) Non-insulin treated: Up to 124 test strips and 124 lancets per month no longer than 60 days beyond the duration of the pregnancy;

(v) Upon refills of quantities that exceed the utilization guidelines, the treating practitioner must have:

(I) Documented in the client's medical record the specific reason for the additional supplies for that particular client; and

(II) Seen the client and have evaluated their diabetes control within six months prior to ordering quantities that exceed the utilization guidelines; and

(III) Documented in the client's medical record, a specific narrative statement that adequately specifies the frequency at which the client is actually testing or a copy of the client's log; or there must be documentation in the DMEPOS provider's records, (e.g., a copy of the client's log) that the client is actually testing at a frequency that corroborates the quantity of supplies that have been dispensed. If the client is regularly using quantities of supplies that exceed the utilization guidelines, new documentation must be present at least every six months;

(e) DMEPOS providers must not dispense a quantity of supplies exceeding a client's expected utilization. DMEPOS providers should stay attuned to atypical utilization patterns on behalf of their clients and verify with the ordering practitioner that the atypical utilization is, in fact, warranted. Regardless of utilization, a DMEPOS provider must not dispense more than a three month quantity of glucose testing supplies at a time;

(f) Providers may contact the treating practitioner to renew an order; however, the request for renewal may only be made with the client's continued monthly use of testing supplies and only with the client's or caregiver's request to the DMEPOS provider for order renewal;

(g) An order refill does not have to be approved by the ordering practitioner; however, a client or their caregiver must specifically request refills of glucose monitor supplies before they are dispensed. The DMEPOS provider must not automatically dispense a quantity of supplies on a predetermined regular basis, even if the client has "authorized" this in advance;

(h) Purchase fee for a glucose monitor includes normal, low and high-calibrator solution/chips (A4256), a battery (A4233, A4234, A4235 or A4236) and a spring-powered lancet device (A4258);

(i) The following services are not covered:

(A) Peroxide (A4244), betadine or phisoHex (A4246, A4247);

(B) Alternate site blood glucose monitors;

(C) Blood glucose monitors and related supplies prescribed on an "as needed" basis;

(D) Blood glucose test or reagent strips that use a visual reading and are not used in a glucose monitor;

(E) Continuous glucose monitoring devices;

(F) Disposable gloves;

(G) Home blood glucose disposable monitors;

(H) Jet injectors;

(I) Insulin delivery devices and related supplies;

(J) Reflectance colorimeter devices used for measuring blood glucose levels in clinical settings;

(K) Urine test or reagent strips or tablets.

(2) Guidelines:

(a) Insulin-treated means that the client is receiving insulin injections to treat their diabetes. Insulin does not exist in an oral form and therefore clients taking oral medication to treat their diabetes are not insulin-treated;

(b) A severe visual impairment is defined as a best corrected visual acuity of 20/200 or worse in both eyes;

(c) An order renewal is the act of obtaining an order for an additional period of time beyond that previously ordered by the treating practitioner;

(d) An order refill is the act of replenishing quantities of previously ordered items during the time period in which the current order is valid;

(e) A4256 describes control solutions containing high, normal, and low concentrations of glucose that can be applied to test strips to check the integrity of the test strips. This code does not describe the strip or chip which is included in a vial of test strips and which calibrates the glucose monitor to that particular vial of test strips;

(f) For glucose test strips (A4253), 1 unit of service = 50 strips. For lancets (A4259), 1 unit of service = 100 lancets;

(g) DMEPOS providers should contact Medicare's Pricing, Data Analysis and Coding (PDAC) Contractor for guidance on the correct coding of these items.

(3) Documentation Requirements:

(a) For codes requiring prior authorization (PA), submit documentation which supports coverage criteria as specified in this rule are met;

(b) The order for home blood glucose monitors and/or diabetic testing supplies must include all of the following:

(A) All item(s) to be dispensed;

(B) The specific frequency of testing;

(C) The treating practitioner's signature;

(D) The date of the treating practitioner's signature;

(E) A start date of the order — only required if the start date is different than the signature date;

(c) A new order must be obtained when there is a change in the testing frequency;

(d) For E2100 or E2101 in a client with impaired visual acuity, submit documentation which includes a narrative statement from the practitioner that indicates the client's specific numerical visual acuity (e.g., 20/400) and that this result represents "best corrected" vision;

(e) For E2101 - clients with impaired manual dexterity, submit documentation which includes a narrative statement from the practitioner that indicates an explanation of the client's medical condition necessitating the monitor with special features;

(f) When requesting quantities of supplies which exceed utilization guidelines as specified in (1)(d)(B)(i)-(iv) (e.g., more than 100 blood glucose test strips per month for insulin-dependent diabetes mellitus), submit documentation supporting the medical appropriateness for the higher utilization as specified in (1)(d)(B)(v)(I)-(III) to the appropriate authorization authority for PA;

(g) Documentation which supports condition of coverage requirements for codes billed in this rule must be kept on file by the DMEPOS provider and made available to DMAP on request;

(h) The ICD-9 diagnosis code describing the condition that necessitates glucose testing must be included on each claim for the monitor, accessories and supplies;

(i) If the client is being treated with insulin injections, the KX modifier must be added to the code for the monitor and each related supply on every claim submitted;

(j) If the client is not being treated with insulin injections, the KS modifier must be added to the code for the monitor and each related supply on every claim submitted;

(k) DMEPOS providers are not prohibited from creating data collection forms in order to gather medically appropriate information; however, DMAP will not rely solely on those forms to prove the medical appropriateness of services provided;

(l) A client's medical records must support the justification for supplies dispensed and billed to DMAP.

(3) Procedure Codes: Table 122-0520 — Diabetic Supplies.

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

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

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0580
Bath Supplies

(1) Indications and limitations of coverage and medical appropriateness

(a) The Division of Medical Assistance Programs (DMAP) may cover bath supplies when medically appropriate and cost-effective including a rehab shower/commode chair when all of the following criteria are met:

(A) Client is unable to use a standard shower chair/bench due to a musculoskeletal condition;

(B) Client has positioning, trunk stability or neck support needs that a standard shower chair/bench cannot provide;

(C) The home (shower) can accommodate a rehab/shower chair;

(D) Less costly alternatives have been considered or tried and ruled out;

(E) The rehab shower/commode chair meets the following specifications and standard features as a minimum:

(i) Constructed specifically for use as a rehab shower/commode chair (corrosive resistant);

(ii) Swing-away or detachable arms;

(iii) Removable commode pan holder and pan;

(iv) Adjustable removable footrests;

(v) Wheel lock system;

(F) The rehab shower/commode chair must be supplied by a durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider that employs a Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)-certified Assistive Technology Professional (ATP) who specializes in wheelchairs and who has direct, in-person involvement in the rehab shower/commode chair selection for the client;

(b) Verification of the healthcare common procedure coding system (HCPCS) code assignment by the Medicare Pricing, Data Analysis and Coding (PDAC) contractor is not required for a rehab shower/commode chair;

(c) Use E1399 for a rehab shower/commode chair.

(2) Documentation requirements:

(a) The practitioner's order and medical justification for the equipment must be kept on file by the DMEPOS provider. The client's medical records must contain information which supports the medical appropriateness of the item ordered;

(b) For a rehab shower/commode chair, submit documentation which supports conditions of coverage in this rule are met.

(3) **Table 122-0580** Bath Supplies

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

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

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 37-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0590
Patient Lifts

(1) Indications and Coverage — A lift is covered if transfer between bed and a chair, wheelchair, or commode requires the assistance of more than one person and, without the use of a lift, the client would be bed confined.

(2) The areas within the client's residence where the lift will be utilized must be able to accommodate and allow for the effective use of the lift. The Division of Medical Assistance Programs (DMAP) does not reimburse for adapting the living quarters.

(3) A sling or seat for a client lift may be covered as an accessory when ordered as a replacement for the original equipment item.

(4) E0621 is included in the allowance for E0630 when provided at the same time.

(5) E0635 may be covered only when a client weighs 450 pounds or more;

(6) Procedure Codes:

(a) E0621 — Sling or seat, client lift, canvas or nylon – Purchase — Prior authorization (PA) required;

(b) E0630 — Client lift, hydraulic with seat or sling (considered purchased after 13 months of rental) — Purchase, rent or repair — PA required;

(c) E0635 — Client lift, electric, with seat or sling – Rent only. This item is a capped rental and becomes the property of the client after 13 months of continuous rental or when the usual purchase price is reached, whichever is lesser. May be covered for a nursing facility client — PA required.

Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0600
Toilet Supplies

(1) The Division of Medical Assistance Programs (DMAP) may consider coverage for commodes when:

(a) The client is physically incapable of utilizing regular toilet facilities. This would occur when the client is confined to:

(A) A single room; or

(B) One level of the home environment and there is no toilet on that level; or

(C) The home and there are no toilet facilities in the home.

(b) Extra-wide/heavy-duty commodes may be covered when a client weighs 300 pounds or more and meets the conditions of coverage for commodes;

(c) Only bariatric commodes coded as E1399 (durable medical equipment, miscellaneous) may be covered for a client residing in a nursing facility, subject to service limitations of DMAP rules, when all of the following requirements are met:

(A) The client meets the conditions of coverage as specified in this rule; and

(B) The bariatric commode has been assigned code E1399 by the Medicare Pricing, Data Analysis and Coding (PDAC) contractor.

(2) Documentation Requirements:

(a) Documentation must include the practitioner's order, the client's height and weight and information supporting the medical appropriateness for the commode dispensed;

(b) For codes requiring prior authorization (PA), submit documentation which supports conditions of coverage are met as specified in this rule.

(3) Procedure Codes: Table 122-0600 Toilet Supplies

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0620
Miscellaneous Supplies

Procedure Codes — **Table 122-0620**.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.010, 409.050, 409.110, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 32-1999, f. & cert. ef. 10-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0700
Negative Pressure Wound Therapy Pumps

(1) Indications and Limitations of Coverage and Medical Appropriateness — Initial Coverage: The Division of Medical Assistance Programs (DMAP) may cover a negative pressure wound therapy (NPWT) pump and supplies on a monthly basis for up to four months on the most recent covered wound when either criterion (a) or (b) is met:

(a) Ulcers and wounds in the home setting or nursing facility:

(A) The client has a chronic Stage III or IV pressure ulcer, neuropathic (for example, diabetic) ulcer, venous or arterial insufficiency ulcer, or a chronic (being present for at least 30 days) ulcer of mixed etiology;

(B) A complete wound therapy program described by criterion (i) and criteria (ii), (iii), or (iv), as applicable depending on the type of wound, must have been tried or considered and ruled out prior to application of NPWT:

(i) For all ulcers or wounds, the wound therapy program must include a minimum of all of the following general measures, which have either been addressed, applied, or considered and ruled out prior to application of NPWT:

(I) Documentation in the client's medical record of evaluation, care, and wound measurements by a licensed medical professional;

(II) Application of dressings to maintain a moist wound environment;

(III) Debridement of necrotic tissue if present;

(IV) Evaluation of and provision for adequate nutritional status;

(ii) For Stage III or IV pressure ulcers:

(I) Appropriate turning and positioning of the client;

(II) Use of a Group 2 or 3 support surface for pressure ulcers on the posterior trunk or pelvis (see 410-122-0400 Pressure Reducing Support Surfaces). If the ulcer is not on the trunk or pelvis, a Group 2 or 3 support surface is not required; and

(III) Appropriate management of the client's moisture and incontinence;

(iii) For neuropathic (for example, diabetic) ulcers:

(I) The client has been on a comprehensive diabetic management program, and;

(II) Reduction in pressure on a foot ulcer has been accomplished with appropriate modalities;

(iv) For venous insufficiency ulcers:

(I) Compression bandages and/or garments have been consistently applied, and;

(II) Leg elevation and ambulation have been encouraged;

(b) Ulcers and wounds encountered in an inpatient setting:

(A) An ulcer or wound as described in subsection (1)(a) is encountered in the inpatient setting and, after wound treatments described in subsection (1)(a) have been tried or considered and ruled out, NPWT is initiated because the treating physician considers it the best available treatment option;

(B) The client has complications of a surgically created wound (for example, dehiscence) or a traumatic wound (for example, pre-operative flap or graft) where there is documentation of the medical appropriateness for accelerated formation of granulation tissue which cannot be achieved by other available topical wound treatments (for example, other conditions of the client that will not allow for healing times achievable with other topical wound treatments);

(c) In either situation described in subsection (1)(b), NPWT will be covered when treatment continuation is ordered beyond discharge to the home setting;

(d) If criterion in subsection (1)(a) or (1)(b) above is not met, the NPWT pump and supplies are not covered;

(e) NPWT pumps (E2402) must be capable of accommodating more than one wound dressing set for multiple wounds on a client. A request for more than one NPWT pump per client for the same time period is not covered;

(f) For the purposes of this rule, a licensed health care professional may be a physician, physician's assistant (PA), registered nurse (RN), licensed practical nurse (LPN), or physical therapist (PT). The practitioner must be licensed to assess wounds and/or administer wound care.

(2) Indications and Limitations of Coverage and Medical Appropriateness — Continued Coverage: For wounds and ulcers described in subsection (1)(a) or (1)(b), for clients placed on an NPWT pump and supplies, DMAP will only approve continued coverage when the licensed medical professional does all the following duties:

(a) On a regular basis:

(A) Directly assesses the wound(s) being treated with the NPWT pump; and

(B) Supervises or directly performs the NPWT dressing changes;

(b) On at least a monthly basis, documents changes in the ulcer's dimensions and characteristics.

(3) Coverage for a NPWT pump and supplies ends when any of the following occur:

(a) Criteria in section (2) are not met;

(b) The treating physician determines that adequate wound healing has occurred for NPWT to be discontinued;

(c) Any measurable degree of wound healing has failed to occur over the prior month. Wound healing is defined as improvement occurring in either surface area (length times width) or depth of the wound;

(d) Four months (including the time NPWT was applied in an inpatient setting prior to discharge to the home) have elapsed using an NPWT pump in the treatment of the most recent wound. Coverage beyond four months will be given individual consideration based upon required additional documentation;

(e) Equipment or supplies are no longer being used for the client, whether or not by the physician's order.

(4) DMAP will not cover NPWT pump and supplies if one or more of the following are present:

(a) Necrotic tissue with eschar in the wound, if debridement is not attempted;

(b) Untreated osteomyelitis within the vicinity of the wound;

(c) Cancer present in the wound;

(d) The presence of a fistula to an organ or body cavity within the vicinity of the wound.

(5) DMAP will only cover NPWT pumps and their supplies that have been specifically designated as being qualified for use of HCPCS codes E2402, A6550 and A7000 via written instructions from the Medicare Pricing, Data Analysis and Coding (PDAC) contractor.

(6) DMAP covers a maximum of 15 dressing kits (A6550) per wound per month, unless there is documentation that the wound size requires more than one dressing kit for each dressing change.

(7) DMAP covers a maximum of 10 canister sets (A7000) per month, unless there is documentation evidencing a large volume of drainage (greater than 90 ml of exudate per day). For high-volume exudative wounds, a stationary pump with the largest capacity canister must be used. DMAP does not cover excess use of canisters related to equipment failure (as opposed to excessive volume drainage).

(8) Guidelines:

(a) Equipment:

(A) Negative pressure wound therapy (NPWT) is the controlled application of subatmospheric pressure to a wound. Specifically, an electrical pump (described in the definition of code E2402) intermittently or continuously conveys subatmospheric pressure through connecting tubing to a specialized wound dressing (described in the descriptor of HCPCS code A6550). The dressing includes a resilient, open-cell foam surface dressing, sealed with an occlusive dressing that is meant to contain the subatmospheric pressure at the wound site and thereby promote wound healing. Drainage from the wound is collected in a canister (described in the definition of HCPCS code A7000);

(B) Code E2402 describes a stationary or portable NPWT electrical pump which provides controlled subatmospheric pressure that is designed for use with NPWT dressings, (A6550) to promote wound healing. Such an NPWT pump is capable of being selectively switched between continuous and intermittent modes of operation and is controllable to adjust the degree of subatmospheric pressure conveyed to the wound in a range from 25 to greater than or equal to 200 mm Hg subatmospheric pressure. The pump can sound an audible alarm when desired pressures are not being achieved (that is, where there is a leak in the dressing seal) and when its wound drainage canister (A7000) is full. The pump is designed to fill the canister to full capacity;

(b) Supplies:

(A) Code A6550 describes a dressing set which is used in conjunction with a stationary or portable NPWT pump (E2402), and contains all necessary components, including but not limited to a resilient, open-cell foam surface dressing, drainage tubing, and an occlusive dressing which creates a seal around the wound site for maintaining subatmospheric pressure at the wound;

(B) Code A7000 describes a canister set which is used in conjunction with a stationary or portable NPWT pump (E2402) and contains all necessary components, including but not limited to a container, to collect wound exudate. Canisters may be various sizes to accommodate stationary or portable NPWT pumps;

(c) The staging of pressure ulcers used in this rule is as follows:

(A) Stage I — Observable pressure related alteration of intact skin whose indicators as compared to the adjacent or opposite area on the body may include changes in one or more of the following: skin temperature (warmth or coolness), tissue consistency (firm or boggy feel) and/or sensation (pain, itching). The ulcer appears as a defined area of persistent redness in lightly pigmented skin, whereas in darker skin tones, the ulcer may appear with persistent red, blue, or purple hues;

(B) Stage II — Partial thickness skin loss involving epidermis, dermis, or both. The ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater;

(C) Stage III — Full thickness skin loss involving damage to, or necrosis of, subcutaneous tissue that may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue;

(D) Stage IV — Full thickness skin loss with extensive destruction, tissue necrosis, or damage to muscle, bone, or supporting structures (e.g., tendon, joint capsule). Undermining and sinus tracts also may be associated with Stage IV pressure ulcers.

(9) Documentation Requirements: Submit the following information with the prior authorization request:

(a) For Initial Coverage:

(A) A statement from the attending physician which describes the initial condition of the wound (including measurements) and the efforts to address all aspects of wound care as specified in subsection (1)(a);

(B) From the treating clinician, history, previous treatment regimens (if applicable), and current wound management for which an NPWT pump is being requested to include the following:

(i) Changes in wound conditions, including precise, quantitative measurements of wound characteristics (wound length and width (surface area), and depth), quantity of exudates (drainage), presence of granulation and necrotic tissue and concurrent measures being addressed relevant to wound therapy (debridement, nutritional concerns, support surfaces in use, positioning, incontinence control, etc.);

(ii) Dated photographs of ulcers or wounds with specific location(s) identified within the last 30 days;

(iii) Length of sessions of use;

(iv) Dressing types and frequency of change;

(v) Wound healing progress;

(b) For Continued Coverage:

(A) Progress notes from the attending physician within the last 30 days;

(B) Updated wound measurements and what changes are being applied to effect wound healing including information specified in paragraph (9) (a) (B);

(c) For both initial and continued coverage of an NPWT pump and supplies, any other medical records that corroborate that all criteria in this rule are met;

(d) When requesting quantities of supplies greater than those specified in this rule as the usual maximum amounts, include documentation supporting the medical appropriateness for the higher utilization.

(10) **Table 122-0700**.

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

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

Stats. Implemented: ORS 414.065

Hist.: OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

410-122-0720

Pediatric Wheelchairs

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a pediatric wheelchair when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADLs); places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform a MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010 Definitions for complete definition of MRADL;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for use of the pediatric wheelchair that is being requested;

(D) Use of a pediatric wheelchair will significantly improve the client's ability to move within the home to the areas customarily used for their MRADL so that the client can complete these MRADLs within a reasonable time frame;

(E) The client is willing to use the requested pediatric wheelchair in the home, and will use it on a regular basis in the home;

(F) The client has either:

(i) Sufficient upper extremity function and other physical and mental capabilities needed to safely self-propel the requested pediatric wheelchair in the home, during a typical day. Proper assessment of upper extremity function should consider limitations of strength, endurance, range of

motion, coordination, presence of pain, and deformity or absence of one or both upper extremities; or

(ii) A caregiver who is available, willing, and able to provide assistance with the wheelchair;

(b) Only when conditions of coverage as specified in (1)(a) of this rule are met, may DMAP authorize a pediatric wheelchair for any of the following situations:

(A) When the wheelchair can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a pediatric wheelchair will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a pediatric wheelchair may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive noncompliance, whether willing or involuntary, can be grounds for denial of pediatric wheelchair coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a pediatric wheelchair;

(B) For a purchase request, when a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement cost;

(C) When a covered, client-owned wheelchair is in need of repair (for one month's rental of a wheelchair). See OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing;

(c) A pediatric tilt-in-space wheelchair (E1231- E1234) may be covered when a client meets all of the following conditions:

(A) A standard base with a reclining back option will not meet the client's needs;

(B) Is dependent for transfers;

(C) Spends a minimum of six hours a day in a wheelchair;

(D) The plan of care addresses the need to change position at frequent intervals and the client is not left in the tilt position most of the time; and

(E) Has one of the following:

(i) High risk of skin breakdown;

(ii) Poor postural control, especially of the head and trunk;

(iii) Hyper/hypotonia;

(iv) Need for frequent changes in position and has poor upright sitting;

(d) One month's rental for a manual pediatric tilt-in-space wheelchair (E1231-E1234) may be covered for a client residing in a nursing facility when all of the following conditions are met:

(A) The anticipated nursing facility length of stay is 30 days or less;

(B) The conditions of coverage for a manual tilt-in-space wheelchair as described in (1) (c) (A) (E) are met;

(C) The client is expected to have an ongoing need for this same wheelchair after discharge to the home setting;

(D) Coverage is limited to one month's rental;

(e) DMAP does not reimburse for another wheelchair if the client has a medically appropriate wheelchair, regardless of payer;

(f) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting living quarters;

(g) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, and wheelchair gloves;

(h) Reimbursement for wheelchair codes includes all labor charges involved in the assembly of the wheelchair, as well as support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education, and ongoing assistance with the use of the wheelchair;

(i) Power mobility devices and related options and accessories must be supplied by a DMEPOS provider that employs a Rehabilitation Engineering and Assistive Technology Society of North America (RESNA)-certified Assistive Technology Professional (ATP) who specializes in wheelchairs and who has direct, in-person involvement in the wheelchair selection for the client;

(j) A Group 5 (Pediatric) power wheelchair (PWC) with Single Power Option (K0890) or with Multiple Power Options (K0891) may be covered when:

(i) The coverage criteria for a PWC (see 410-122-0325, Motorized/Power Wheelchair Base) are met; and

(ii) The client is expected to grow in height; and

(iii) Either of the following criteria is met:

(I) The Group 2 Single Power Option in 410-122-0325, Motorized/Power Wheelchair Base, (2)(a)(C)(i)(I-II); or

(II) Multiple Power Options in 410-122-0325, Motorized/Power Wheelchair Base, (2) (a)(D) (i) (I-II);

(iv) The delivery of a PWC must be within 120 days following completion of the face-to-face examination with the physician;

(v) A PWC may not be ordered by a podiatrist;

(k) A pediatric wheelchair for use only outside the home is not covered;

(l) For more information on coverage criteria regarding repairs and maintenance, see 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing.

(2) Coding Guidelines:

(a) For individualized wheelchair features that are medically appropriate to meet the needs of a particular client, use the correct codes for the wheelchair base, options and accessories (see 410-122-0340 Wheelchair Options/Accessories);

(b) For wheelchair frames that are modified in a unique way to accommodate the client, submit the code for the wheelchair base used and submit the modification with code K0108 (wheelchair component or accessory, not otherwise specified);

(c) Wheelchair "poundage" (pounds) represents the weight of the usual configuration of the wheelchair with a seat and back, but without front riggings;

(d) A manual wheelchair with a seat width and/or depth of 14" or less is considered a pediatric size wheelchair and is billed with codes E1231-E1238 or E1229 unless determination by the Medicare Pricing, Data Analysis and Coding (PDAC) contractor for the wheelchair is otherwise indicated;

(e) A PWC with a seat width or depth of 14" or less is considered a pediatric PWC base and is coded E1239, PWC, pediatric size, not otherwise specified;

(f) Pediatric seating system codes E2291-E2294 may only be billed with pediatric wheelchair base codes;

(g) Contact the Medicare Pricing, Data Analysis and Coding (PDAC) contractor regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation requirements:

(a) Functional Mobility Evaluation:

(A) Durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) providers must submit medical documentation which supports conditions of coverage in this rule are met for purchase and modifications of all covered, client-owned pediatric wheelchairs;

(B) Information must include, but is not limited to:

(i) Medical justification, needs assessment, order, and specifications for the wheelchair, completed by a physical therapist (PT), occupational therapist (OT) or treating physician. The person who provides this information must have no direct or indirect financial relationship, agreement or contract with the DMEPOS provider requesting authorization; and

(ii) Client identification and rehab technology supplier identification information which may be completed by the DMEPOS provider; and

(iii) Signature and date by the treating physician and PT or OT.

(C) If the information on this form includes all the elements of an order, the provider may submit the completed form in lieu of an order;

(b) Additional Documentation:

(A) Information from a PT, OT or treating physician that specifically indicates:

(i) The client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(B) Pertinent information from a PT, OT or treating physician about the following elements that support coverage criteria are met for a pediatric wheelchair; only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, pediatric wheelchair, power-operated vehicle (POV), or PWC and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs, or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment – any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and a wheelchair or power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;

(C) Documentation from a PT, OT or treating physician that clearly distinguishes the client's abilities and needs within the home from any additional needs for use outside the home since DMAP determines coverage of a wheelchair solely by the client's mobility needs within the home, even though a client who qualifies for coverage of a pediatric wheelchair may use the wheelchair outside the home; and

(D) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options, including growth capabilities; and

(E) Detailed information about client-owned equipment (including serial numbers), as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable; and

(F) For the home assessment, prior to delivery of the wheelchair, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a wheelchair. This assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc.; and

(G) All HCPCS codes, including the base, options and accessories, whether prior authorization (PA) is required or not, that will be separately billed;

(c) A written order by the treating physician, identifying the specific type of pediatric wheelchair needed. If the order does not specify the type requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific pediatric wheelchair that is being ordered and any options and accessories requested. The DMEPOS provider may enter the items on this order. This order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority; and

(d) For a PWC request: See 410-122-0325, Motorized/Power Wheelchair Base for documentation requirements; and

(e) Any additional documentation that supports indications of coverage are met as specified in this policy; and

(f) For a manual wheelchair rental, submit all of the following:

(A) A written order from the treating physician, identifying the specific type of manual wheelchair needed:

(i) If the order does not specify the type of wheelchair requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific manual wheelchair that is being ordered and any options and accessories requested;

(ii) The DMEPOS provider may enter the items on this order;

(iii) This order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority;

(B) HCPCS codes;

(C) Documentation from the DMEPOS provider which supports that the client's home can accommodate and allow for the effective use of the requested wheelchair;

(g) The above documentation must be kept on file by the DMEPOS provider; and

(h) Documentation that the coverage criteria have been met must be present in the client's medical records and this documentation must be made available to DMAP on request; and

(i) For a PWC furnished on a rental basis with dates of services prior to October 1, 2006, use code E1239 as appropriate.

(4) **Table 122-0720** — Pediatric Wheelchairs.

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

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

Stats. Implemented: ORS 414.065

Hist.: OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 12-2007, f. 6-29-07, cert. ef. 7-1-07; DMAP 15-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 17-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 15-2009 f. 6-12-09, cert. ef. 7-1-09

Rule Caption: July 2009 rule amendments for clarification only.
Adm. Order No.: DMAP 16-2009
Filed with Sec. of State: 6-12-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 410-123-1060, 410-123-1100, 410-123-1160, 410-123-1220, 410-123-1260, 410-123-1490, 410-123-1600, 410-123-1620, 410-123-1670
Subject: The Dental Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP amended rules to clarify current policies and procedures to ensure these rules are not open to interpretation by providers or outside parties and to help eliminate confusion possibly resulting in non-compliance. DMAP also clarified current OARs to help facilitate provider compliance with eligibility, service coverage and limitations, prior authorizations, and billing requirements. 410-123-1670 is amended to reference the corrected document, Covered and Non-Covered Services, dated July 1, 2009. Text in all rules listed is revised to improve readability, allow for more user-friendly format, and reduce duplication of language already addressed in other rules.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-123-1060
Definition of Terms

(1) Central Nervous System Anesthesia — An induced controlled state of unconsciousness or depressed consciousness produced by a pharmacologic method. Refer to Oregon Board of Dentistry administrative rules (OAR chapter 818, division 026) for further details:

(a) Conscious Sedation — An induced controlled state of minimally depressed consciousness in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

(b) Deep Sedation —An induced controlled state of depressed consciousness in which the patient experiences a partial loss of protective reflexes, as evidenced by the inability to respond purposefully either to physical stimulation or to verbal command but the patient retains the ability to independently and continuously maintain an airway;

(c) General Anesthesia —An induced controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation, or the inability to respond purposefully to verbal command;

(d) Nitrous Oxide Sedation —An induced controlled state of minimally depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide and oxygen, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command;

(2) Citizen/Alien-Waived Emergency Medical (CAWEM) — Refer to OAR 410-120-0000 for definition of clients who are eligible for limited emergency services under the CAWEM benefit package. The definition of emergency services does not apply to CAWEM clients. OAR 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package.

(3) Covered Services — Services on the Health Services Commission's (HSC) Prioritized List of Health Services (List) that have been funded by the Legislature and identified in specific program rules. Services are limited as directed by General Rules — Excluded Services and Limitations (OAR 410-120-1200), the Dental Services Rules (chapter 410, division 123) and the HSC List. Services that are not considered emergency dental services as defined by OAR 410-123-1060(12) are considered routine services.

(4) Dental Hygienist — A person licensed to practice dental hygiene pursuant to State law.

(5) Dental Hygienist with Limited Access Permit (LAP) — A person licensed to practice dental hygiene with a LAP and within the scope of a LAP pursuant to State law.

(6) Dental Practitioner — A person licensed pursuant to State law to engage in the provision of dental services within the scope of the practitioner's license and/or certification.

(7) Dental Services — Services provided within the scope of practice as defined under State law by or under the supervision of a dentist or dental hygienist, or denture services provided within the scope of practice as defined under State law by a denturist.

(8) Dental Services Documentation — Must meet the requirements of the Oregon Dental Practice Act statutes; administrative rules for client records and requirements of OAR 410-120-1360, "Requirements for Financial, Clinical and Other Records;" and any other documentation requirements as outlined in the Dental rules.

(9) Dentally Appropriate — In accordance with OAR 410-141-0000, services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community, evidence-based medicine and professional standards of care as effective;

(c) Not solely for the convenience of a OHP member or a provider of the service; and

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a Division of Medical Assistance Program (DMAP) member.

(10) Dentist — A person licensed to practice dentistry pursuant to State law.

(11) Denturist — A person licensed to practice denture technology pursuant to State law.

(12) Direct Pulp Cap — The procedure in which the exposed pulp is covered with a dressing or cement that protects the pulp and promotes healing and repair.

(13) Emergency Services:

(a) Refer to OAR 410-120-0000 for the complete definition of emergency services. (This definition of emergency services does not apply to CAWEM clients. OAR 410-120-1210 provides a complete description of limited emergency coverage pertaining to the CAWEM benefit package);

(b) Covered services for an emergency dental condition manifesting itself by acute symptoms of sufficient severity requiring immediate treatment. This includes services to treat the following conditions:

(A) Acute infection;

(B) Acute abscesses;

(C) Severe tooth pain;

(D) Unusual swelling of the face or gums; or

(E) A tooth that has been avulsed (knocked out);

(c) The treatment of an emergency dental condition is limited only to covered services. DMAP recognizes that some non-covered services may meet the criteria of treatment for the emergency condition, however this rule does not extend to those non-covered services. Routine dental treatment or treatment of incipient decay does not constitute emergency care;

(d) The OHP Standard Benefit Package includes a limited emergency dental benefit. Refer to OAR 410-123-1670.

(14) Hospital Dentistry — Dental services normally done in a dental office setting, but due to specific client need (as detailed in OAR 410-123-1490) are provided in an ambulatory surgical center, inpatient, or outpatient hospital setting under general anesthesia (or IV conscious sedation, if appropriate).

(15) Medical Practitioner — A person licensed pursuant to State law to engage in the provision of medical services within the scope of the practitioner's license and/or certification.

(16) Procedure Codes — The procedure codes in the Dental Services rulebook (OAR 410, Division 123) refer to Current Dental Terminology (CDT), unless otherwise noted. Codes listed in this rulebook and other documents incorporated in rule by reference are subject to change by the American Dental Association (ADA) without notification.

(17) Standard of Care — What reasonable and prudent practitioners would do in the same or similar circumstances.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09

410-123-1100
Services Reviewed by the Division of Medical Assistance Programs (DMAP)

(1) Services requiring prior authorization (PA): See OAR 410-123-1160 for information about services that require PA and how to request PA.

(2) By Report Procedures:

(a) Request for payment for dental services listed as "by report" (BR), or services not included in the procedure code listing must be submitted with a full description of the procedure, including relevant operative or clinical history reports and/or radiographs. Payment for BR procedures will be approved in consultation with a Division of Medical Assistance Program (DMAP) dental consultant;

(b) Refer to the "Covered and Non-Covered Dental Services" document for a list of procedures noted as BR. See OAR 410-123-1220.

(3) Treatment Justification: DMAP may request the treating dentist to submit appropriate radiographs or other clinical information that justifies the treatment:

(a) Before issuing PA;

(b) In the process of utilization/post payment review; or

(c) In determining responsibility for payment of dental services.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 32-1994, f. & cert. ef. 11-1-94; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09

410-123-1160
Prior Authorization (PA)

(1) Division of Medical Assistance Programs (DMAP) PA requirements:

(a) For fee-for-service (FFS) dental clients, the following services require PA:

(A) Crowns (porcelain fused to metal, resin with metal);

(B) Re-treatment of previous root canal therapy – anterior;

(C) Complete dentures;

(D) Immediate dentures;

(E) Partial dentures;

(F) Denture repairs; and

(G) Orthodontics (when covered pursuant to OAR 410-123-1260);

(b) Hospital dentistry always requires PA, regardless of the client's enrollment status. Refer to OAR 410-123-1490 for more information;

(c) Oral surgical services require PA when performed in an Ambulatory Surgical Center (ASC) or an outpatient or inpatient hospital setting and related anesthesia. Refer to OAR 410-123-1260(15) and the current Medical Surgical Services administrative rules (OAR 410-130-0200) for information;

(d) Maxillofacial surgeries may require PA in some instances. Refer to the current Medical Surgical Services administrative rules for information (OAR 410-130-0200).

(2) DMAP does not require PA for outpatient or inpatient services related to life-threatening emergencies. The client's clinical record must document any appropriate clinical information that supports the need for the hospitalization.

(3) How to request PA:

(a) Submit the request to DMAP in writing. Refer to the Dental Services Supplemental Information for specific instructions and forms to use. Telephone calls requesting PA will not be accepted;

(b) Treatment justification: DMAP may request the treating dentist to submit appropriate radiographs or other clinical information that justifies the treatment:

(a) When radiographs are required they must be:

(A) Readable copies;

(B) Mounted or loose;

(C) In an envelope, stapled to the PA form;

(D) Clearly labeled with the dentist's name and address and the client's name; and

(E) If digital x-ray, they must be of photo quality;

(b) Do not submit radiographs unless it is required by the Dental Services administrative rules or they are requested during the PA process.

(4) DMAP will issue a decision on PA requests within 30 days of receipt of the request. DMAP will provide PA for services when:

(a) The prognosis is favorable;

(b) The treatment is practical;

(c) The services are dentally appropriate; and

(d) A lesser-cost procedure would not achieve the same ultimate results.

(5) PA does not guarantee eligibility or reimbursement. It is the responsibility of the provider to check the client's eligibility on the date of service.

(6) For certain services and billings, DMAP will seek a general practice consultant or an oral surgery consultant for professional review to determine if a PA will be approved. DMAP will deny PA if the consultant decides that the clinical information furnished does not support the treatment of services.

(7) For managed care PA requirements:

(a) For services other than hospital dentistry, contact the client's DCO for PA requirements for individual services and/or supplies listed in the Dental Services administrative rules. DCOs may not have the same PA requirements for dental services as listed in this administrative rule;

(b) For hospital dentistry, refer to OAR 410-123-1490 for details regarding PA requirements.

Stat. Auth.: ORS 409.050, 414.051, 414.065

Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 32-1994, f. & cert. ef. 11-1-94; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09

410-123-1220
Coverage according to the Prioritized List of Health Services

(1) This rule incorporates by reference the "Covered and Non-Covered Dental Services" document, dated July 1, 2009, located on the DHS Web site at www.dhs.state.or.us/policy/healthplan/guides/dental/main.html:

(a) The "Covered and Non-Covered Dental Services" document lists coverage of Current Dental Terminology (CDT) procedure codes according to the Prioritized List of Health Services and the client specific benefit package;

(b) This document is subject to change if there are funding changes to the Prioritized List Services.

(2) Changes to services funded on the Oregon Health Services Commission's (HSC) Prioritized List of Health Services are effective on the date of the List change:

(a) The Division of Medical Assistance Programs (DMAP) administrative rules (Chapter 410-Division 123) will not reflect the most current HSC list changes until they have gone through DMAP rule filing process;

(b) For the most current HSC list, refer to the HSC Web site at www.oregon.gov/OHPPR/HSC/current_prior.shtml.

(2) In the event of an alleged variation between a DMAP-listed code and a national code, DMAP will apply the national code in effect on the date of request or date of service.

(3) The following general categories of Dental Services are not included/funded on the HSC List and are not covered for any client. Several of these services are considered "cosmetic" in nature (i.e., done for the sake of appearance):

(a) Desensitization;

(b) Implant and implant services;

(c) Mastique or veneer procedure;

(d) Orthodontia (except when it is treatment for cleft palate with cleft lip);

(e) Overhang removal;

(f) Procedures, appliances or restorations solely for aesthetic/ cosmetic purposes;

(g) Temporomandibular Joint Dysfunction treatment; and

(h) Tooth bleaching.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 21-1994(Temp), f. 4-29-94, cert. ef. 5-1-94; HR 32-1994, f. & cert. ef. 11-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; HR 9-1996, f. 5-31-96, cert. ef. 6-1-96; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09

410-123-1260
Dental Exams, Diagnostic and Procedural Services

GENERAL

(1) Refer to OAR 410-123-1160 for information regarding dental services requiring prior authorization (PA).

(2) Refer to OAR 410-123-1100 for information regarding dental services that require providers to submit reports for review ("by report" — BR) prior to reimbursement.

(3) The client's records must include documentation to support the appropriateness of the service and level of care rendered.

(4) The Division of Medical Assistance Programs (DMAP) will only reimburse for dental services that are dentally appropriate as defined in OAR 410-123-1060.

(5) Refer to OAR 410 Division 147 for information about reimbursement for dental services provided through a Federally Qualified Health Center (FQHC) or Rural Health Center (RHC).

(6) Early and Periodic Screening, Diagnosis and Treatment (EPSDT):

(a) Refer to Code of Federal Regulations (42 CFR 441, Subpart B) and OAR 410 Division 120 for definitions of the EPSDT program, eligible clients, and related services. EPSDT dental services includes, but are not limited to:

(A) Dental screening services for eligible EPSDT individuals; and

(B) Dental diagnosis and treatment which is indicated by screening, at as early an age as necessary, needed for relief of pain and infections, restoration of teeth and maintenance of dental health;

(b) Providers must provide EPSDT services for eligible DMAP clients according to the following documents:

(A) The Dental Services administrative rules (OAR 410 Division123), for dentally appropriate services funded by the Prioritized List of Health Services; and

(B) The "Oregon Health Plan (OHP) — Recommended Dental Periodicity Schedule," dated January 1, 2009. This rule incorporates by reference the OHP periodicity schedule posted on the DHS Web site at www.dhs.state.or.us/policy/healthplan/guides/dental/main.html.

(7) Restorative, periodontal and prosthetic treatments:

(a) Such treatments must be consistent with the prevailing standard of care, documentation must be included in the client's charts to support the treatment, and may be limited as follows:

(A) When prognosis is unfavorable;

(B) When treatment is impractical;

(C) A lesser-cost procedure would achieve the same ultimate result; or

(D) The treatment has specific limitations outlined in this rule;

(b) Prosthetic treatment (including porcelain fused to metal crowns) are limited until rampant progression of caries is arrested and a period of adequate oral hygiene and periodontal stability is demonstrated; periodontal health needs to be stable and supportive of a prosthetic.

DIAGNOSTIC SERVICES

(8) Exams:

(a) For children (under 19 years of age) — DMAP will reimburse exams (billed as D0120, D0145, D0150, D0160 or D0180) a maximum of twice every 12 months with the following limitations:

(A) D0150: once every 12 months when performed by the same practitioner;

(B) D0150: twice every 12 months only when performed by different practitioners;

(C) D0160 or D0180: once every 12 months;

(b) For adults (19 years of age and older) – DMAP will reimburse exams (billed as D0120, D0150, D0160, or D0180) by the same practitioner once every 12 months;

(c) For each emergent episode, use D0140 for the initial exam. Use D0170 for related dental follow-up exams;

(d) DMAP only covers oral exams by medical practitioners when the medical practitioner is an oral surgeon;

(e) As the American Dental Association's Current Dental Terminology (CDT) codebook specifies the evaluation, diagnosis and treatment planning components of the exam are the responsibility of the dentist, DMAP does not reimburse dental exams when furnished by a Dental Hygienist (with or without a limited access permit).

(9) Radiographs:

(a) DMAP will reimburse for routine radiographs once every 12 months;

(b) DMAP will reimburse bitewing radiographs for routine screening once every 12 months;

(c) DMAP will reimburse a maximum of six radiographs for any one emergency;

(d) For clients under age six, radiographs may be billed separately every 12 months as follows:

(A) D0220 — once;

(B) D0230 — a maximum of five times;

(C) D0270 — a maximum of twice, or D0272 once;

(e) DMAP will reimburse for panoramic (D0330) or intra-oral complete series (D0210) once every five years, but both cannot be done within the five-year period;

(f) Clients must be a minimum of six years old for billing intra-oral complete series (D0210); The minimum standards for reimbursement of intra-oral complete series are:

(A) For clients age six through 11- a minimum of 10 periapicals and two bitewings for a total of 12 films;

(B) For clients ages 12 and older - a minimum of 10 periapicals and four bitewings for a total of 14 films;

(g) If fees for multiple single radiographs exceed the allowable reimbursement for a full mouth complete series (D0210), DMAP will reimburse for the complete series;

(h) Additional films may be covered if dentally or medically appropriate, e.g., fractures (Refer to OAR 410-123-1060 and 410-120-0000);

(i) If DMAP determines the number of radiographs to be excessive, payment for some or all radiographs of the same tooth or area may be denied;

(j) The exception to these limitations is if the client is new to the office or clinic and the office or clinic was unsuccessful in obtaining radiographs from the previous dental office or clinic. Supporting documentation outlining the provider's attempts to receive previous records must be included in the client's records;

(k) Digital radiographs, if printed, should be on photo paper to assure sufficient quality of images.

PREVENTIVE SERVICES

(10) Prophylaxis:

(a) For children (under 19 years of age) — Limited to twice every 12 months;

(b) For adults (19 years of age and older) — Limited to once every 12 months;

(c) Additional prophylaxis benefit provisions may be available for persons with high risk oral conditions due to disease process, pregnancy, medications or other medical treatments or conditions, severe periodontal disease, rampant caries and/or for persons with disabilities who cannot perform adequate daily oral health care;

(d) Are coded using the appropriate Current Dental Terminology (CDT) coding:

(A) D1110 (Prophylaxis — Adult) — Use for clients age 14 and up; and

(B) D1120 (Prophylaxis — Child) — Use for clients age 0 through 13.

(11) Topical Fluoride Treatment:

(a) For adults (19 years of age and older) — Limited to once every 12 months;

(b) For children (under 19 years of age) — Limited to twice every 12 months;

(c) For children under 7 years of age who have limited access to a dental practitioner, topical fluoride varnish may be applied by a medical practitioner during a medical visit:

(A) Bill DMAP directly regardless of whether the client is fee-for-service (FFS) or enrolled in a Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO);

(B) Bill as a professional claim using the appropriate CDT code (D1206 – Topical Fluoride Varnish);

(C) An oral screening by a medical practitioner is not a separate billable service and is included in the office visit;

(d) Additional topical fluoride treatments may be available, up to a total of 4 treatments per client within a 12-month period, when high-risk conditions or oral health factors are clearly documented in chart notes for the following clients who:

(A) Have high-risk oral conditions due to disease process, medications, other medical treatments or conditions, or rampant caries;

(B) Are pregnant;

(C) Have physical disabilities and cannot perform adequate, daily oral health care;

(D) Have a developmental disability or other severe cognitive impairment that cannot perform adequate, daily oral health care; or

(E) Are under seven year old with high-risk oral health factors, such as poor oral hygiene, deep pits and fissures (grooves) in teeth, severely crowded teeth, poor diet, etc.

(12) Sealants:

(A) Are covered for permanent molars only for children 15 or younger;

(B) Are limited to one treatment per tooth every five years except for visible evidence of clinical failure.

(13) Tobacco Cessation:

(a) For services provided during a dental visit, bill as a dental service using CDT code D1320 when the following brief counseling is provided:

(A) Ask patients about their tobacco-use status at each visit and record information in the chart;

(B) Advise patients on their oral health conditions related to tobacco use and give direct advice to quit using tobacco;

(C) Assess the patient's current level of readiness to quit;

(D) Assist patients, for example by providing self-help cessation materials, recommending tobacco cessation therapy products through the patient's primary care physician (e.g. nicotine patches, oral medications intended for tobacco cessation treatment and gum) and encouraging the setting of a quit date; and

(E) Arrange to follow up with patients at their next office visit and provide local tobacco-use cessation resources, if needed;

(b) A maximum of 10 services are allowed within a three-month period;

(c) For tobacco cessation services provided during a medical visit follow criteria outlined in OAR 410-130-0190.

(14) Space management – DMAP will not reimburse for replacement of lost or damaged removable space maintainers.

RESTORATIVE SERVICES

(15) Restorations — Amalgam and Composite:

(a) DMAP limits payment to the maximum restoration fee of four surfaces per tooth. Refer to the ADA CDT codebook for definitions of restorative procedures;

(b) Combine and bill one line per tooth using the appropriate code. For example, if tooth #30 has a buccal amalgam and a MOD amalgam, then bill MOD, B, using code D2161;

(c) DMAP will not reimburse for an amalgam or composite restoration and a crown on the same tooth;

(d) DMAP reimburses for a surface once in each treatment episode regardless of the number or combination of restorations;

(e) The restoration fee includes payment for occlusal adjustment and polishing of the restoration;

(f) DMAP reimburses for posterior composite restorations at the same rate as amalgam restorations;

(g) DMAP limits payment for replacement of posterior composite restorations to once every five years.

(16) Crowns:

(a) Acrylic heat or light cured crowns (D2970) — allowed for anterior permanent teeth only;

(b) Prefabricated plastic crowns (D2932) — allowed for anterior teeth only, permanent or primary;

(c) Stainless steel crowns (D2930/D2931) — allowed for posterior teeth, permanent or primary;

(d) Permanent crowns — allowed only for anterior permanent teeth if dentally appropriate:

(A) For resin-based composite — D2710:

(i) Clients is 16 years or older;

(ii) The dental practitioner submits radiographs to DMAP for review; history, diagnosis, and treatment plan may be requested. See OAR 410-123-1100 Services Reviewed by DMAP;

(iii) Rampant caries are arrested and the client demonstrates a period of oral hygiene before prosthetics are proposed;

(B) For porcelain fused to metal (PFM) – D2751 and D2752:

(i) Conditions listed in part (16)(d)(A) of this rule have been met;

(ii) The dental practitioner has attempted all other dentally appropriate restoration options, and documented failure of those options;

(iii) Written documentation in the client's chart indicates that PFM is the only restoration option that will restore function;

(iv) The client has documented stable periodontal status with pocket depths within 1 – 3 millimeters. If PFM crowns are placed with pocket depths of 4 millimeter and over, documentation must be maintained in the client's chart of the dentist's findings supporting stability and why the increased pocket depths will not adversely affect expected long term prognosis;

(v) The crown has a favorable long-term prognosis; and

(vi) If tooth to be crowned is clasp/abutment tooth in partial denture, both prognosis for crown itself and tooth's contribution to partial denture must have favorable expected long-term prognosis;

(e) The fee for the crown includes payment for preparation of the gingival tissue;

(f) DMAP limits payment for retention pins to four per tooth;

(g) DMAP covers crowns only when there is significant loss of clinical crown and no other restoration will restore function. The following is not covered:

(A) Endodontic therapy alone (with or without a post;

(B) Aesthetics (cosmetics);

(h) DMAP limits crown replacement to once every five years per tooth and only when dentally appropriate. DMAP may make exceptions to this limitation for crown damage due to acute trauma, based on the following factors:

(A) Extent of crown damage;

(B) Extent of damage to other teeth or crowns;

(C) Extent of impaired mastication;

(D) Tooth is restorable without other surgical procedures; and

(E) If loss of tooth would result in coverage of removable prosthetic;

(i) DMAP does not cover crowns in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason;

(j) DMAP will cover crowns if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures.

ENDODONTIC SERVICES

(17) Endodontics:

(a) Pulp Capping:

(A) DMAP includes direct and indirect pulp caps in the restoration fee; no additional payment will be made for clients with the OHP Plus Benefit package;

(B) DMAP covers direct pulp caps as a separate service for clients with the OHP Standard Benefit package because restorations are not a covered benefit under this benefit package;

(b) Endodontic Therapy:

(A) DMAP covers endodontics only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(B) DMAP does not cover retreatment for bicuspid or molars;

(C) DMAP limits retreatment to anterior teeth when:

(i) Crown-to-root ratio is 50:50 or better;

(ii) The tooth is restorable without other surgical procedures; or

(iii) If loss of tooth would result in the need for removable prosthodontics;

(D) DMAP does not allow separate reimbursement for open-and-drain as a palliative procedure when the root canal is completed on the same date of service, or if the same practitioner or dental practitioner in the same group practice completed the procedure;

(E) DMAP does not cover root canal therapy for third molars;

(F) DMAP covers endodontic therapy if the tooth is restorable within the OHP benefit coverage package;

(c) Endodontic therapy on permanent teeth – DMAP limits payment for apexification to a maximum of five treatments on permanent teeth only.

PERIODONTIC SERVICES

(18) Periodontics:

(a) Surgical periodontal services:

(A) D4210 and D4211 – limited to coverage for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., Dilantin hyperplasia;

(B) D4240, D4241, D4260 and D4261 — allowed once every three years unless there is a documented medical/dental indication;

(C) Surgical procedures include six months routine postoperative care;

(b) Non-surgical periodontal services — D4341 and D4342 -- allowed once every two years. A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances. Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater;

(c) Other periodontal services — D4910 – limited to following periodontal therapy and allowed once every six months. For further consideration of more frequent periodontal maintenance benefits, office records must clearly reflect clinical indication, i.e., chart notes, pocket depths and radiographs;

(d) Records must clearly document the clinical indications for all periodontal procedures, including current pocket depth charting and/or radiographs;

(e) DMAP will not reimburse for procedures identified by the following codes if performed on the same date of service:

(A) D1110 (Prophylaxis – adult);

(B) D1120 (Prophylaxis – child);

(C) D4210 (Gingivectomy or gingivoplasty — four or more contiguous teeth or bounded teeth spaces per quadrant);

(D) D4211 (Gingivectomy or gingivoplasty — one to three contiguous teeth or bounded teeth spaces per quadrant);

(E) D4260 (Osseous surgery, including flap entry and closure — four or more contiguous teeth or bounded teeth spaces per quadrant);

(F) D4261 (Osseous surgery, including flap entry and closure — one to three contiguous teeth or bounded teeth spaces per quadrant);

(G) D4341 (Periodontal scaling and root planning — four or more teeth per quadrant);

(H) D4342 (Periodontal scaling and root planning — one to three teeth per quadrant);

(I) D4355 (Full mouth debridement to enable comprehensive evaluation and diagnosis); and

(J) D4910 (Periodontal maintenance).

REMOVABLE PROSTHODONTIC SERVICES

(19) Removable Prosthodontics:

(a) DMAP limits payment for removable cast metal prosthodontics and full dentures to clients 16 years or older;

(b) The fee for the prosthodontics and full dentures includes payment for adjustments during the six-month period following delivery to clients;

(c) Cast partial dentures:

(A) DMAP will not approve cast partial dentures if stainless steel crowns are used as abutments;

(B) Cast partial dentures must have one or more anterior teeth missing or four or more missing posterior teeth per arch with resulting space equivalent to that loss demonstrating inability to masticate. Third molars are not a consideration when counting missing teeth;

(C) The dental practitioner must note the teeth to be replaced and teeth to be clasped in the "remarks" section of the ADA claim form;

(d) Replacement of removable prosthodontics:

(A) Replacement of dentures and partials, when it cannot be made clinically serviceable by a less costly procedure (e.g., reline, rebase, repair, tooth replacement), is limited to once every five years and only if dentally appropriate. This does not imply that replacement of dentures or partials must be done once every five years, but only when dentally appropriate;

(B) This limitation applies to the client regardless of the client's OHP or Dental Care Organization (DCO) enrollment status at the time client's last denture or partial was received. For example: a client receives full dentures on February 1, 2002, and becomes a FFS OHP client in 2005. The client is not eligible for replacement dentures until February 2, 2007. The client gets replacement dentures on February 3, 2007 while FFS and a year later enrolls in a DCO. The client would not be eligible for another full denture until February 3, 2012, regardless of DCO or FFS enrollment;

(C) Replacement of partial dentures with full dentures is payable five years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene will not warrant replacement;

(e) Denture rebase procedures:

(A) Rebase should only be done if a reline will not adequately solve the problem. DMAP limits payment for rebase to once every three years;

(B) DMAP may make exceptions to this limitation in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical and/or medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene will not warrant rebasing;

(f) Denture reline procedures:

(A) DMAP limits payment for reline of complete or partial dentures to once every two years;

(B) DMAP may make exceptions to this limitation under the same conditions warranting replacement;

(C) Laboratory relines:

(i) Are not payable within five months after placement of an immediate denture; and

(ii) Are limited to once every two years;

(g) Tissue conditioning:

(A) Is allowed once per denture unit in conjunction with immediate dentures; and

(B) Is allowed once prior to new prosthetic placement.

MAXILLOFACIAL PROSTHETIC SERVICES

(20) Maxillofacial Prosthetics:

(a) Maxillofacial prosthetics are medical services. Refer to the "Covered and Non-Covered Dental Services" document and OAR 410-123-1220;

(b) Bill for maxillofacial prosthetics using the professional (CMS-1500, DMAP 505 or 837P) claim format:

(A) For clients receiving services through an FCHP or PCO, bill maxillofacial prosthetics to the FCHP or PCO;

(B) For clients receiving medical services through FFS, bill DMAP.

ORAL SURGERY SERVICES

(21) Oral Surgery:

(a) Oral surgical procedures that are directly related to the teeth and supporting structures that are not due to a medical condition must be billed on an ADA claim form, using CDT codes;

(b) Oral surgical services that are included in a dental plan benefit package which are performed in a dental office setting (including an oral surgeon's office):

(A) Do not require PA, and include, but are not limited to, all dental procedures, local anesthesia, surgical postoperative care, radiographs and follow-up visits;

(B) Are billed on an ADA dental claim form, using CDT codes, except when the procedures are a result of a medical condition (i.e., fractures, cancer) which must be billed using a professional claim form with the appropriate American Medical Association (AMA) CPT procedure/ICD-9 diagnosis codes;

(C) For clients enrolled in a DCO, the DCO is responsible for payment of those services in the dental plan package;

(c) Oral surgical services performed in an Ambulatory Surgical Center (ASC) or an inpatient or outpatient hospital setting:

(A) Oral surgical services in a hospital setting and related anesthesia services require PA;

(B) If the hospital setting oral surgical procedures are directly related to the teeth and supporting structures, the procedures must be billed on an ADA claim form, using CDT codes;

(C) If the services requiring hospital dentistry are the result of a medical condition/diagnosis (i.e., fracture, cancer), use appropriate AMA CPT procedure codes/ICD-9 diagnosis codes and bill procedures on a professional claim form;

(D) For clients enrolled in a FCHP, the facility charge and anesthesia services are the responsibility of the FCHP. For clients enrolled in a PCO, the outpatient facility charge (including ASCs) and anesthesia are the responsibility of the PCO. Refer to the current Medical Surgical Services administrative rules in OAR Chapter 410 – Division 130 for more information;

(d) All codes listed as "by report" require an operative report;

(e) DMAP covers payment for tooth reimplantation only in cases of traumatic avulsion where there are good indications of success;

(f) Biopsies collected are reimbursed as a dental service. Laboratory services of biopsies are reimbursed as a medical service;

(g) DMAP does not cover surgical excisions of soft tissue lesions (D7410 — D7415;

(h) Extractions — Includes local anesthesia and routine postoperative care, including treatment of a dry socket if done by the provider of the extraction. Dry socket is not considered a separate service;

(i) Surgical extractions:

(A) Includes local anesthesia and routine post-operative care;

(B) DMAP limits payment for surgical removal of impacted teeth or removal of residual tooth roots to treatment for only those teeth that have acute infection or abscess, severe tooth pain, and/or unusual swelling of the face or gums;

(C) DMAP does not cover alveoloplasty in conjunction with extractions (D7310 and D7311) separately from the extraction. DMAP covers only alveoplasty not in conjunction with extractions (D7320;

(j) Refer to the "Covered and Non-Covered Dental Services" document to see a list of CDT procedure codes on the HSC's Prioritized List of Health Services that also have CPT medical codes. See OAR 410-123-1220. The procedures listed as "medical" on the table may be covered as medical procedures, and the table may not be all-inclusive of every dental code that has a corresponding medical code:

(A) If billed as a medical procedure in accordance with these rules, the procedure must be billed on a CMS-1500, using CPT coding. Refer to the Medical-Surgical administrative rules for additional information (DMAP chapter 410 – division 130);

(B) If a client is enrolled in a FCHP or a PCO, it is the responsibility of the provider to contact the FCHP or the PCO for any required authorization before the service is rendered.

ORTHODONTIA SERVICES

(22) Orthodontia:

(a) DMAP limits orthodontia services and extractions to eligible clients:

(A) With the ICD-9-CM diagnosis of cleft palate with cleft lip; and

(B) Whose orthodontia treatment began prior to 21 years of age; or

(C) Whose surgical corrections of cleft palate with cleft lip were not completed prior to age 21;

(b) PA is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate/cleft lip must be included in the client's record and a copy sent with the PA request;

(c) Documentation in the client's record must include diagnosis, length and type of treatment;

(d) Payment for appliance therapy includes the appliance and all follow-up visits;

(e) Orthodontists evaluate orthodontia treatment for cleft palate/cleft lip as two phases. Stage one is generally the use of an activator (palatal expander) and stage two is generally the placement of fixed appliances (banding). DMAP will reimburse each phase individually (separately);

(f) DMAP will pay for orthodontia in one lump sum at the beginning of each phase of treatment. Payment for each phase is for all orthodontia-related services. If the client transfers to another orthodontist during treatment, or treatment is terminated for any reason, the orthodontist must refund to DMAP any unused amount of payment, after applying the following formula: Total payment minus $300.00 (for banding) multiplied by the percentage of treatment remaining;

(g) DMAP will use the length of the treatment plan from the original request for authorization to determine the number of treatment months remaining;

(h) As long as the orthodontist continues treatment, DMAP will not require a refund even though the client may become ineligible for medical assistance sometime during the treatment period;

(i) Code:

(A) D8660 — PA required (reimbursement for required orthodontia records is included);

(B) Codes D8010-D8999 — PA required.

ADJUNCTIVE GENERAL AND OTHER SERVICES

(23) Anesthesia:

(a) Only use general anesthesia or IV sedation for those clients with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure (D9220, D9221, D9241 and D9242);

(b) DMAP reimburses providers for general anesthesia or IV sedation as follows:

(A) D9220 or D9241: For the first 30 minutes;

(B) D9221 or D9242: For each additional 15-minute period, up to three hours on the same day of service. Each 15-minute period represents a quantity of one. Enter this number in the quantity column;

(c) DMAP reimburses administration of Nitrous Oxide (D9230) per date of service, not by time;

(d) Oral pre-medication anesthesia for conscious sedation:

(A) Limited to clients through 12 years of age;

(B) Limited to four times per year;

(C) Includes payment for monitoring and Nitrous Oxide; and

(D) Requires use of multiple agents to receive payment;

(e) Upon request, providers must submit to DMAP a copy of their permit to administer anesthesia, analgesia and/or sedation;

(f) Anesthesia -- For the purpose of Title XIX and Title XXI, DMAP limits payment for code D9630 to those oral medications used during a procedure and is not intended for "take home" medication.

(24) DMAP limits office visit for observation (D9430) to three visits per year.

(25) Oral devices/appliances (E0485, E0486):

(a) These may be placed or fabricated by a dentist or oral surgeon, but are considered a medical service;

(b) Bill DMAP or the FCHP/PCO for these codes using the professional claim format.

[ED. NOTE: Tables are available from the Agency.]

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09

410-123-1490
Hospital Dentistry

(1) The purpose of hospital dentistry is to provide safe, efficient dental care when providing routine (non-emergency) dental services for Division of Medical Assistance Programs (DMAP) clients who present special challenges that require the use of general anesthesia or IV conscious sedation services in an Ambulatory Surgical Center (ASC), inpatient or outpatient hospital setting. Refer to OAR 410-123-1060 for definitions.

(2) DMAP reimbursement for hospital dentistry is limited to covered services and may be prorated if non-covered dental services are performed during the same hospital visit:

(a) See OAR 410-123-1060 for a definition of DMAP hospital dentistry services;

(b) Refer to OAR 410-123-1220 and the "Covered and Non-Covered Dental Services" document.

(3) Hospital dentistry is intended for the following DMAP clients:

(a) Children (18 or younger) who:

(A) Through age 3 — Have extensive dental needs;

(B) 4 years of age or older – Have unsuccessfully attempted treatment in the office setting with some type of sedation or nitrous oxide;

(C) Have acute situational anxiety, fearfulness, extreme uncooperative behavior, uncommunicative such as a client with developmental or mental disability, a client that is pre-verbal or extreme age where dental needs are deemed sufficiently important that dental care cannot be deferred;

(D) Need the use of general anesthesia (or IV conscious sedation) to protect the developing psyche;

(E) Have sustained extensive orofacial or dental trauma;

(F) Have physical, mental or medically compromising conditions; or

(G) Have a developmental disability or other severe cognitive impairment and one or more of the following characteristics that prevent routine dental care in an office setting:

(i) Acute situational anxiety and extreme uncooperative behavior;

(ii) A physically compromising condition;

(b) Adults (19 or older) who:

(A) Have a developmental disability or other severe cognitive impairment, and one or more of the following characteristics that prevent routine dental care in an office setting:

(i) Acute situational anxiety and extreme uncooperative behavior;

(ii) A physically compromising condition;

(B) Have sustained extensive orofacial or dental trauma; or

(C) Are medically fragile, have complex medical needs, contractures or other significant medical conditions potentially making the dental office setting unsafe for the client.

(4) Hospital dentistry is not intended for:

(a) Client convenience. Refer to OAR 410-120-1200;

(b) A healthy, cooperative client with minimal dental needs; or

(c) Medical contraindication to general anesthesia or IV conscious sedation.

(5) Required documentation: The following information must be included in the client's dental record:

(a) Informed consent: Client, parental or guardian written consent must be obtained prior to the use of general anesthesia or IV conscious sedation;

(b) Justification for the use of general anesthesia or IV conscious sedation. The decision to use general anesthesia or IV conscious sedation must take into consideration:

(A) Alternative behavior management modalities;

(B) Client's dental needs;

(C) Quality of dental care;

(D) Quantity of dental care;

(E) Client's emotional development;

(F) Client's physical considerations;

(c) If treatment in an office setting is not possible, documentation in the client's dental record must explain why, in the estimation of the dentist, the client will not be responsive to office treatment;

(d) DMAP or the FCHP may require additional documentation when reviewing requests for prior authorization (PA) of hospital dentistry services. See OAR 410-123-1160 and section (6) of this rule for additional information;

(e) If the dentist did not proceed with a previous hospital dentistry plan approved by DMAP for the same client, DMAP will also require clinical documentation explaining why the dentist did not complete the previous treatment plan.

(6) Hospital dentistry always requires prior authorization (PA) for the medical services provided by the facility:

(a) If a client is enrolled in a Fully Capitated Health Plan (FCHP) and a Dental Care Organization (DCO):

(A) The dentist is responsible for:

(i) Contacting the FCHP for PA requirements and arrangements; and

(ii) Submitting documentation to both the FCHP and DCO;

(B) The FCHP and DCO should review the documentation and discuss any concerns they have, contacting the dentist as needed. This allows for mutual plan involvement and monitoring;

(C) The total response time should not exceed 14 calendar days from the date of submission of all required documentation for routine dental care and should follow urgent/emergent dental care timelines;

(D) The FCHP is responsible for payment of all facility and anesthesia services. The DCO is responsible for payment of all dental professional services;

(b) If a client is fee-for-service (FFS) for medical services and enrolled in a DCO:

(A) The dentist is responsible for faxing documentation and a completed American Dental Association (ADA) form to DMAP. Refer to the Dental Services Supplemental Information;

(B) If the client is assigned to a Primary Care Manager (PCM) through FFS medical, the client must have a referral from the PCM prior to any hospital service being approved by DMAP;

(C) DMAP is responsible for payment of facility and anesthesia services. The DCO is responsible for payment of all dental professional services;

(D) DMAP will issue a decision on PA requests within 30 days of receipt of the request;

(c) If a client is enrolled in an FCHP and is FFS dental:

(A) The dentist is responsible for contacting the FCHP to obtain the PA and arrange for the hospital dentistry;

(B) The dentist is responsible for submitting required documentation to the FCHP;

(C) The FCHP is responsible for all facility and anesthesia services. DMAP is responsible for payment of all dental professional services;

(d) If a client is FFS for both medical and dental:

(A) The dentist is responsible for faxing documentation and a completed ADA form to DMAP. Refer to the Dental Services Supplemental Information;

(B) DMAP is responsible for payment of all facility, anesthesia services and dental professional charges.

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

Stat. Auth.: ORS 409.050, 414.051, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09

410-123-1600

Managed Care Organizations

(1) The Division of Medical Assistance Programs (DMAP) contracts with Managed Care Organizations (MCO) and Primary Care Managers (PCM) to provide medical services for clients under DMAP (Title XIX and Title XXI services):

(a) MCOs for dental services are called Dental Care Organizations (DCO). See General Rules OAR 410-120-0250 — Managed Care Organizations for definitions and responsibilities of MCOs;

(b) See General Rules OAR 410-120-1210(4) — Medical Assistance Programs and Delivery Systems for a description of how clients receive services through MCOs and PCMs.

(2) DMAP prepays DCOs to cover dental services, including the professional component of any services provided in an Ambulatory Surgical Center (ASC) or an outpatient or inpatient hospital setting for hospital dentistry. See OAR 410-123-1490 for more information about hospital dentistry.

(3) DMAP will not pay for services covered by a MCO; reimbursement is a matter between the MCO and the provider.

(4) For clients enrolled in a DCO, it is the responsibility of the dental provider to coordinate all dental services with the client's DCO prior to providing services.

Stat. Auth.: ORS 409.050, 414.065, 414.725

Stats. Implemented: ORS 414.725

Hist.: OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09

410-123-1620

Procedure and Diagnosis Codes

(1) DMAP requires providers to use the standardized code sets adopted by the Health Insurance Portability and Accountability Act (HIPAA) and the Centers for Medicare and Medicaid Services (CMS). Unless otherwise directed in rule, providers must accurately code claims according to the national standards in effect for the date the service(s) was provided.

(2) Procedure codes:

(a) For dental services, use Current Dental Terminology (CDT) codes as maintained and distributed by the American Dental Association. Contact the American Dental Association (ADA) to obtain a current copy of the CDT reference manual. Current Dental Terminology (including procedure codes, definitions (descriptors) and other data) is copyrighted by the ADA. © 2008 American Dental Association. All rights reserved. Applicable FARS/DFARS apply;

(b) For physician services and other health care services, use Health Care Common Procedure Coding System (HCPCS) and Current Procedural Terminology (CPT) codes.

(3) Diagnosis codes:

(a) ICD-9-CM diagnosis codes are not required for dental services submitted on an ADA claim form;

(b) When Oregon Administrative Rule (OAR) 410-123-1260 requires services to be billed on a professional claim form, ICD-9-CM diagnosis codes are required. Refer to the Medical-Surgical administrative rules for additional information, OAR 410 Division 130.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09

410-123-1670

OHP Standard Limited Emergency Dental Benefit

(1) The Oregon Health Plan (OHP) Standard Limited Emergency Dental benefit is intended to provide services requiring immediate treatment and is not intended to restore teeth.

(2) Refer to the "Covered and Non-Covered Dental Services" document. See OAR 410-123-1220. Procedures listed as "Yes" for the OHP Standard Benefit Package in the Covered and Non-Covered Dental Services document are covered but are limited to treatment for conditions such as:

(a) Acute infection;

(b) Acute abscesses;

(c) Severe tooth pain;

(d) Tooth re-implantation when clinically appropriate; and

(e) Extraction of teeth, limited only to those teeth that are symptomatic.

(3) Hospital Dentistry is not a covered benefit for the OHP Standard population, with the following exceptions:

(a) Clients who have a developmental disability or other severe cognitive impairment, with acute situational anxiety and extreme uncooperative behavior that prevents dental care without general anesthesia (or IV conscious sedation, if appropriate); or

(b) Clients who have a developmental disability or other severe cognitive impairments and have a physically compromising condition that prevents dental care without general anesthesia (or IV conscious sedation, if appropriate).

(4) Any limitations or prior authorization requirements on services listed in OAR 410-123-1260 or 410-123-1160 will also apply to services in the OHP Standard benefit.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09

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Rule Caption: July '09, non-substantive revisions for various language and code updates-Remove table.
Adm. Order No.: DMAP 17-2009
Filed with Sec. of State: 6-12-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 410-125-0080
Subject: The Hospital Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP amended OAR 410-125-0080 to remove the table and any reference to table 125-0080-1. DMAP will transfer the information from this table to the Medical Surgical rule 410-130-0200, table 130-0200-1.

Other text is revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-125-0080
Inpatient Services

(1) Elective (not urgent or emergent) admission:

(a) Fully Capitated Health Plan (FCHP) and Mental Health Organization (MHO) clients — contact the client's MHO or FCHP. The health plan may have different prior authorization (PA) requirements than the Division of Medical Assistance Programs (DMAP);

(b) Medicare clients — DMAP does not require PA for inpatient services provided to clients with Medicare Part A or B coverage;

(c) For DMAP clients covered by the Oregon Health Plan (OHP) Plus Benefit Package:

(A) For a list of medical and surgical procedures that require PA, see the Medical-Surgical Service rules, specifically 410-130-0200, table 130-0200-1, unless they are urgent or emergent defined in 410-125-0401.

(B) For PA contact the DMAP contracted Quality Improvement Organization (QIO) unless otherwise indicated in the Medical Surgical Service rules , specifically 410-130-0200, Table 130-0200-1;

(d) DMAP clients covered by the OHP Standard Benefit Package have a limited hospital benefit package. Specific coverage and PA requirements are referenced in OAR 410-125-0047 and listed in the DMAP Hospital Services Supplemental Information at DMAP Web site http://www.dhs.state.or.us/healthplan/guides/hospital.

(2) Transplant services:

(a) Complete rules for transplant services are in the DMAP Transplant Services administrative rules (chapter 410 division 124);

(b) Clients are eligible for transplants covered by the Oregon Health Services Commission's Prioritized List of Health Services. See the Transplant Services administrative rules for criteria. For clients enrolled in a FCHP, contact the plan for authorization. Clients not enrolled in a FCHP, contact the DMAP Medical Director's office.

(3) Out-of-state non-contiguous hospitals:

(a) All non-emergent/non-urgent services provided by hospitals more than 75 miles from the Oregon border require PA;

(b) Contact the DMAP Medical Director's office for authorization for clients not enrolled in a Prepaid Health Plan (PHP). For clients enrolled in a PHP, contact the plan.

(4) Out-of-state contiguous hospitals: services provided by contiguous-area hospitals, less than 75 miles from the Oregon border, are prior authorized following the same rules and procedures as in-state providers.

(5) Transfers to another hospital:

(a) Transfers for the purpose of providing a service listed in the Medical Surgical Service rules, specifically 410-130-0200, Table 130-0200-1, e.g., inpatient physical rehabilitation care, require PA — contact the DMAP contracted QIO;

(b) Transfers to a long term acute care hospital, skilled nursing facility, intermediate care facility or swing bed — contact Seniors and People with Disabilities (SPD). SPD reimburses nursing facilities and swing beds through contracts with the facilities. For FCHP clients — transfers require authorization and payment (for first 20 days) from the FCHP;

(c) Transfers for the same or lesser level inpatient care to a general acute care hospital — DMAP will cover transfers, including back transfers, which are primarily for the purpose of locating the patient closer to home and family, when the transfer is expected to result in significant social/psychological benefit to the patient:

(A) The assessment of significant benefit shall be based on the amount of continued care the patient is expected to need (at least seven days) and the extent to which the transfer locates the patient closer to familial support;

(B) Transfers not meeting these guidelines may be denied on the basis of post-payment review;

(d) Exceptions:

(A) Emergency transfers do not require PA;

(B) In-state or contiguous non-emergency transfers for the purpose of providing care that is unavailable in the transferring hospital do not require PA unless the planned service is listed in Medical Surgical Service rules, Table 130-0200-1;

(C) All non-urgent transfers to out-of-state non-contiguous hospitals require PA.

(6) Dental procedures provided in a hospital setting:

(a) DMAP will reimburse for hospital services when covered dental services are provided in a hospital setting for clients not enrolled in a FCHP, when a hospital setting is medically appropriate:

(b) For prior authorization for fee-for-service clients, contact the DMAP dental services program coordinator;

(c) For clients enrolled in a FCHP, contact the client's FCHP;

(d) Emergency dental services do not require PA.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.010, 409.050 & 414.065
Stats. Implemented: ORS 414.065
Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 30-1982, f. 4-26-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 11-1983, f. 3-8-83, ef. 4-1-83; AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 36-1984, f. & ef. 8-20-84; AFS 22-1985, f. 4-23-85, ef. 6-1-85; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 46-1987, f. & ef. 10-1-87; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 45-1989, f. & cert. ef. 8-21-89; HR 9-1990(Temp), f. 3-30-90, cert. ef. 4-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0190; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 42-1991, f. & cert. ef. 10-1-91; HR 39-1992, f. 12-31-92, cert. ef. 1-1-93; HR 36-1993, f. & cert. ef. 12-1-93; HR 5-1994, f. & cert. ef. 2-1-94; HR 4-1995, f. & cert. ef. 3-1-95; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 7-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 28-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 9-2002, f. & cert. ef. 4-1-02; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 11-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 50-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08; DMAP 12-2008, f. 4-29-08, cert. ef. 5-1-08; DMAP 19-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 39-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 17-2009 f. 6-12-09, cert. ef. 7-1-09

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Rule Caption: July '09, non-substantive revisions for various language and code updates.
Adm. Order No.: DMAP 18-2009
Filed with Sec. of State: 6-12-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 410-130-0163, 410-130-0180, 410-130-0200, 410-130-0220, 410-130-0240, 410-130-0255, 410-130-0365, 410-130-0595
Rules Repealed: 410-137-0080
Subject: The Medical-Surgical Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP amended OARs as follows:

410-130-0163: to remove language for Standard Benefits that is already addressed in DMAP General Rules (chapter 410, division 120);

410-130-0180: to remove codes that don't require submission of documentation and update the "not covered" services and supplies;

410-130-0200: to clarify that the treating practitioner is responsible to obtain prior authorization & update codes for bariatric surgeries, hysterectomies, hip resurfacing and dentistry performed in hospital or ASC settings;

410-130-0220: to update "excluded" codes;

410-130-0240: to add that practitioners can apply topical fluoride to children under age 7;

410-130-0255: to update immunization codes covered under VFC;

410-130-0365: to address prior authorization requirements and Medicare designated payment allowed for ancilary services and to distinguish coding between ASCs and Birthing Centers; and

410-130-0595: to appropriately describe MCM services and update mandatory topics.

All rules listed above were revised to improve readability and to take care of "housekeeping" corrections.

DMAP repealed 410-137-0080, thus making the Ambulatory Surgical Services program obsolete. Text from this rule is found in 410-130-0595.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-130-0163
Standard Benefit Package

(1) The Division of Medical Assistance Programs (DMAP) does not cover some services under the Standard Benefit Package. Refer to General Rule 410-120-1210 for restrictions in other programs.

(2) DMAP covers medical supplies and equipment only when applied by the practitioner in the office setting for treatment of the acute medical condition. Durable medical equipment (DME) and medical supplies dispensed by DME providers are limited. Refer to DME Rules 410-122-0055 for specific information on coverage.

Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; DMAP 18-2009 f. 6-12-09, cert. ef. 7-1-09

410-130-0180
Drugs

(1) The Division of Medical Assistance Programs' (DMAP) Medical-Surgical Services Program reimburses practitioners for drugs only when administered by the practitioner in the office, clinic or home settings. DMAP does not reimburse practitioners for drugs that are self-administered by the client, except for contraceptives such as birth control pills, spermicides and patches:

(a) Use an appropriate Current Procedural Terminology (CPT) therapeutic injection code for administration of injectables;

(b) Use an appropriate Healthcare Common Procedure Coding System (HCPCS) code for the specific drug. Do not bill for drugs under code 99070;

(c) When there is no specific HCPCS code for a drug or biological, use an appropriate unlisted code from the list below and bill at acquisition cost (purchase price plus postage):

(A) J3490;
(B) J3590;
(C) J7599;
(D) J7699;
(E) J7799;
(F) J8499;
(G) J8999;
(H) J9999;

(I) Include the name of the drug, National Drug Code (NDC) number and dosage.

(d) Do not bill for local anesthetics; reimbursement is included in the payment for the tray and/or procedure.

(2) DMAP requires both the NDC number and HCPCS codes on all claim forms.

(3) For codes requiring prior authorization and codes that are Not Covered/Bundled, refer to OAR 410-130-0200 Table 130-0200-1 and 410-130-0220 Table 130-0220-1.

(4) Not covered services and supplies include:

(a) Laetrile;

(b) Home pregnancy kits and products designed to promote fertility;

(c) Dimethyl sulfoxide (DMSO), except for instillation into the urinary bladder for symptomatic relief of interstitial cystitis;

(d) Infertility drugs;

(e) Sodium hyaluronate and Synvisc.

(5) Follow criteria outlined in the following:

(a) Billing Requirements – OAR 410-121-0150;

(b) Brand Name Pharmaceuticals – OAR 410-121-0155;

(c) Prior Authorization Procedures – OAR 410-121-0060;

(d) Drugs and Products Requiring Prior Authorization -- OAR 410-121-0040;

(e) Drug Use Review – OAR 410-121-0100;

(f) Participation in Medicaid's Drug Rebate Program – OAR 410-121-0157.

(A) DMAP cannot reimburse providers for a drug unless the drug manufacturer has signed an agreement with the Centers for Medicare and Medicaid Services (CMS) to participate in the Medicaid Drug Rebate Program.

(B) To verify that a drug manufacturer participates in the Medicaid Drug Rebate Program, visit the CMS website below to verify that the first five digits of the NDC number (labeler code) are listed as a participating drug company:

http://www.cms.hhs.gov/MedicaidDrugRebateProgram/10_DrugComContactInfo.asp

(6) Clozapine therapy:

(a) Clozapine is covered only for the treatment of clients who have failed therapy with at least two anti-psychotic medications;

(b) Clozapine supervision is the management and record keeping of clozapine dispensing as required by the manufacturer of clozapine:

(A) Providers billing for clozapine supervision must document all of the following:

(i) Exact date and results of white blood counts (WBC), upon initiation of therapy and at recommended intervals per the drug labeling;

(ii) Notations of current dosage and change in dosage;

(iii) Evidence of an evaluation at intervals recommended per the drug labeling requirements approved by the FDA;

(iv) Dates provider sent required information to manufacturer.

(B) Only one provider (either a physician or pharmacist) may bill per client per week;

(C) Limited to five units per client per 30 days;

(D) Use code 90862 with modifier TC to bill for clozapine supervision.

[ED. NOTE: Tables & forms referenced are available from the agency.]
Stat. Auth.: ORS 409.110, 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0620; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 43-1991, f. & cert. ef. 10-1-91; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 2-2002, f. 2-15-02, cert. ef. 4-1-02; OMAP 33-2002, f. & cert. ef. 8-1-02; OMAP 39-2002, f. 9-13-02, cert. ef. 9-15-02; OMAP 52-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 18-2009, f. 6-12-09, cert.ef. 7-1-09

410-130-0200
Prior Authorization

(1) For fee-for-service clients prior authorization (PA) is required for all procedure codes listed in Table 130-0200-1 regardless of the setting they are performed in. Refer to the Medical-Surgical Services Supplemental for details on where to obtain PA.

(2) For clients enrolled in a prepaid health plan (PHP), providers must obtain PA from the client's PHP.

(3) PA is not required:

(a) For clients with both Medicare and Medical Assistance Program coverage and the service is covered by Medicare. However, PA is still required for most transplants, even if they are covered by Medicare;

(b) For kidney and cornea transplants unless they are performed out-of-state;

(c) For emergent or urgent procedures or services;

(d) For hospital admissions unless the procedure requires PA.

(4) A second opinion may be requested by the Division of Medical Assistance Programs (DMAP) or the contractor before PA is given for a surgery.

(5) Treating and performing practitioners are responsible for obtaining PA.

(6) Refer to Table 130-0200-1 for all services/procedures requiring PA. Table 130-0200-1

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 414.065
Stats. Implemented: ORS 414.065
Hist.: AFS 868, f. 12-30-77, ef. 2-1-78; AFS 65-1980, f. 9-23-80, ef. 10-1-80; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 23-1986, f. 3-19-86, ef. 5-1-86; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0045; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0630; HR 25-1990(Temp), f. 8-31-90, cert. ef. 9-1-90; HR 44-1990, f. & cert. ef. 11-30-90; HR 17-1991(Temp), f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 50-2005,

f. 9-30-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08; DMAP 12-2008, f. 4-29-08, cert. ef. 5-1-08; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 18-2009, f. 6-12-09, cert.ef. 7-1-09

410-130-0220
Not Covered/BundledServices

(1) Refer to the Oregon Health Plan Administrative Rules (chapter 410, division 141) and General Rules (chapter 410, division 120) for coverage of services. Refer to Table 130-0220-1, in this rule, for additional information regarding not covered services or for services that are considered by the Division of Medical Assistance Programs (DMAP) to be bundled.

(2) The following are examples of not covered services:

(a) Psychotherapy services (covered only through local Mental Health Clinics and Mental Health Organizations);

(b) Routine postoperative visits (included in the payment for the surgery) during 90 days following major surgery (global period) or 10 days following minor surgery;

(c) Services provided at the client's request in a location other than the practitioner's office that are normally provided in the office;

(d) Telephone calls for purposes other than tobacco cessation, maternity case management and telemedicine.

(3) This is not an inclusive list. Specific information is included in the DMAP General Rules, Medical Assistance Benefits: Excluded Services and Limitations (OAR 410-120-1200). Table 130-0220-1

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

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0640; HR 14-1991(Temp), f. & cert. ef. 3-7-91; HR 21-1991, f. 4-16-91, cert. ef. 5-1-91; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 16-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 30-1998, f. & cert. ef. 9-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 37-1999, f. & cert. ef. 10-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 45-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 18-2009, f. 6-12-09, cert.ef. 7-1-09

410-130-0240
Medical Services

(1) All medical and surgical services requiring prior authorization (PA) are listed in OAR 410-130-0200 PA Table 130-0200-1, and services that are Not Covered/Bundled services are listed in 410-130-0220 Table 130-0220-1. Table 130-0220-1 only contains clarification regarding some services that are not covered. Refer to the Health Services List of Prioritized Services for additional information regarding not covered services.

(2) Acupuncture may be performed by a physician, a physician's employee (an acupuncturist under the physician's supervision) or a licensed acupuncturist, and billed using CPT 97810-97814.

(3) Chiropractic services must be billed using 99202 and 99212 for the diagnostic visits and 98940-98942 for manipulation. Bill laboratory and radiology services with specific Current Procedural Terminology (CPT) codes.

(4) Maternity care and delivery:

(a) Use Evaluation and Management (E/M) codes when providing three or fewer antepartum visits;

(b) For births performed in a clinic or home setting, use CPT codes that most accurately describe the services provided. Healthcare Common Procedure Coding System (HCPCS) supply code S8415 may be billed in addition to the CPT procedure code. Code S8415 includes all supplies, equipment, staff assistance, birthing suite, newborn screening cards, topical and local anesthetics. Bill medications (except topical and local anesthetics) with HCPCS codes that most accurately describe the medications;

(c) For labor management only, bill 59899 and attach a report;

(d) For multiple births, bill the highest level birth with the appropriate CPT code and the other births under the delivery only code. For example, for total obstetrical care with cesarean delivery of twins, bill 59510 for the first delivery and 59514 for the second delivery.

(5) Mental health and psychiatric services:

(a) For Administrative Exams and reports for psychiatric or psychological evaluations, refer to the Administrative Exam rules;

(b) Psychiatrists can be reimbursed by the Division of Medical Assistance Programs (DMAP) for symptomatic diagnosis and services, which are somatic (physical) in nature. Contact the local Mental Health Department for covered psychiatric and psychological services;

(c) Mental Health Services – Must be provided by local Mental Health Clinics or a client's Mental Health Organization (MHO). Not payable to private physicians, psychologists, and social workers.

(6) Neonatal Intensive Care Unit (NICU) procedure codes:

(a) Are reimbursed only to neonatologists and pediatric intensivists for services provided to infants when admitted to a Neonatal or Pediatric Intensive Care Unit (NICU/PICU). All other pediatricians must use other CPT codes when billing for services provided to neonates and infants;

(b) Consultations by specialists other than neonatologists and pediatric intensivists are payable in addition to these codes;

(c) Neonatal intensive care codes are not payable for infants on Extracorporeal Membrane Oxygenation (ECMO). Use specific CPT ECMO codes.

(7) Neurology/Neuromuscular–Payment for polysomnograms and multiple sleep latency tests (MSLT) are each limited to two in a 12 month period.

(8) Ophthalmology Services–Routine eye exams for the purpose of glasses or contacts are limited to one examination every 24 months for adults. All materials and supplies must be obtained from the DMAP contractor. Refer to the Vision Program Rules for more information.

(9) Speech & Hearing:

(a) HCPCS codes V5000-V5299 are limited to speech-language pathologists, audiologists, and hearing aid dealers;

(b) Refer to the Speech and Hearing Program Rules for detailed information;

(c) Payment for hearing aids and speech therapy must be authorized before the service is delivered;

(d) CPT 92593 and 92595 are only covered for children under age 21.

(10) Massage therapy is covered only when provided with other modalities during the same physical therapy session. Refer to Physical and Occupational Therapy Services administrative rules (Chapter 410 Division 131) for other restrictions.

(11) Medical practitioners may apply topical fluoride varnish during a medical visit to children under the age of 7 years who have limited access to a dental practitioner. Refer to Dental Services rule (chapter 410 division 123 Rule 1260).

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

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: PWC 839(Temp), f. & ef. 4-28-77; PWC 849, f. 7-15-77, ef. 8-1-77; PWC 868, f. 12-30-77, ef. 2-1-78; AFS 14-1978(Temp), f. 4-14-78, ef. 4-15-78; AFS 31-1978, f. & ef. 8-1-78; AFS 26-1980, f. 5-21-80, ef. 6-1-80, AFS 56-1980(Temp), f. 8-29-80, ef. 9-1-80; AFS 2-1981, f. 1-9-81, ef. 2-1-81; AFS 36-1981, f. 6-29-81, ef. 7-1-81; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 38-1983, f. & ef. 8-1-83; AFS 57-1983, f. 11-29-83, ef. 1-1-84; AFS 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 56-1987, f. 10-29-87, ef. 11-1-87; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0021 & 461-014-0056; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0650, 461-014-0690 & 461-014-0700; HR 14-1991(Temp), f. & cert. ef. 3-7-91; HR 18-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 2-1992, f. & cert. ef. 1-2-92; HR 8-1992, f. 2-28-92, cert. ef. 3-1-92; HR 18-1992, f. & cert. ef. 7-1-92; HR 36-1992, f. & cert. ef. 12-1-92; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 16-1993, f. & cert. ef. 7-2-93; HR 6-1994, f. & cert. ef. 2-1-94, Renumbered from 410-130-0320, 410-130-0340, 410-130-0360 & 410-130-0740; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 88-2004, f. 11-24-04, cert. ef. 12-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 18-2009, f. 6-12-09, cert.ef. 7-1-09

410-130-0255
Immunizations and Immune Globulins

(1) Use standard billing procedures for vaccines that are not part of the Vaccines for Children (VFC) Program.

(2) The Division of Medical Assistance Programs (DMAP) covers Synagis (palivizumab-rsv-igm) only for high-risk infants and children as defined by the American Academy of Pediatric guidelines. Bill 90378 for Synagis.

(3) Providers are encouraged to administer combination vaccines when medically appropriate and cost effective.

(4) VFC Program:

(a) Under this federal program, vaccine serums are free for clients' ages 0 through 18. DMAP will not reimburse the cost of privately purchased vaccines that are provided through the VFC Program, but will reimburse for the administration of those vaccines;

(b) Only providers enrolled in the VFC Program can receive free vaccine serums. To enroll as a VFC provider, contact the Public Health Immunization Program. For contact information, see the Medical-Surgical Supplemental Information;

(c) DMAP will reimburse providers for the administration of any vaccine provided by the VFC Program. Whenever a new vaccine becomes

available through the VFC Program, administration of that vaccine is also covered by DMAP;

(d) Refer to Table 130-0255-1 for immunization codes provided through the VFC Program. Recommendations as to who may receive influenza vaccines vary from season to season and may not be reflected in Table 130-0255-1;

(e) Use the following procedures when billing for the administration of a VFC vaccine:

(A) When the sole purpose of the visit is to administer a VFC vaccine, the provider should bill the appropriate vaccine procedure code with modifier -26 or -SL for each injection. Do not bill CPT code 90465-90474 or 99211;

(B) When the vaccine is administered as part of an Evaluation and Management service (e.g., well-child visit) the provider should bill the appropriate immunization code with modifier -26, or -SL for each injection in addition to the Evaluation and Management code. Table 130-0255-1

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

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 4-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 2-2002, f. 2-15-02, cert. ef. 4-1-02; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; Renumbered from 410-130-0800, OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 45-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 18-2009, f. 6-12-09, cert.ef. 7-1-09

410-130-0365

Ambulatory Surgical Center and Birthing Center Services

(1) Ambulatory Surgical Centers (ASC) and Birthing Centers (BC) must be licensed by the Oregon Health Division. ASC and BC services are items and services furnished by an ASC or BC in connection with a covered surgical procedure as specified in the Medical-Surgical Services rule or in the Dental Services rule. Reimbursement is made at all-inclusive global rates based on the surgical procedure codes billed.

(2) If the client has Medicare in addition to Medicaid and Medicare covers a surgery, but not in an ASC setting, then the surgery may not be performed in an ASC.

(3) Global rates include:

(a) Nursing services, services of technical personnel, and other related services;

(b) Any support services provided by personnel employed by the ASC or BC facility;

(c) The client's use of the ASC's or BC's facilities including the operating room and recovery room;

(d) Drugs, biologicals, surgical dressings, supplies, splints, casts, appliances, and equipment related to the provision of the surgical procedure(s);

(e) Diagnostic or therapeutic items and services related to the surgical procedure;

(f) Administrative, record-keeping, and housekeeping items and services;

(g) Blood, blood plasma, platelets;

(h) Materials for anesthesia;

(i) Items not separately identified in section (4) of this rule.

(4) Items and services not included in ASC or BC Global Rate:

(a) Practitioner services such as those performed by physicians, licensed physician assistants, nurse practitioners, certified registered nurse anesthetists, dentists, podiatrists and Licensed Direct Entry Midwives (for birthing centers only);

(b) The sale, lease, or rental of durable medical equipment to ASC or BC clients for use in their homes;

(c) Prosthetic and orthotic devices;

(d) Ambulance services;

(e) Leg, arm, back and neck brace, or other orthopedic appliances;

(f) Artificial legs, arms, and eyes;

(g) Services furnished by a certified independent laboratory.

(5) ASCs and BCs will not be reimbursed for services that are normally provided in an office setting unless the practitioner has justified the medical appropriateness of using an ASC or BC through documentation submitted with the claim. Practitioner's justification is subject to review by the Division of Medical Assistance Programs (DMAP). If payment has been made and the practitioner fails to justify the medical appropriateness for using an ASC or BC facility, the amount paid is subject to recovery by DMAP.

(6) Procedure coding for non-Birthing Centers:

(a) Bill the same procedure codes billed by the surgeon;

(b) For reduced or discontinued procedures, use Common Procedural Terminology (CPT) instructions and add appropriate modifiers;

(c) Attach a report to the claim when billing an unlisted code;

(d) For billing instructions regarding multiple procedures, see rule 410-130-0380.

(7) Procedure coding for Birthing Centers:

(a) Bill code 59409 only once for a single vaginal delivery regardless of the total days that the client was in the facility for labor management, delivery and immediate postpartum care;

(b) For delivery of twins:

(A) Bill the delivery of the first twin with 59409; and

(B) Bill the delivery of the second twin with code 59409 on a separate line;

(c) When labor was managed in the BC but a delivery did not result, bill S4005 (Interim labor facility global) and attach a report documenting the circumstances.

(8) Prior authorization is required for all services listed in Table 130-0200-1. Refer to Rule 410-130-0200.

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; Renumbered from 410-130-0940, OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; DMAP 18-2009, f. 6-12-09, cert.ef. 7-1-09

410-130-0595

Maternity Case Management (MCM)

(1) The primary purpose of the Maternity Case Management (MCM) program is to optimize pregnancy outcomes, including reducing the incidence of low birth weight babies. MCM services are tailored to the individual client needs. These services are provided face-to-face, unless specifically indicated in this rule, throughout the client's pregnancy.

(2) This program:

(a) Is available to all pregnant clients receiving Medical Assistance Program coverage;

(b) Expands perinatal services to include management of health, economic, social and nutritional factors through the end of pregnancy and a two-month postpartum period;

(c) Must be initiated during the pregnancy and before delivery;

(d) Is an additional set of services over and above medical management of pregnant clients;

(e) Allows billing of intensive nutritional counseling services.

(3) Any time there is a significant change in the health, economic, social, or nutritional factors of the client, the prenatal care provider must be notified.

(4) Only one provider may provide MCM services to the client at a time. The provider must coordinate care to ensure that duplicate claims for MCM services are not submitted to the Division of Medical Assistance Programs (DMAP).

(5) Definitions:

(a) Case Management – An ongoing process to assist and support an individual pregnant client in accessing necessary health, social, economic, nutritional, and other services to meet the goals defined in the Client Service Plan (CSP)(defined below);

(b) Case Management Visit – A face-to-face encounter between a Maternity Case Manager and the client that must include two or more specific training and education topics, address the CSP and provide an ongoing relationship development between the client and the visiting provider. The visit occurs in the client's home unless documentation of extenuating circumstances indicates that the encounter must be conducted elsewhere;

(c) Client Service Plan (CSP) --A written systematic, client coordinated plan of care which lists goals and actions required to meet the needs of the client as identified in the Initial Assessment (defined below) and includes a client discharge plan/summary;

(d) High Risk Case Management – Intensive level of services provided to a client identified and documented by the Maternity Case Manager or prenatal care provider as being high risk;

(e) High Risk Client – A client who has a current (within the last year) documented alcohol, tobacco or other drug (ATOD) abuse history, or who is 17 or under, or has other conditions identified in the Initial Assessment or during the course of service delivery;

(f) Home/Environmental Assessment – A visit to the client's primary place of residence to assess the health and safety of the client's living conditions;

(g) Initial Assessment – Documented, systematic collection of data with planned interventions as outlined in a CSP to determine current status and identify needs and strengths in physical, psychosocial, behavioral, developmental, educational, mobility, environmental, nutritional, and emotional areas;

(h) Nutritional Counseling – Intensive nutritional counseling for clients who have at least one of the conditions listed under Nutritional Counseling (14)(a)(A-I);

(i) Prenatal/Perinatal care provider The physician, licensed physician assistant, nurse practitioner, certified nurse midwife, or licensed direct entry midwife providing prenatal or perinatal (including labor and delivery) and/or postnatal services to the client;

(j) Telephone Case Management Visit – A non-face-to-face encounter between a Maternity Case Manager and the client providing identical services of a Case Management Visit (G9012).

(6) Maternity Case Manager Qualifications:

(a) Maternity Case Managers must be currently licensed as a:

(A) Physician;

(B) Physician Assistant;

(C) Nurse Practitioner;

(D) Certified Nurse Midwife;

(E) Direct Entry Midwife;

(F) Social Worker; or

(G) Registered Nurse;

(b) The Maternity Case Manager must be a Division of Medical Assistance Programs (DMAP) enrolled provider or deliver services under an appropriate DMAP enrolled provider. See DMAP General Rules 410-120-1260 for provider enrollment qualifications;

(c) All of the above must have a minimum of two years of related and relevant work experience;

(d) Other paraprofessionals may provide specific services with the exclusion of the Initial Assessment (G9001) while working under the supervision of one of the practitioners listed in (6)(a)(A-G) of this rule;

(e) The Maternity Case Manager must sign off on all services delivered by a paraprofessional;

(f) Specific services not within the recognized scope of practice of the provider of MCM services must be referred to an appropriate discipline.

(7) Nutritional counselor qualifications – Nutritional counselors must be:

(a) A licensed dietician (LD) licensed by the Oregon Board of Examiners of Licensed Dieticians; and

(b) A registered dietician (RD) credentialed by the Commission on Dietetic Registration of the American Dietetic Association (ADA).

(8) Documentation Requirements:

(a) Documentation is required for all MCM services in accordance with DMAP General Rules 410-120-1360; and

(b) A correctly completed DMAP form 2470, 2471, 2472 and 2473 or their equivalents meet minimum documentation requirements for MCM services.

(9) G9001 – Initial Assessment must be performed by a licensed Maternity Case Manager as defined under (6)(a)(A-G) above:

(a) Services include:

(A) Client assessment as outlined in the "Definitions" section of this rule;

(B) Development of a CSP which addresses identified needs;

(C) Making and assisting with referrals as needed to:

(i) A prenatal care provider;

(ii) A dental health provider;

(D) Forwarding the initial assessment and the CSP to the prenatal care provider;

(E) Communicating pertinent information to the prenatal care provider and others participating in the client's medical and social care;

(b) Data sources relied upon may include:

(A) Initial assessment;

(B) Client interviews;

(C) Available records;

(D) Contacts with collateral providers;

(E) Other professionals; and

(F) Other parties on behalf of the client;

(c) The client's record must reflect the date and to whom the initial assessment was sent;

(d) The Initial Assessment (G9001) is billable once per pregnancy per provider and must be performed before providing any other MCM services. Only a Home/Environmental Assessment (G9006) and a Case Management Visit (G9012) may be performed and billed on the same day as an Initial Assessment.

(10) G9002 – Case Management (Full Service) – Includes:

(a) Face-to-face client contacts;

(b) Implementation and monitoring of a CSP:

(A) The client's records must include a CSP and written updates to the plan;

(B) The CSP includes determining the client's strengths and needs, setting specific goals and utilizing appropriate resources in a cooperative effort between the client and the Maternity Case Manager;

(c) Care coordination as follows:

(A) Contact with Department of Human Services (DHS) case worker, if assigned;

(B) Maintain contact with prenatal care provider to ensure service delivery, share information, and assist with coordination;

(C) Contact with other community resources/agencies to address needs;

(d) Linkage to client services indicated in the CSP:

(A) Make linkages, provide information and assist the client in self-referral;

(B) Provide linkage to labor and delivery services;

(C) Provide linkage to family planning services as needed; (e) Ongoing nutritional evaluation with basic counseling and referrals to nutritional counseling, as indicated;

(f) Utilization and documentation of the "5 A's" brief intervention protocol for addressing tobacco use (US Public Health Service Clinical Practice Guideline for Treating Tobacco Use and Dependence, 2008). Routinely:

(A) Ask all clients about smoking status;

(B) Advise all smoking clients to quit;

(C) Assess for readiness to try to quit;

(D) Assist all those wanting to quit by referring them to the Quitline and/or other appropriate tobacco cessation counseling and provide motivational information for those not ready to quit;

(E) Arrange follow-up for interventions;

(g) Provide training and education on all mandatory topics - Refer to Table 130-0595-2;

(h) Client advocacy as necessary to facilitate access to benefits or services;

(i) Assist client in achieving the goals in the CSP;

(j) G9002 is billable after the delivery when more than three months of service were provided. Services must be initiated during the prenatal period and carried through the date of delivery;

(k) G9002 is billable once per pregnancy.

(11) G9009 – Case Management (Partial Service):

(a) Can be billed when the CSP has been developed and MCM services were initiated during the prenatal period and partially completed;

(b) Provided MCM services to the client for three months or less.

(12) G9005 -- High Risk Case Management (Full Service):

(a) Enhanced level of services which are more intensive and are provided in addition to G9002;

(b) Provided High Risk Case Management services for the client for more than three months after the client was identified as high risk; AND

(c) Provided at least eight Case Management Visits;

(d) G9005 is billable after the delivery and only once per pregnancy;

(e) G9005 can be billed in addition to G9002.

(13) G9010 – High Risk Case Management (Partial Service):

(a) Are the same enhanced level of services provided in G9005 but the client became high risk during the latter part of the pregnancy or intensive high risk MCM services were initiated and partially completed but not carried through to the date of delivery;

(b) Provided high risk case management services for the client for three months or less after the client has been identified as high risk; OR

(c) Provided less than eight Case Management Visits;

(d) G9010 is billable after the delivery and once per pregnancy;

(e) G9010 can be billed in addition to G9002 or G9009.

(14) S9470 – Nutritional Counseling:

(a) Is available for clients who have at least one of the following conditions:

(A) Chronic disease such as diabetes or renal disease;

(B) Hematocrit (Hct) less than 34 or hemoglobin (Hb) less than 11 during the first trimester, or Hct less than 32 or Hb less than 10 during the second or third trimester;

(C) Pre-gravida weight under 100 pounds or over 200 pounds;

(D) Pregnancy weight gain outside the appropriate Women, Infants and Children (WIC) guidelines;

(E) Eating disorder;

(F) Gestational diabetes;

(G) Hyperemesis;

(H) Pregnancy induced hypertension (pre-eclampsia); or

(I) Other identified conditions;

(b) Documentation must include all of the following:

(A) Nutritional assessment;

(B) Nutritional care plan;

(C) Regular client follow-up;

(c) Can be billed in addition to other MCM services;

(d) S9470 is billable only once per pregnancy.

(15) G9006 – Home/Environmental Assessment:

(a) Includes an assessment of the health and safety of the client's living conditions with training and education of all topics as indicated in Table 130-0595-1;

(b) G9006 may be billed only once per pregnancy, except an additional Home/Environmental Assessments may be billed with documentation of problems which necessitate follow-up assessments or when a client moves. Documentation must be submitted with the claim to support the additional Home/Environment Assessment.

(16) G9011 – Telephone Case Management Visit:

(a) A non-face-to-face encounter between a Maternity Case Manager and the client, meeting all requirements of a Case Management Visit (G9012) and when a face-to-face Case Management Visit is not possible or practical;

(b) G9011 is billable in lieu of a Case Management Visit and counted towards the total number of Case Management Visits (see G9012 for limitations).

(17) G9012 – Case Management Visit:

(a) Each Case Management Visit must include:

(A) An evaluation and/or revision of objectives and activities addressed in the CSP: and

(B) At least two training and education topics listed in Table 130-0595-2;

(b) Four Case Management Visits (G9012) may be billed per pregnancy. Telephone Case Management Visits (G9011) are included in this limitation;

(c) Six additional Case Management Visits may be billed if the client is identified as high risk;

(A) These additional visits may not be billed until after delivery;

(B) These additional six visits may only be submitted with or after High Risk Full (G9005) or High Risk Partial (G9010) Case Management has been billed. Telephone Case Management Visits (G9011) are included in this limitation;

(d) Maternity Case Management Visits (G9012) may be provided in the client's home or other site due to documented extenuating circumstances.

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

Stat. Auth.: ORS 409.050, 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 57-1987, f. 10-29-87, ef. 11-1-87; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0200 & 461-014-0201; AFS 54-1989(Temp), f. 9-28-89, cert. ef. 10-1-89; AFS 71-1989, f. & cert. ef. 12-1-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0580; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 43-1991, f. & cert. ef. 10-1-91; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 34-1998, f. & cert. ef. 10-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 51-2002, f. & cert. ef. 10-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; Renumbered from 410-130-0100, OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 18-2009, f. 6-12-09, cert.ef. 7-1-09

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Rule Caption: July '09 — Current licensing board rules; documentation and care coordination; covered/non-covered services.

Adm. Order No.: DMAP 19-2009

Filed with Sec. of State: 6-12-2009

Certified to be Effective: 7-1-09

Notice Publication Date: 5-1-2009

Rules Amended: 410-133-0000, 410-133-0040, 410-133-0060, 410-133-0080, 410-133-0090, 410-133-0100, 410-133-0120, 410-133-0140, 410-133-0160, 410-133-0180, 410-133-0200, 410-133-0220, 410-133-0245, 410-133-0280, 410-133-0320

Subject: The School-Based Health Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP amended the rules listed above to update signature requirements to mitigate risk documenting therapy provided in education settings; and to clarify care coordination of covered and not covered services.

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

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-133-0000
Purpose

(1) School-Based Health Services (SBHS) rules describe the Medicaid covered services available to Medicaid-eligible students receiving health services on a fee-for-service basis when "Necessary and Appropriate" and within the limitations established by the Medical Assistance Program and these rules, consistent with the requirements of the Individuals with Disabilities Education Act (IDEA). These rules are to be used in conjunction with the General Rules governing the Division of Medical Assistance Programs (DMAP) (OAR 410 division 120) and the Oregon Health Plan (OHP) rules (OAR 410 division 141). The School-Based Health Services rules are also a user's manual designed to assist the Educational Agency (EA) in matching state and federal funds for Oregon's Medicaid-eligible students with disabilities.

(2) The Oregon Administrative Rules (OARs) in Chapter 581, Division 15 for the Oregon Department of Education (ODE) outline Oregon's program to meet the federal provisions of the IDEA. These SBHS rules define Oregon's fee-for-service program to reimburse publicly funded education agencies for the health services provided under the IDEA to Oregon's Medicaid-eligible children.

(3) The Department of Human Services (DHS) and ODE recognize the unique intent of health services provided for Medicaid-eligible students with disabilities in the special education setting. The School-Based Health Services rules address the health aspects of special education services that are covered by Medicaid or the Children's Health Insurance Program (CHIP).

(4) DHS endeavors to furnish School Medical (SM) providers with up-to-date billing, procedural information, and guidelines to keep pace with program changes and governmental requirements. DHS does so by providing information on its website.

(5) Enrolled School-Based Health Services providers are responsible to maintain current publications provided by DHS and DMAP, and to comply with the OARs in effect on the date of service the health service is provided.

(6) In order for DHS to reimburse for health services provided in the school, the health services must be included as a covered service under the Oregon Health Plan (OHP). There is no benefit category in the Medicaid statute titled "school health services" or "early intervention services." These rules do not create a new category of health benefits for this fee for service program.

(7) These rules describe health services that are covered services for Medicaid-eligible students, which are authorized and provided consistent with these rules.

(8) Medicaid-eligible students retain the ability to obtain services from any qualified Medicaid provider that undertakes to provide services to them. These rules do not require a Medicaid-eligible student to receive their health services solely from school medical providers.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 15-2000, f. 9-28-00, cert. ef 10-1-00; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0040
Definitions

(1) Adapted Vehicle – Vehicle specifically designed or modified to transport passengers with disabilities.

(2) Adequate Recordkeeping – In addition to General Rules OAR 410-120-0000, Definitions and 410-120-1360, Requirements for financial, clinical, and other records, documentation in the student's educational record and on the Individualized Education Plan (IEP) or Individualized Family Service Plan(IFSP) showing the necessary and appropriate health services provided to the student detailed in the Department of Human Services (DHS) School-Based Health Services (SBHS) rules (See Definitions and OAR 410-133-0320).

(3) Agent – means a third party or organization that contracts with a provider, allied agency, or Prepaid Health Plan (PHP) to perform designated services in order to facilitate a transaction or conduct other business functions on its behalf. Agents include billing agents, claims clearinghouses, vendors, billing services, service bureaus, and accounts receivable management firms. Agents may also be clinics, group practices, and facilities that submit billings on behalf of providers but the payment is made to a provider, including the following: an employer of a provider, if a provider is required as a condition of employment to turn over his fees to the employer; the facility in which the service is provided, if a provider has a contract under which the facility submits the claim; or a foundation, plan, or similar organization operating an organized health care delivery system, if a provider has a contract under which the organization submits the claim. Agents may also include electronic data transmission submitters.

(4) Allied Agency – Local and regional governmental agencies and regional authorities that contract with DHS to provide the delivery of services to covered individuals. (e.g., local mental health authority, community mental health program, Oregon Youth Authority, Department of Corrections, local health departments, public schools, Education Service

Districts (ESDs), developmental disability service programs, Area Agencies on Aging (AAAs), federally recognized American Indian tribes).

(5) Assessment – A process of obtaining information to determine if a student qualifies for or continues to qualify for Division of Medical Assistance Programs (DMAP) covered school-based health services (SBHS).

(6) Assistive Technology Service – Services provided by medically qualified staff within the scope of practice under State law with training and expertise in the use of assistive technology (see 410-133-0080 Coverage and 410-133-0200 Not Covered Services in these rules).

(7) Audiologist - A person licensed to practice audiology by the State Board of Examiners for Speech Pathology and Audiology or holds a Certificate of Clinical Competency (CCC) from the American Speech and Hearing Association (ASHA) and meet the requirements in 42 CFR 440.110.

(8) Audiology – Assessment of children with hearing loss; determination of the range, nature and degree of hearing loss, including the referral for medical or other professional attention for restoration or rehabilitation due to hearing disorders; provision of rehabilitative activities, such as language restoration or rehabilitation, auditory training, hearing evaluation and speech conversation, and determination of the child's need for individual amplification; obtaining and interpreting information; and coordinating care and integrating services relative to the student receiving services.

(9) Automated Voice Response (AVR) – A computer system that provides information on clients' current eligibility status from DMAP by computerized phone or web-based response.

(10) Benefit Package – The "package" of covered health care services for which the Medicaid-eligible student is eligible. (See General Rules OAR 410-120-1210 Medical Assistance Benefit Packages and Delivery System)

(11) Billing Agent or Billing Service – Third party or organization that contracts with a provider to perform designated services in order to facilitate an Electronic Data Interchange (EDI) transaction on behalf of the provider. Also see definition for Electronic Data Interchange (EDI) Submitter

(12) Billing Provider (BP) – A person, agent, business, corporation, clinic, group, institution, or other entity who submits claims to and/or receives payment from DMAP on behalf of a performing Provider and has been delegated the authority to obligate or act on behalf of the performing Provider. (See DHS Admin Services and Director's Office Rules, Chapter 407 Division 120 Provider Rules, General Rules OAR 410-120-1260 and SBHS Rules 410-133-0140.)

(13) Billing Time Limit – Refers to the rules concerning the period of time allowed to bill services to the Division of Medical Assistance Programs (DMAP) see Department Provider Rules Chapter 407 Division120 Timely Submission of Claim or Encounter Data and DMAP General Rules Timely Submission of Claims OAR 410-120-1300. In general, those rules require initial submission within 12 months of the date of service or 18 months for resubmission.

(14) Centers for Medicare and Medicaid Services (CMS) – The federal regulatory agency for Medicaid programs.

(15) CMS-1500 – The standard federal billing form used to bill medical services.

(16) Certification – See "licensure."

(17) Children's Health Insurance Program (CHIP) – A federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered in Oregon by the Department of Human Services (DHS) Division of Medical Assistance Programs (DMAP).

(18) Clinical Social Work Associate (CSWA) – A person working toward Licensed Clinical Social Worker (LCSW) licensure under the supervision of a LCSW for two years of post masters clinical experience and is licensed by the State Board of Clinical Social Workers to practice in Oregon.

(19) Coordinated Care – Services directly related to covered school-based health services (SBHS) specified in the individualized education program (IEP) or individualized family service plan (IFSP), performed by medically qualified staff, and allowed under 410-133-0080, Coverage to manage integration of those health services in an education setting. Coordinated Care includes the following activities:

(a) Conference – The portion of a conference in a scheduled meeting, between medically qualified staff and interested parties, to develop, review, or revise components of school-based health services provided to a Medicaid-eligible student for the purpose to establish, re-establish or terminate a Medicaid covered health service on a Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP); or to develop, review, or revise components of a health service currently provided to a Medicaid-eligible student to determine whether or not those covered health services continue to meet the student's needs as specified on the student's IEP or IFSP.

(b) Consultation – performed by medically qualified staff within the scope of practice providing technical assistance to or conferring with, special education providers, physicians, and families to assist them in providing a covered health service for Medicaid-eligible students related to a specific health service and health service goals and objectives in the individualized education program (IEP) or individualized family service plan (IFSP).

(c) Physician coordinated care – Meeting or communication with a physician in reference to oversight of care and treatment provided for a health service specified on a Medicaid-eligible student's individualized education program (IEP) or individualized family service plan (IFSP).

(20) Cost Determination – The process of establishing an annual discipline fee (cost rate), based on the prior-year actual audited costs, used by an EA for the purpose of billing for covered school-based health services (see 410-133-0245 Cost Determination and Payment in these rules).

(21) COTA – Certified Occupational Therapy Assistant – A person who is licensed as an occupational therapy assistant assisting in the practice of occupational therapy under the supervision of a licensed occupational therapist.

(22) Covered Entity – means a health plan, health care clearing house, health care provider, or allied agency that transmits any health information in electronic form in connection with a transaction, including direct data entry (DDE), and who must comply with the National Provider Identifier (NPI) requirements of 45 CFR 162.402 through 162.414. When a school provides covered SBHS services in the normal course of business and bills Medicaid for reimbursed covered transactions electronically in connection with that health care such as electronic claims, it is then a covered entity and must comply with the HIPAA Administrative Simplification Rules for Transactions and Code sets and Identifiers with respect to its transactions.

(23) Current Procedural Terminology (CPT) – The American Medical Association's Current Procedural Terminology is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other health care providers. See General Rules (OAR 410-120-0000 Definitions).

(24) Data Transmission – means the transfer or exchange of data between the Department and a web portal or electronic data interchange (EDI) submitter by means of an information system which is compatible for that purpose and includes without limitation, web portal, EDI, electronic remittance advice (ERA), or electronic media claims (EMC) transmissions.

(25) Delegated Health Care Aide – A non-licensed person trained and supervised by a licensed Registered Nurse (RN) or Nurse Practitioner (NP) to perform selected tasks of nursing care specific to the Medicaid-eligible student identified in the nursing plan of care pursuant to the Individualized Education Program/Individualized Family Service Plan (IEP/IFSP).

(26) Delegation of Nursing Task – A selected nursing task that is performed by an unlicensed person, trained and monitored by a licensed Registered Nurse (RN). Delegation and supervision of selected nursing tasks must comply with Oregon Administrative Rules (OARs), Board of Nursing, Chapter 851 Division(s) 45 and 47. A school medical (SM) Provider must maintain documentation of the actual delegation, training, supervision and provision of the nursing service billed to Medicaid.

(27) Department of Human Services (DHS) – The Department or DHS or any of its programs or offices means the Department of Human Services established in ORS Chapter 409, including such divisions, programs and offices as may be established therein. Wherever the former Office of Medical Assistance Programs or OMAP is used in contract or administrative rule, it shall mean the Division of Medical Assistance Programs (DMAP).

(28) Diagnosis Code – As identified in the International Classification of Diseases 9th Revision, Clinical Modification (ICD-9-CM), the primary Diagnosis Code is shown in all billing claims, unless specifically excluded in individual Provider rule(s). Where they exist, diagnosis codes shall be shown to the degree of specificity outlined in OAR 410-120-1280, Billing.

(29) Direct Services – Face-to-face delivery of health services between the medically qualified staff who is the service provider and a Medicaid-eligible student.

(30) Division of Medical Assistance Programs (DMAP) – A Division within DHS; DMAP is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP- Title XXI), and several other programs.

(31) Early Intervention/Early Childhood Special Education (EI/ECSE) - A program designed to address the unique needs of a child age 0-3 years (EI) and preschool children ages 3-5 years (ECSE) with a disability.

(32) Educational Agency (EA) – For purposes of these rules, any public school, school district, Education Service District (ESD), state institution, or youth care center providing educational services to students, birth to age 21 through grade 12, that receives federal or state funds either directly or by contract or subcontract with the Oregon Department of Education (ODE).

(33) Education Records – Those records, files, documents and other materials which contain information directly related to a student and maintained by an Education Agency (EA) or by a person acting for such EA as set forth in OAR 581-021-0220. (A school-based health services (SBHS) provider is required to keep and maintain supporting documentation for Medicaid reimbursed school-based health services for a period of seven (7) years; this documentation is part of the student's education record but may be filed and kept separately by school health professionals.) See 410-133-0320 Documentation and Recordkeeping Requirements in these rules.

(34) Education Service District (ESD) – An education agency established to offer a resource pool of cost-effective, education-related, physical or mental health-related, state-mandated services to multiple local school districts within a geographic area described in ORS 334.

(35) Electronic Data Interchange (EDI) – The exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, using bulk transmission processes and other formats as the Department designates for EDI transactions. For purposes of these rules (OAR 407-120-0100 through 407-120-0200), EDI does not include electronic transmission by web portal.

(36) EDI Submitter – An Individual or an entity authorized to establish an electronic media connection with DHS to conduct an EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner. Also see definition for billing agent in these rules.

(37) Electronic Verification System (EVS) – Eligibility information that have met the legal and technical specifications of DMAP in order to offer eligibility information to enrolled Providers of DMAP.

(38) Eligibility for Special Education Services – A determination by a designated education agency (EA), through a team, that a child meets the eligibility criteria for early intervention (EI), early childhood special education (ECSE) or special education as defined in ORS 343 and OAR Chapter 581, Division 15.

(39) Evaluation – Evaluations are procedures performed by medically qualified staff to determine whether a Medicaid-eligible student is disabled and the nature and extent of the health services the student needs under the Individuals with Disabilities Education Act (IDEA) and in accordance with Oregon Department of Education OAR chapter 581 division 15. The Department of Human Services (DHS) can only reimburse evaluations that establish, re-establish or terminate a school-based health services (SBHS) covered health service on a Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) under the Individuals with Disabilities Education Act (IDEA).

(40) Federal Medical Assistance Percentage (FMAP) – The percentage of federal matching dollars for qualified state medical assistance program expenditures.

(41) Healthcare Common Procedure Coding System (HCPCS) – A method for reporting health care professional services, procedures, and supplies. HCPCS consists of the Level I -American Medical Association's Physician's Current Procedural Terminology (CPT), Level II – National codes, and Level III – Local codes. DMAP uses HCPCS codes. See General Rules (OAR 410-120-1280 Billing).

(42) Health Assessment Plan (nursing) – Systematic collection of data for the purpose of assessing a Medicaid-eligible student's health or illness status and actual or potential health care needs in the educational setting. Includes taking a nursing history, and an appraisal of the student's health status through interview, information from the family and information from the student's past health or medical record. A SBHS provider is required to keep and maintain the health assessment plan and supporting documentation for Medicaid reimbursed health services described in a Medicaid-eligible student's individualized education program (IEP) or individualized family service plan (IFSP) for a period of seven (7) years, as part of the student's education record, which may be filed and kept separately by school health professionals. (See 410-133-0320 Documentation and Recordkeeping Requirements.)

(43) Health Care Practitioner – A person licensed pursuant to state law to engage in the provision of health care services within the scope of the health care practitioner's license and/or certification standards established by their health licensing agency. Medical provider and health care practitioner are interchangeable terms. See Definition for Medical Provider in these rules.

(44) Health Services - Medical evaluation services provided by a physician for diagnostic and evaluation purposes for a Medicaid-eligible student that is found eligible under the Individuals with Disabilities Education Act (IDEA) and leads to an established Individualized Education Program (IEP) or Individualized Family service Plan (IFSP), physical or mental health evaluations, and assessment or treatment performed by medically qualified staff to achieve the goals set forth in a Medicaid-eligible student's IEP or IFSP. A covered health service is one that is covered by the medical assistance program and is provided to enable the Medicaid-eligible student to benefit from a special education program (age 3-21) or to achieve developmental milestones in an early intervention program (age 0-3). "Health services" are synonymous with "medical services" in these rules. To determine whether a health service specified on an Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) is a covered School-Based Health Service (SBHS) (See 410-133-0080 Coverage and 410-133-0200 Not Covered Services).

(45) Health Services Commission (HSC) – An eleven member commission that is charged with reporting to the Governor the ranking of health benefits from most to least important, and representing the comparable benefits of each service to the entire population to be serviced.

(46) ID Number – A number issued by the Department of Human Services (DHS) used to identify Medicaid-eligible students. This number may also be referred to as recipient identification number; prime number; client medical ID Number or medical assistance program ID number.

(47) Individuals with Disabilities Education Act (IDEA) – The federal law ensuring the rights of children with disabilities to a "free and appropriate education" (FAPE).

(48) Individualized Education Plan (IEP) – A written statement of an educational program for a child with a disability which is developed, reviewed, or revised in a meeting in accordance with Oregon Department of Education OAR chapter 581, division 15. When an IEP is used as a prescription for Medicaid reimbursement for covered School-Based Health Services (SBHS), it must include: type of health service, amount, duration and frequency for the service provided. In order to bill Medicaid for covered health services they must be delivered by or under the supervision of medically qualified staff and must be recommended by a physician or appropriate health care practitioner acting within the scope of practice. See definition medically qualified staff.

(49) Individualized Family Service Plan (IFSP) – A written plan of Early childhood Special Education (ECSE) services, Early Intervention (EI) services, and other services developed in accordance with criteria established by the Oregon Department of Education (ODE) for each child (age's birth to 5 years) eligible for IFSP services. The plan is developed to meet the needs of a child with disabilities in accordance with requirements and definitions in OAR chapter 581, division 15. When an IFSP is used as a prescription for Medicaid reimbursement for SBHS covered services, it must include: type of health service, amount, duration and frequency for the service provided. In order to bill Medicaid for covered health services they must be delivered by or under the supervision of medically qualified staff and must be recommended by a physician or appropriate health care practitioner acting within their scope of practice. See definition medically qualified staff.

(50) Individualized Education Plan/Individualized Family Service Plan (IEP/IFSP) Team – A group of teachers, specialists, and parents responsible for determining eligibility, developing, reviewing, and revising an IEP or IFSP in compliance with OAR chapter 581, division 15.

(51) Licensed Clinical Social Worker (LCSW) – A person licensed to practice clinical social work pursuant to State law.

(52) Licensed Physical Therapist Assistant (LPTA) – A person licensed to assist in the administration of physical therapy, solely under the supervision and direction of a physical therapist.

(53) Licensed Practical Nurse (LPN) – A person licensed to practice under the direction of a licensed professional within the scope of practice as defined by State law.

(54) Licensure – Documentation from state agencies demonstrating that licensed or certified individuals are qualified to perform specific duties and a scope of services within a legal standard recognized by the licensing agency. In the context of health services, licensure refers to the standards applicable to health service providers by health licensing authorities. For health services provided in the state of Oregon, licensure refers to the standards established by the appropriate State of Oregon licensing agency.

(55) Medicaid-eligible student – The child or student who has been determined to be eligible for Medicaid health services by the Department of Human Services. For purposes of this rule, Medicaid-eligible student is synonymous with "recipient" or "Oregon Health Plan (OHP) client". For convenience, the term student used in these rules applies to both students covered by an Individualized Education Program (IEP) and children covered by an Individualized Family Service Plan (IFSP). Also for purposes of this rule, students or children whose eligibility is based on the Children's Health Insurance Program (CHIP) shall be referred to as Medicaid-eligible students.

(56) Medical Assistance Program – A program for payment of health services provided to eligible Oregonians. Oregon's medical assistance program includes Medicaid services including the Oregon Health Plan (OHP) Medicaid Demonstration, and the Children's Health Insurance Program (CHIP). The Medical Assistance Program is administered by the Division of Medical Assistance Programs (DMAP), of the Department of Human Services (DHS) also termed Department.

(57) Medical Management Information System (MMIS) – A data collection system for processing paper and electronic claims for payment of health services provided to Medicaid-eligible recipients.

(58) Medical Provider – An individual licensed by the State to provide health services within their governing body's definitions and respective scope of practice. Medical provider and health care practitioner are interchangeable terms.

(59) Medical Services – The care and treatment provided by a licensed health care practitioner to prevent, diagnose, treat, correct or address a medical problem; whether physical, mental or emotional. For the purposes of these rules, this term shall be synonymous with health services or health-related services listed on an Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP), as defined in OAR chapter 581, division 15. Not all health-related services listed on an IEP or IFSP are covered as SBHS. See 410-133-0080 Coverage and 410-133-0200 Not Covered Services.

(60) Medical Transportation – Specialized transportation in a vehicle adapted to meet the needs of passengers with disabilities transported to and from a SBHS covered service.

(61) Medically Qualified Staff:

(a) Staff employed by and/or through contract with an EA; and

(b) Licensed by the State to provide health services in compliance with State law defining and governing the scope of practice, described further in OAR 410-133-0120.

(62) Medication Management – A task performed only by medically qualified staff, pursuant to a student's Individualized Education Program/Individualized Family Service Plan (IEP/IFSP), which involves administering medications, observing for side effects, and monitoring signs and symptoms for medication administration.

(63) National Provider Identification (NPI) – Federally directed Provider number mandated for use on Health Insurance Portability Accountability Act (HIPAA) covered transactions; individuals, provider organizations, and subparts of provider organizations that meet the definition of health care provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI; Medicare covered entities are required to apply for an NPI.

(64) "Necessary and Appropriate Health Services" – Those health services described in a Medicaid-eligible student's IEP or IFSP which are: (a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the Medicaid-eligible student or provider of the service; and

(d) The most cost-effective of the alternative levels of health services, which can safely be provided to a Medicaid-eligible student.

(65) Nursing Diagnosis and Management Plan – A written plan that describes a Medicaid-eligible student's actual and anticipated health conditions that are amenable to resolution by nursing intervention.

(66) Nursing Plan of Care – Written guidelines made a part of and attached to the Individualized Education Program (IEP) or individualized Family Service Plan (IFSP) that identify specific health conditions of the Medicaid-eligible student, and the nursing regimen that is "necessary and appropriate" for the student. Development and maintenance of this plan includes establishing student and nursing goals, and identifying nursing interventions (including location, frequency, duration and delegation of care) to meet the medical care objective identified in their IEP or IFSP, see Oregon State Board of Nursing Practice Act, Division 47. The SBHS provider is responsible for developing the nursing plan of care and is required to keep and maintain a copy of the nursing plan of care as supporting documentation for Medicaid reimbursed health services. (See definition "Education records".)

(67) Nurse Practitioner – A person licensed as a registered nurse and certified by the Board of Nursing to practice as a nurse practitioner pursuant to State law.

(68) Nursing Services – Services provided by a nurse practitioner (NP), registered professional nurse (RN), a licensed practical nurse (LPN) or delegated health care aide, within the scope of practice as defined by State law. Nursing services include preparation and maintenance of the health assessment plan, nursing diagnosis and management plan, nursing plan of care, consultation, and coordination and integration of health service activities, as well as direct patient care and supervision.

(69) Observation – Surveillance or visual monitoring performed by medically qualified staff as part of an evaluation, assessment, direct service, or care coordination for a necessary and appropriate Medicaid covered health service specified on a Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) to better understand the child's medical needs and progress in their natural environment. An observation by itself is not billable.

(70) Occupational Therapist (OT) – A person licensed by the State's Occupational Therapy Licensing Board.

(71) Occupational Therapy – Assessing, improving, developing, or restoring functions impaired or lost through illness, injury or deprivation, to improve the ability to perform tasks for independent functioning when functions are lost or impaired, preventing through early intervention, initial or further impairment or loss of function. Obtaining and interpreting information, coordinating care, and integrating necessary and appropriate occupational therapy services relative to the Medicaid-eligible student.

(72) Oregon Department of Education (ODE) – The state agency that provides oversight to public educational agencies for ensuring compliance with Federal and State laws relating to the provision of services required by the individuals with disabilities education act (IDEA).

(73) Orientation and Mobility Training – Services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community. These services are not covered under School-Based Health Services (SBHS) (See OAR 410-133-0200 Not Covered Services) .

(74) Performing Provider – A person, agent, business, corporation, clinic, group, institution, or other entity that is the provider of a service or item with the authority to delegate fiduciary responsibilities to a billing provider, also termed billing agent, to obligate or act on the behalf of the performing provider regarding claim submissions, receivables, and payments relative to the Medical Assistance Program. For the purposes of these School-Based Health Services (SBHS) rules, the School Medical (SM) provider is the performing provider.

(75) Physical Therapist – A person licensed by the relevant State licensing authority to practice physical therapy (See OAR Chapter 848 Division10 Licensed Physical Therapists and Licensed Physical therapist Assistants; chapter 848 division 40 Standards For Authorization To Provide Physical therapy Services OAR 848-040-0117; and 848-040-0105 General Standards for practice

(76) Physical Therapy – Assessing, preventing or alleviating movement dysfunction and related functional problems. Obtaining and interpreting information: coordinating care and integrating necessary and appropriate physical therapy services relative to the student receiving treatments.

(77) Prime Number – See definition of ID Number.

(78) Prioritized List of Health Services – Also referred to as the Prioritized List, the Oregon Health Services Commission's (HSC) listing of health services with "expanded definitions' of ancillary services and preventative services and the HSC practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by the HSC. The Prioritized List governs medical assistance programs' health services and Benefit Packages pursuant to General Rules OAR 410-120-0000 et seq., and OAR 410-141-0480 through 410-141-0520 (for the listing of condition and treatment pairs).

(79) Procedure Code – See definition of HCPC healthcare common procedure code.

(80) Provider - An individual, facility, institution, corporate entity, or other organization which supplies health care services or items, also termed a performing provider, or bills, obligates and receives reimbursement on behalf of a performing provider of services, also termed a Billing Provider (BP). The term "Provider" refers to both performing providers and billing providers unless otherwise specified. Payment can only be made to DMAP-enrolled providers who have by signature on the provider enrollment forms and attachments, agreed to provide services and to bill in accordance with the General Rules 410-120-1260, and the School-Based Health Services (SBHS) rules 410-133-0140. If a provider submits claims electronically, the provider must become a trading partner with the Department of Human Services (DHS) and comply with the requirements of the Electronic Data Interchange (EDI) rules pursuant to OAR 407-120-0100 through 407-120-0200.

(81) Provider Enrollment Agreement – An agreement between the provider and the Department that sets forth the conditions for being enrolled as a provider with the Department and to receive a provider number in order to submit claims for reimbursement for covered SBHS provided to Medicaid-eligible students. Payment can only be made to DMAP-enrolled providers who have by signature on the provider enrollment forms

and program applicable attachments agree to provide services and to bill in accordance with DHS Provider Rules chapter 407 division 120 and DMAP General Rules Chapter 410 Division 120, and these SBHS rules. Also see definitions for Trading Partner and Trading Partner Agreement in these rules.

(82) Psychiatrist – A person licensed to practice medicine and surgery in the state of Oregon and possesses a valid license from the Oregon Licensing Board for the Healing Arts.

(83) Psychologist – A person with a doctoral degree in psychology and licensed by the State Board of Psychologist Examiners See 858-010-0015.

(84) Psychologist Associate – A person who does not possess a doctoral degree that is licensed by the Board of Psychologists Examiners, to perform certain functions within the practice of psychology under the supervision of a psychologist. See 858-050-0100 through 858-050-0150. An exception would be psychologist associate with the authority to function without immediate supervision, see OAR 858-050-0150.

(85) Recordkeeping Requirements – A School-Based Health Services (SBHS) School Medical (SM) provider is required to keep and maintain the supporting documentation for Medicaid reimbursed health services described in a Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) for a period of seven (7) years, as part of the student's education record, which may be filed and kept separately by school health professionals (See 410-133-0320).

(86) Re-evaluation – Procedures used to measure a Medicaid-eligible student's health status compared to an initial or previous evaluation, are focused on evaluation of progress toward current goals, modifying goals or treatment, or making a professional judgment to determine whether or not the student will continue to receive continued care for a covered service pursuant to an IEP or IFSP under the Individuals with Disabilities Education Act (IDEA). Continuous assessment of the student's progress as a component of ongoing therapy services is not billable as a re-evaluation.

(87) Regional Program – Regional program services are provided on a multi-county basis, under contract from the Oregon Department of Education (ODE) to eligible children (birth to 21) visually impaired, hearing impaired, deaf-blind, autistic, and/or severely orthopedically impaired. A Regional program may be reimbursed for covered health services it provides to Medicaid-eligible students through the School Medical (SM) Provider (e.g., public school district or ESD) that administers the program.

(88) Registered Nurse (RN) – A person licensed and certified by the Oregon Board of Nursing to practice as a registered nurse pursuant to State law.

(89) Rehabilitative Services – For purposes of the School-Based Health Services (SBHS) program, any health service that is covered by the Medical Assistance Program and that is a medical, psychological or remedial health service recommended by a physician or other licensed health care practitioner within the scope of practice under State law, and provided to a Medicaid-eligible student pursuant to an Individualized Education Program/Individualized Family Service Plan (IEP/IFSP) under the Individuals with Disabilities Education Act (IDEA), for reduction, correction, stabilization or functioning improvement of physical or mental disability of a Medicaid-eligible student (See 410-133-0060).

(90) Related Services – For purposes of this rule, related services as listed on an Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) may include: transportation and such developmental, corrective and other supportive services (e.g., speech language, audiology services, psychological services, physical therapy, occupational therapy, social work services in schools, and nursing services) as are required to assist a child or student with a disability to benefit from special education; and includes early identification and assessment of disabling conditions in children.

NOTE: Not all "related services" are covered for payment by Medicaid. To determine whether a particular related service is a covered health service for a Medicaid-eligible student (see OAR 410-133-0080, Coverage and OAR 410-133-0200, Not Covered Services).

(91) School-Based Health Services (SBHS) - Health services provided in the educational setting, meeting the requirements of these rules, and applicable federal and state laws and rules.

(92) School Medical (SM) Provider – An enrolled provider type established by the Division of Medical Assistance Programs (DMAP) to designate the provider of school-based health services eligible to receive reimbursement from DMAP. See Provider Rules OAR 407-120-0300 through 407-120-0380, General Rules OAR 410-120-1260, and OAR 410-133-0140 (School Medical (SM) Provider Enrollment Provisions).

(93) Screening – A limited examination to determine a Medicaid-eligible student's need for a diagnostic medical evaluation. See OAR 410-133-0200 (Not Covered Services).

(94) Special Education Services – Specially designed instruction to meet the unique needs of a child with a disability, including regular classroom instruction, instruction in physical education, home instruction, and instruction in hospitals, institutions, special schools, and other settings.

(95) Speech Language Pathology Assistant (SLPA) – A person who is licensed by the Oregon State Board of Examiners for Speech Pathology and Audiology and provides speech-language pathology services under the direction and supervision of a speech-language pathologist licensed under ORS 681.250.

(96) Speech-Language Pathologist – A person licensed by the Oregon Board of Examiners for Speech Pathology and Audiology or holds a Certificate of Clinical Competency (CCC) from the American Speech and Hearing Association (ASHA) (See Medically Qualified Staff 410-133-0120).

(97) Speech-Language Pathology Services – Assessment of children with speech/language disorders, diagnosis and appraisal of specific speech/language disorders, referral for medical and other professional attention necessary for the rehabilitation of speech/language disorders and provision of speech/language services for the prevention of communicative disorders. Obtaining and interpreting information, coordinating care, and integrating necessary and appropriate speech-language pathology services relative to the student receiving services.

(98) State Education Agency (SEA) – See "Oregon Department of Education (ODE)".

(99) State-Operated Schools – The Oregon School for the Blind or the Oregon School for the Deaf. See "Educational Agency."

(100) Student Health/Medical/Nursing Records – Education records that document, for Medical Assistance Program purposes, the Medicaid-eligible student's diagnosis or the results of tests, screens or treatments, treatment plan, the Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP), and the record of treatments or health services provided to the child or student.

(101) Teachers' Standards and Practices Commission (TSPC) - The commission that governs licensing of teachers, personnel service specialists, and administrators as set forth in OAR Chapter 584. In order for schools or school providers to participate in the Medicaid program and receive Medicaid reimbursement, they must meet the Medicaid provider qualifications. It is not sufficient for a state to use Department of Education provider qualifications for reimbursement of Medicaid-covered health services provided in an education setting.

(102) Testing – See "Assessment".

(103) Testing Technician – A person/technician adequately trained to administer and score specific tests, as delegated under the direction and supervision of a licensee, and maintains standards for the testing environment and testing administration as set forth in the American Psychological Association Standards for Educational and Psychological Tests (1999) and Ethical Principles for Psychologists (2002). See ORS 675.010(4), OAR 858-010-0001, and 858-010-0002.

(104) Third Party Billing -The process of sending a bill to a public or private insurance company for a medical or health service given to someone who is insured.

(105) Trading Partner – means a provider, prepaid health plan (PHP), clinic, or allied agency that has entered into a trading partner agreement with the Department in order to satisfy all or part of its obligations under a contract by means of electronic data interchange (EDI), electronic remittance advice (ERA), or electronic media claims (EMC), or any other mutually agreed means of electronic exchange or transfer of data. EDI transactions must comply with the requirements of the EDI rules OAR 407-120-0100 through 407-120-0200 for the purposes of these rules EDI does not include electronic transmission by web portal.

(106) Trading Partner Agreement (TPA) – means a specific request by a provider, PHP, clinic, or allied agency to conduct EDIT transactions that governs the terms and conditions for EDI transactions in the performance of obligations under a contract. A provider, PHP, clinic, or allied agency that has executed a TPA will be referred to as a trading partner in relation to those functions.

(107) Transportation Aide – An individual trained for health and safety issues to accompany a Medicaid-eligible student transported to and from a covered Health Service as specified in the Individualized Education Program/individualized Family Service Plan (IEP/IFSP). The School Medical (SM) Provider must maintain documentation of the training, supervision and provision of the services billed to Medicaid. For the purposes of these rules, individual transportation aides are included in the cost calculation for transportation costs and will not be billed separately. This computation will not include delegated health care aides for whom costs are direct costs.

(108) Transportation as a Related Service – Specialized Transportation adapted to serve the needs of a Medicaid-eligible student to

and from a covered health service that is necessary and appropriate, and described in the Individualized Education Program/individualized Family Service Plan (IEP/IFSP) as outlined in OAR 410-133-0080 (Coverage).

(109) Transportation Vehicle Trip Log – A record or log kept specifically for tracking each transportation trip a Medicaid-eligible student receives transportation to or from a covered health service. (See OAR 410-136-0280 Medical Transportation rules – Required Documentation and SBHS rules Cost Determination and Payment 410-133-0245).

(110) Treatment Plan – A written plan of care services, including treatment with proposed location, frequency and duration of treatment as required by the health care practitioner's health licensing agency.

(111) Unit – A service measurement of time for billing and reimbursement efficiency. One (1) unit equals 15 minutes unless otherwise stated.

(112) Web Portal Submitter – means an individual or entity authorized to establish an electronic media connection with the Department to conduct a direct data entry transaction. A web portal submitter may be a provider or a provider's agent.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 29-1993, f. & cert. ef. 10-1-93; HR 21-1995, f. & cert. ef. 12-1-95;OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 15-2000, f. 9-28-00, cert. ef 10-1-00; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0060
Health Services

(1) A School-based Health Service is a health service for a Medicaid-eligible student that meets the coverage requirements in OAR 410-133-0080 and that:

(a) Addresses physical or mental disabilities of the child or student; and

(b) Is identified in a student's Individualized Education Program (IEP), or the Individualized Family Service Plan (IFSP); and

(c) Is recommended by a physician or other licensed health care practitioner within the scope of practice under State law.

(2) School-based health services that meet the requirements of subsection (1) of this rule may include:

(a) Physical Therapy Evaluations and Treatments which include assessing, preventing or alleviating movement dysfunction and related functional problems, obtaining and interpreting information, and coordinating care and integrating services relative to the student receiving treatments such as:

(A) Neuromotor or neurodevelopmental assessment;

(B) Assessing and treating problems related to musculo-skeletal status;

(C) Gait, balance, and coordination skills;

(D) Oral motor assessment;

(E) Adaptive equipment assessment;

(F) Gross and fine motor development;

(G) Observation of orthotic devices; and

(H) Prosthetic training.

(b) Occupational Therapy Evaluations and Treatments which include assessing, improving, developing, or restoring functions impaired or lost through illness, injury or deprivation, improving ability to perform tasks for independent functioning when functions are lost or impaired, preventing through early intervention, initial or further impairment or loss of function, obtaining and interpreting information, coordinating care, and integrating services relative to the student receiving services such as:

(A) Neuromuscular and musculo-skeletal status (muscle strength and tone, reflex, joint range of motion, postural control, endurance);

(B) Gross and fine motor development;

(C) Feeding or oral motor function;

(D) Adaptive equipment assessment;

(E) Prosthetic or orthotic training;

(F) Neuromotor or neurodevelopmental assessment;

(G) Gait, balance, and coordination skills;

(c) Speech Evaluation and Therapy Treatments, which include assessment of children with speech and/or language disorders, diagnosis and appraisal of specific speech or language disorders, referral for medical and other professional attention, necessary for the rehabilitation of speech/language disorders, provision of speech/language services for the prevention of communicative disorders, obtaining and interpreting information, coordinating care and integrating services relative to the student receiving services such as:

(A) Expressive language;

(B) Receptive language;

(C) Auditory processing, discrimination, perception and memory;

(D) Vocal quality;

(E) Resonance patterns;

(F) Phonological;

(G) Pragmatic language;

(H) Rhythm or fluency; and

(I) Feeding and swallowing assessment;

(d) Audiological Evaluation and Services which include assessment of children with hearing loss, determination of the range, nature and degree of hearing loss, including the referral for medical or other professional attention for restoration or rehabilitation due to hearing disorders, provision of rehabilitative activities, such as language restoration or rehabilitation, auditory training, hearing evaluation and speech conversation, and determination of the child's need for individual amplification, obtaining and interpreting information, coordinating care and integrating services relative to the student receiving services such as:

(A) Auditory acuity (including pure tone air and bone conduction), speech detection, and speech reception threshold;

(B) Auditory discrimination in quiet and noise;

(C) Impedance audiometry, including tympanometry and acoustic reflex;

(D) Central auditory function;

(E) Testing to determine the child's need for individual amplification;

(F) Auditory training; and

(G) Training for the use of augmentative communication devices;

(e) Nurse Evaluation and Treatment Services which include assessments, treatment services, and supervision of delegated health care services provided to prevent disease, disability, other health conditions or their progression, prolong life, and promote physical and mental health and efficiency. This includes any medical or remedial services recommended by a physician or other licensed health care practitioner, within the scope of practice under state law for maximum reduction of physical or mental disability and restoration of a recipient to his or her best possible functional level. The RN is responsible for periodic supervision for services provided to coordinating care and integrating nursing tasks and services that can be performed in the educational setting such as:

(A) Monitoring patient's seizure activity for breathing patterns, onset/duration of seizure, triggers/auras, level of consciousness, support after seizure, administering medication as ordered;

(B) Monitoring/providing treatment for high and low blood sugar, checking urine keytones, blood glucose testing, carbohydrate calculations, assisting with insulin administration;

(C) Ventilator Care, suctioning, and equipment management;

(D) Tracheotomy Care, changing dressings, emergency trach replacement, suctioning, changing "nose", and providing humidification as necessary;

(E) Catheterization, assisting with or performing procedure for catheterization, monitor urinary tract infections, and performing skin integrity checks;

(F) Gastrostomy Tube feeding, administering tube feedings per physician order, monitoring skin status around the tube, and emergency treatment for button dislodgement;

(G) Medication pumps, e.g., insulin pump, calculate carbohydrate amounts in food/snacks, provide insulin bolus per physician order, emergency disconnect procedure and monitoring blood sugar; and

(H) Medication management, e.g., monitoring signs and symptoms for medication administration, administering medications, observing for side effects;

(f) Mental Health Evaluation and Treatment Services – Assessment and treatment services provided by or under the supervision and direction of a Psychiatrist, Psychologist, a Mental Health Nurse Practitioner, or by a Social Worker qualified and licensed to deliver the service, and who may provide care coordination and integration for services relative to the student for out patient mental health services received in the educational setting to prevent disease, disability, other health conditions or their progression, to prolong life and promote physical and mental health and efficiency. This includes any medical or remedial services recommended by a physician or other licensed health care practitioner, within the scope of practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his or her best possible functional level, such as:

(A) Mental health assessment;

(B) Psychological testing (non-educational cognitive and adaptive testing);

(C) Assessment of motor language, social, adaptive, and/or cognitive functioning by standardized developmental instruments;

(D) Behavioral health counseling and therapy; and

(E) Psychotherapy (group/individual).

(3) Services for physical, occupational, and speech therapy, hearing, nursing, and mental health services must be recommended as set out, and

provided by medically qualified individuals as defined in OAR 410-133-0120.

(4) Medicaid covered services and treatments are provided in accordance with the Oregon Medicaid program's Prioritized List of Health Services to recipients receiving services pursuant to an IEP/IFSP eligible under IDEA in the educational setting. The above-listed therapy services and treatments are examples of services that may be provided to eligible recipients in an educational setting under the Oregon Medicaid program. The current Prioritized List of services can be found on the Health Services Commission web site.

Stat. Auth.: ORS 409.40, 409.50
Stats. Implemented: ORS 414.065
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 22-1995, f. & cert. ef. 12-1-95; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0080
Coverage

The Department of Human Services may reimburse School Medical (SM) providers for covered health services that meet all of the following criteria:

(1) The health service(s) must be "Necessary and Appropriate" and covered under the Oregon Health Plan (OHP) as a service that is above the funding line of the Prioritized List of health services and the health services must not be excluded under OAR 410-133-0200 (Not Covered Services).

(2) The health service(s) must be required by a Medicaid-eligible student's physical or mental condition(s) as specified on the Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) and further described in the treatment plan and the evaluation of the student.

(3) The health service, individual or group, may include corrective health services treatments and Medicaid-covered related services as described in a student's IEP or IFSP.

(a) The payment rate for health services includes case management and necessary supplies for these services. Additional reimbursement, for such services, are not paid separately from the health service.

(b) These services must be provided by medically qualified staff who meet the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120 and comply with the respective medical provider's governing definitions, scope of practice, documentation requirements, and licensure or certification.

(4) Evaluation and assessment for SBHS are reimbursed for the part of the evaluation or assessment regarding a Medicaid-eligible student's "Necessary and Appropriate" SBHS needs for the purpose of establishing, re-establishing, or terminating a Medicaid covered service on a Medicaid-eligible student's IEP or IFSP; or to develop, review, or revise components of a covered health service currently provided to a Medicaid-eligible student for continuation of those covered services pursuant to an IEP or IFSP under the Individuals with Disabilities Education Act (IDEA).

(a) Evaluation services are procedures used to determine a SBHS covered health-related need, diagnosis, or eligibility under IDEA.(b) Re-evaluation services are procedures used to measure a Medicaid-eligible student's health status compared to an initial or previous evaluation and is focused on evaluation of progress toward current goals, modifying goals or treatment or making a professional judgment to determine whether or not a Medicaid-eligible student will continue to receive continued care for a SBHS covered service pursuant to the IEP or IFSP under IDEA. Continuous assessment of the student's progress as a component of ongoing therapy services is not billable as a re-evaluation.

(5) Assistive Technology Services directly assist a Medicaid-eligible student with a disability, eligible under IDEA, to receive assistive technology covered SBHS as specified on the IEP or IFSP, in the selection, acquisition, or use of an assistive technology device, including:

(a) The Assistive technology assessment with one-to-one student contact time by medically qualified staff within the scope of practice performing the assessment of the need, suitability, and benefits of the use of an assistive technology device or adaptive equipment that will help restore, augment, or compensate for existing functional ability in the Medicaid-eligible student or that will optimize functional tasks and/or maximize the Medicaid-eligible student's environmental accessibility. This requires and includes the preparation of a written report;

(b) Care Coordination with the Medicaid-eligible student's physician, parent/guardian, and the Division of Medical Assistance Programs (DMAP) for the parent/guardian's acquisition of a personal assistive technology device for their Medicaid-eligible student through the student's Medicaid plan for the benefit of the Medicaid-eligible student to maximize his/her functional ability and environmental accessibility; and

(c) Training or technical assistance provided to or demonstrated with the Medicaid-eligible student by medically qualified staff, instructing the use of an assistive technology device or adaptive equipment in the educational setting with professionals (including individuals providing education and rehabilitation services) or where appropriate the family members, guardians, advocates, or authorized representative of the Medicaid-eligible student. In order to bill Medicaid for this service, the student must be present.

(6) DHS may reimburse Physical Therapy Services provided by:

(a) A physical therapist authorized to administer physical therapy to an individual, when the individual is a Medicaid-eligible student eligible for special education, as defined by state or federal law, and is being seen pursuant to the Medicaid-eligible student's individual education plan or individual family service plan (see Oregon Administrative Rules Chapter 848 Division 10 Licensed Physical therapist and Licensed Physical Therapist Assistants; Division 15 Physical Therapist Assistants; and Division 40 Minimum Standards For Physical therapy Practice and Records);

(b) A physical therapist assistant providing treatment under the supervision of a physical therapist who is available and readily accessible for consultation with the assistant, at all times, either in person or by means of telecommunications (see OAR Chapter 848 Division 15 Physical Therapist Assistants). Physical therapy services must be provided by medically qualified staff who meet the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120.

(c) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment report to establish necessary and appropriate physical therapy services on a Medicaid-eligible student's IEP or IFSP.

(B) Obtaining and interpreting medical information for the part of an evaluation or assessment performed by the physical therapist to establish necessary and appropriate physical therapy services on a Medicaid-eligible student's IEP or IFSP; or to determine whether or not necessary and appropriate physical therapy services will continue to be specified on the Medicaid-eligible student's IEP or IFSP under IDEA (cannot be delegated).

(C) Care coordination and integrating services, within the scope of practice, for providing necessary and appropriate physical therapy services relative to the Medicaid-eligible student pursuant to an IEP or IFSP.

(D) Direct treatment and supervision of services provided to a Medicaid-eligible student by the physical therapist and defined in the individual plan; when

(E) Documentation by the supervising physical therapist supporting the appropriate supervision of the assistant is maintained and kept by the School Medical Provider for a period of seven years (See OAR Chapter 848 Division 40 Minimum Standards for Physical Therapy Practice and Records).

(F) Individual or group physical therapy services provided to a Medicaid-eligible student by or under the supervision and direction of a Licensed physical therapist pursuant to the Medicaid-eligible student's IEP or IFSP; when the documentation describing physical therapy services provided are signed by the therapist providing the service in accordance with their board licensing requirements and documentation for supervision of services performed by or under the supervision and direction of the supervising physical therapist supporting the services provided is maintained and kept by the school medical provider for seven (7) years (See Minimum Standards for Physical Therapy Practice and Records OARs 848-040-0100 through 848-040-0170).

(G) Other covered physical therapy services within the scope of practice and subsections (1) and (2) of this rule.

(7) DHS may reimburse occupational therapy services provided by:

(a) A licensed Occupational Therapist (OT)authorized to administer occupational therapy to an individual, when the individual is a Medicaid-eligible student eligible for special education, as defined by state or federal law, and is being seen pursuant to the Medicaid-eligible student's individual education plan or individual family service plan; and

(b) A licensed occupational therapy assistant assisting in the practice of occupational therapy under the general supervision of a licensed occupational therapist. (General supervision requires the supervisor to have at least monthly direct contact in person with the supervisee at the work site with supervision available as needed by other methods); and

(c) Before an occupational therapy assistant assists in the practice of occupational therapy, he/she must file with the Board a signed, current statement of supervision of the licensed occupational therapist that will supervise the occupational therapy assistant (See OAR 339-010-0035 Statement of Supervision for Occupational Therapy Assistant). Occupational therapy services must be provided by medically qualified staff who meet the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120.

(d) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment reports that establish necessary and appropriate occupational therapy services on a Medicaid eligible students IEP or IFSP.

(B) Obtaining and interpreting medical information for the part of the evaluation or assessment performed by the occupational therapist to establish necessary and appropriate occupational therapy services on a Medicaid-eligible student's IEP or IFSP; or to determine whether or not necessary and appropriate occupational therapy services will continue to be specified on the Medicaid eligible student's IEP or IFSP under IDEA (cannot be delegated).

(C) Development of the initial occupational therapy treatment plan by the OT (cannot be delegated).

(D) Coordinating care and integrating services, within the scope of practice, relative to the Medicaid-eligible student receiving necessary and appropriate occupational therapy services as specified on the IEP or IFSP.

(E) Individual or group occupational therapy services provided to a Medicaid-eligible student by or under the supervision and direction of a licensed occupational therapist as specified on Medicaid-eligible student's IEP or IFSP,

(F) Direct treatment and supervision of services provided to a Medicaid-eligible student by the occupational therapist and defined in the individual plan; when documentation supporting the appropriate supervision of the assistant is kept and maintained by the school medical provider for a period of seven years;

(G) The occupational therapy services provided are consistent with OAR 339-010-0050 Occupational Therapy Services For Children and Youth in Education and Early childhood Programs regulated by federal laws ; and

(H) Documentation describing occupational therapy treatment provided must be signed including credentials by the occupational therapist providing the service. Where appropriate, services provided by an occupational therapist assistant shall be reviewed and co signed by the supervising occupational therapist. All documentation describing treatment provided by an occupational therapy assistant must name the assistant therapist and the supervising therapist including credentials as reflected on the current statement of supervision filed with the Occupational Therapist Licensing Board. Supervision and documentation of supervision by the supervising therapist for therapy provided by the occupational therapy assistant must meet general supervision requirements or closer supervision where professionally appropriate. See OAR 339-010-0005 and 339-010-0035. Also, see 410-133-0320 Documentation and Recordkeeping Requirements in these rules.

(I) Other covered occupational therapy services within the scope of practice and subsections (1) and (2) of this rule.

(8) DHS May Reimburse Speech Therapy Services Provided By:

(a) A licensed speech pathologist licensed by the Oregon Board of Examiners for Speech Pathology and Audiology or holds a Certificate of Clinical Competency (CCC) from the American Speech and Hearing Association (ASHA), authorized to administer speech therapy to an individual, when the individual is a Medicaid-eligible student eligible for special education, as defined by state or federal law, receiving speech therapy services pursuant to an individual education plan or individual family service plan; or

(b) A graduate speech pathologist in their Clinical Fellowship Year (CFY) practicing under the supervision of an ASHA licensed speech pathologist with CCC meeting the standards of licensing or certification for the health service provided as described in OAR 410-133-0120 medically qualified staff; and when

(A) A standardized system for reviewing the clinical work of the clinical fellow is performed at regularly scheduled intervals, using the Skills Inventory Rating (CFSI) form addressing the fellow's attainment of skills for independent practice;

(B) The clinical fellow supervisor maintains and documents the supervision of the clinical fellow to be kept by the school medical provider for a period of seven years.

(C) Documentation describing the treatment provided are signed and initialed by the clinical fellow for review and co-signature by the supervising clinical fellow.

(c) Speech-language pathology assistants (SLPA), licensed by the Oregon State Board of Examiners for Speech Pathology and Audiology, under the supervision of a supervising speech-language pathologist and who meet the standards of licensing or certification for the health service provided as described in OAR 410-133-0120 Medically Qualified Staff, when the following conditions are met:

(A) The supervising speech-language pathologist must have at least two years of full-time professional speech-language pathology experience (see OAR 335-095-0050 Requirements for Supervising Licensed Speech-Language Pathology Assistants);

(B) The supervising speech therapist does not supervise more than two full-time or three part-time speech-language pathology assistants;

(C) The supervising speech-language pathologist maintains documentation supporting the appropriate supervision of the assistant(s) to be kept by the school medical provider for a period of seven (7) years;

(D) The caseload of the supervising clinician allows for administration, including assistant supervision, evaluation of students and meeting times. (All students assigned to an assistant are considered part of the caseload of the supervising clinician);

(E) The supervising speech-language pathologist must be able to be reached at all times (A temporary supervisor may be designated as necessary);

(F) The services provided by the assistants are consistent with the Scope of Duties for the Speech-Language Pathology Assistant (SLPA) pursuant to OAR 335-095-0060;

(G) Documentation describing the treatment provided are signed and initialed by the SLPA for review and co-signature by the supervising speech-language pathologist to be kept by the school medical provider for a period of seven (7) years.

(d) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment report, including obtaining and interpreting medical information for the part of the evaluation or assessment performed by the speech pathologist to establish necessary and appropriate speech therapy services on a Medicaid-eligible student's IEP or IFSP; or determine whether or not necessary and appropriate speech therapy services will continue to be specified on the Medicaid-eligible student's IEP or IFSP under IDEA (cannot be delegated);

(B) Development of the initial speech therapy treatment plan by the speech pathologist (cannot be delegated);

(C) Care coordination and integrating services, within the scope of practice, relative to the Medicaid-eligible student receiving necessary and appropriate speech therapy services specified on the IEP or IFSP;

(D) Direct individual or group speech therapy services provided to a Medicaid-eligible student for speech services specified on the IEP or IFSP delivered by or under the supervision and direction of a speech pathologist who is medically qualified to deliver the service see 410-133-0120 Medically Qualified Staff;

(E) Direct training and supervision of services provided to a Medicaid-eligible student by the medically qualified supervising speech pathologist to be kept by the school medical provider for a period of seven (7) years; and

(F) Other covered speech therapy services within the scope of practice and subsections (1) and (2) of this rule.

(9) DHS May Reimburse Audiology Services Provided By:

(a) A licensed audiologist within the scope of practice as defined by state or federal law who meet the standards of licensing or certification for the health service provided as described in OAR 410-133-0120 Medically Qualified Staff

(b) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment report, including obtaining and interpreting medical information for the part of the evaluation or assessment performed by the audiologist within the scope of practice, to establish necessary and appropriate hearing services on a Medicaid-eligible student's IEP or IFSP; or determine whether or not necessary and appropriate hearing impairment services will continue to be specified on the Medicaid-eligible student's IEP or IFSP under IDEA.

(B) Periodic hearing evaluations and assessments of a Medicaid-eligible student with hearing loss found eligible under IDEA pursuant to services as specified on the IEP or IFSP, for determination of the range, nature and degree of hearing loss.

(C) Care coordination and integration of services for medical or other professional attention relative to Medicaid-eligible student receiving services for restoration or rehabilitation due to hearing and communication disorders as specified on the IEP or IFSP.

(D) Provision of rehabilitative activities, such as language restoration or rehabilitation, auditory training, hearing evaluation and speech conversation, and determination of the Medicaid-eligible student's need for individual amplification in accordance with the student's IEP or IFSP.

(10) DHS May Reimburse Nurse Services Provided By:

(a) A Nurse Practitioner (NP), Registered Nurse (RN, Licensed Practical Nurse (LPN) or Delegated Health Care Aid under the supervision of an RN or NP who meet the standards of licensing or certification for the health service provided as described in OAR 410-133-0120 Medically Qualified Staff

(b) Nursing services under this program are not intended to reimburse nursing activities of a Private Duty RN or LPN that is otherwise billing Medicaid directly for those services.

(c) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment report to establish nursing services including obtaining and interpreting medical information for the part of the evaluation or assessment performed to establish Necessary and Appropriate nursing services on the Medicaid-Eligible student's IEP or IFSP; or determine whether or not necessary and appropriate nursing services will continue to be specified on the Medicaid-eligible students IEP or IFSP under IDEA.

(B) Coordinated care for other specified care management for a chronic medical condition that is not addressed on the current IEP or IFSP that will result in amending nursing services specified in the IEP or IFSP and requires an updated nursing plan of care. This may result in an increase in supervision, monitoring and training of DHC staff to provide new nursing tasks related to the change in condition. For example: a child with seizure disorder that develops diabetes.

(C) Care coordination and integration of necessary and appropriate nursing services relative to the Medicaid–eligible student's covered health service specified on the IEP or IFSP.

(D) Nurse to student interactive services that are covered health services provided to a Medicaid-eligible student with a chronic medical condition receiving nursing services pursuant to an IEP or IFSP.

(E) Oversight of delegated health care aides performing delegated nursing services directly with the student as specified on the IEP or IFSP.

(F) Student observation by medically qualified staff for medical reasons of a Medicaid-eligible student with a chronic medical condition as part of an evaluation/assessment or care coordination. An observation by itself is not a billable activity.

(G) Other covered nursing care services within the scope of practice and subsections (1) and (2) of this rule.

(11) DHS May Reimburse Mental Health Services Provided By:

(a) A Psychiatrist who meets the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120(2)(f)(A), or a Psychologist who meets the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120(2)(f)(B), or a mental health Nurse Practitioner who meets the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120(2)(e)(A); or

(b) A Psychologist Associate with authority to function without immediate supervision, performing functions that may include but are not restricted to administering tests of mental abilities, conducting personality assessments and counseling (see OAR 858-050-0150 Application for Independent Status). These services must be provided by medically qualified staff who meet the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120(2)(f)(C); or

(c) A Psychologist Associate under the supervision of a Psychologist as specified by the Board of Psychologists Examiners, Chapter 858 Division 50, Psychologist Associates OAR 858-050-0100 through 858-050-0150. These services must be provided by Medically Qualified Staff who meet the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120(2)(f)(D); or

(d) A testing technician under the supervision of a Psychologist as specified by the Board of Psychologists Examiners, Chapter 858, Division 10, OAR 858-010-0002 Guidelines for Supervising Technicians and who meet the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120 (f)(E); or

(e) A Licensed (LCSW) qualified and licensed to deliver the service, or a Clinical Social Work Associate (CSWA) under the supervision of an LCSW specified by the Board of Clinical Social Workers, Chapter 877 Division 20, OAR 877-020-0000 through 877-020-0050 and who meet the standards of licensing or certification for the health service being provided as described in OAR 410-133-0120 (f)(F).

(f) Reimbursable time may include:

(A) Preparation of the written initial evaluation or initial assessment report for a suspected disability per the referral process for determining IDEA eligibility, including obtaining and interpreting medical information for the part of the evaluation or assessment performed by the mental health care practitioner within the scope of practice, to establish necessary and appropriate mental health services on the Medicaid-eligible student's IEP or IFSP; or to determine whether or not necessary and appropriate mental health services will continue to be specified on the Medicaid-eligible student's IEP or IFSP under IDEA.

(B) Care coordination and integrating services, within the scope of practice, relative to the Medicaid-eligible student receiving mental health services as specified on the IEP or IFSP;

(C) Direct individual therapy services provided within the scope of practice under state law and covered under subsections (1) and (2) of this rule to a Medicaid-eligible student by or under the supervision and direction of a Psychologist, a Psychiatrist, or Mental Health Nurse Practitioner, or a Licensed Clinical Social Worker qualified and licensed to deliver the service pursuant to the Medicaid-eligible student's IEP or IFSP.

(12) Medicaid Reimbursed Transportation:

(a) Transportation to a covered Health Service as documented in the child's IEP/IFSP and defined in these rules (see 410-133-0245 Cost Determination and Payment).

(b) Ongoing transportation specified, as a related service, on the Medicaid-eligible student's IEP or IFSP may be claimed as a Medicaid service on the days a Medicaid-eligible student receives a covered health service that is also specified on the IEP or IFSP,

(c) DHS may only reimburse for transportation as a related service to and from a Medicaid-covered service for a Medicaid-eligible student when the student receives a Medicaid covered health service other than transportation on that day when either of the following situations exist:

(A) The Medicaid-eligible student requires specialized transportation adapted to serve the needs of the disabled student, there is documentation to support specialized transportation is "necessary and appropriate", and transportation is listed as a related service on the student's IEP or IFSP; or

(B) The Medicaid-eligible student has a medical need for transportation that is documented in the IEP or IFSP, and resides in an area that does not have regular school bus transportation such as those areas in close proximity to a school.

(d) If a Medicaid-eligible student is able to ride on a regular school bus, but requires the assistance of a delegated health care aide, trained by an RN to provide a delegated nursing task specific to the student, who cannot be transported safely without the delegated health care aide, the service provided by the delegated healthcare aide is reimbursed under the delegated healthcare code. See the standards for delegation of a Nursing Care Task as outlined in the Nurse Practice Act, Division 47, OAR 851-047-0000 through 851-047-0040

(e) If a Medicaid-eligible student requires the assistance of a delegated health care aide and transportation adapted to serve the needs of the disabled student, both the necessary and appropriate transportation and the service provided by the delegated healthcare aide may be reimbursed when both are specified on the Medicaid-eligible student's current IEP or IFSP.

(f) If an education agency provides special transportation to a Medicaid-eligible student to a covered service outside the district or the Medicaid-eligible student's resident school and the student cannot be transported safely without a transportation aide as specified on the IEP or IFSP, the transportation is billable. However, a transportation aide who is not a delegated healthcare aide trained by an RN cannot be billed as a separate cost because the cost of the transportation aide is included in the cost of the transportation.

(g) Transportation is not reimbursable by DMAP when provided by the parent or relative of the child.

(h)Transportation to an Evaluation service is covered as long as:

(A) Medically necessary transportation is listed and included in the Medicaid-eligible student's current IEP or IFSP and the evaluation is to establish, re-establish, or terminate a SBHS covered service under IDEA;

(B) The Evaluation is a SBHS covered Health Service;

(C) The medical provider conducting the Evaluation, if not employed or contracted by the school medical provider, is an enrolled provider with DMAP and meets applicable medical licensing standards necessary to conduct the evaluation.

(13) Medicaid may reimburse for Contracted Consultation Health Services for furnishing consultations regarding a Medicaid-eligible student's covered health service(s) specified on the IEP or IFSP for an evaluation or assessment to establish, re-establish, or terminate a covered SBHS on an IEP or IFSP. Contracted consultation services must be provided by a licensed medical professional other than school medical provider staff.

(a) This service may be on a contracted basis for a number of students;

(b) Allowable services must be furnished through a personal service contract between the school medical provider and the licensed health care practitioner;

(c) This service would only be a SBHS covered Health Service by the school medical provider when the licensed health care practitioner did not bill Medicaid directly under other programs for the same services.

(14) Reimbursed Coordinated care, performed by Medically Qualified Staff as described in OAR 410-133-0120 directly related to health services required by a Medicaid-eligible student's physical or mental condition as described in the IEP or IFSP; and must be one of the following:

(a) Managing integration of those Medicaid covered health services for treatment provided in the education setting;

(b) The portion of a Conference, between interested parties and medically qualified staff for developing, reviewing, or revising a Medicaid covered health service, or therapy treatment plan, for services provided pursuant to a Medicaid-eligible student's IEP or IFSP, or to establish, re-estab-

lish, or terminate a covered health service under IDEA for eligibility purposes;

(c) Consultation from medically qualified staff providing technical assistance to or conferring with special education providers, physician, or families to assist them in providing covered health services to Medicaid-eligible students for treatment provided in the educational setting related to specific health services, and the goals and objectives in the student's IEP or IFSP. Consultation services must be completed by a licensed health care practitioner within the scope of practice under their licensure;

Stat. Auth.: ORS 409.40 & 409.50
Stats. Implemented: ORS 414.065
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 21-1995, f. & cert. ef. 12-1-95; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 31-2003, f. & cert ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0090
Public Education Agency School Medical Provider Payment Requirements

These rules are designed to assist the public Education Agency (EA) School Medical (SM) provider in matching state and federal funds for services defined by Section 1915(g) of the Social Security Act, 42 USC § 1396n(g) and are to be used in conjunction with the Division of Medical Assistance Programs (DMAP) General Rules (OAR 410 Division 120).

(1) Payment will be made in accordance with DHS Provider Rules Chapter 407 Division 120 and DMAP General Rules Chapter 410 Division 120 to the enrolled School Medical (SM) provider with the Department of Human Services (DHS), also termed Department, meeting the requirements set forth in the provider enrollment agreement for those covered health services provided by medically qualified staff working within the scope of their practice. Medically qualified staff must meet the qualifications as outlined in OAR 410-133-0120 Medically Qualified Staff.

(2) Signing the school medical provider enrollment agreement sets forth the relationship between the State of Oregon, the Department , and the SM provider and constitutes agreement by the SM provider to comply with all applicable rules of the Department, the Division of Medical Assistance Programs (DMAP), and federal and state laws or regulations. (See DHS Provider Rules Chapter 407 Division120 and DMAP General Rules Chapter 410 Division 120).

(3) The school medical (SM) provider will bill for covered services provided to Medicaid-eligible students in accordance with DHS Chapter 407 Division 120 Provider rules, DMAP rules Chapter 410 Division 120 and these School-Based Health Services (SBHS) rules. Payments will be made through the Medicaid Management Information System (MMIS) and the SM provider must retain the full payment for the covered services provided. The SM provider must have a Trading Partner Agreement (TPA) with the Department prior to submission of electronic transactions.

(4) School-based health services (SBHS) authorized under these rules is a cost-sharing Federal Financial Participation (FFP) matching program in which the Education Agency (EA) SM provider that is a public entity unit of government, is responsible for paying the non-federal matching share of the amount of the SBHS claims, calculated using the Federal Medical Assistance Percentage (FMAP) rates in effect during the quarter when the SBHS claims will be paid:

(a) The unit of government public education agency SM provider's share means the public funds share of the Medicaid payment amount. Pursuant to 42 CFR 433.51, public funds may be considered as the State's share in claiming federal financial participation (FFP) if the public funds meet the following conditions:

(A) The public funds are transferred to the Department from public entities that are units of government;

(B) The public funds are not federal funds or they are federal funds authorized by federal law to be used to match other federal funds;

(C) All sources of funds must be allowable under 42 CFR 433 Subpart B;

(b) The unit of government EA SM provider must pay its non-federal matching share portion for claims submitted to the Department in accordance with OAR 410-120-0035.

(5) Before DHS pays for SBHS claims, DHS must receive the SM provider's corresponding local match payment as described in this rule. Failure to timely pay the non-federal matching funds to DHS will delay reimbursement of claims and may require the SM provider to resubmit the claims.

(6) The Department will not be financially responsible for payment of any claim that the Centers for Medicare and Medicaid Services (CMS) disallows under the Medicaid program. If the Department has previously paid the SM provider for any claim which the CMS disallows, the SM provider must reimburse the Department the amount of the claim that the Department has paid to the SM provider, less any amount previously paid by the unit of government EA SM Provider to the Department for purposes of reimbursing the Department for the non-federal match portion of that claim.

Stat. Auth.: ORS 409.010, 409.110 & 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 41-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 88-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 4-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0100
School Medical Provider Requirements

The School Medical (SM) provider is responsible to:

(1) Enroll with the Department of Human Services' (also termed Department) Division of Medical Assistance Programs (DMAP) to provide health services, and comply with all the requirements in the Department Provider Rules OAR 407-120-0300 to 407-120-0380, OAR 410-120-1260 and 410-133-0140 in these rules applicable to enrollment as a provider.

(2) Provide health services pursuant to the Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) for special education under OAR Chapter 581, Division 15

(3) Provide health services using medically qualified staff (see 410-133-0120 Medically Qualified Staff in these rules).

(4) Provide appropriate medical supervision by licensed medically qualified staff consistent with their licensing board requirements.

(5) Document health services in writing as required in OAR 410-133-0320.

(6) Maintain adequate medical and financial records as part of the Medicaid-eligible student's education record necessary to fully disclose the extent of the covered health services provided.

(7) Make the records required by these rules and specifically OAR 410-133-0320 available for a period of seven years.

(8) Document costs and establish a schedule of cost rates per discipline in accordance with OAR 410-133-0245.

(9) Provide access for on-site review of IDEA Medicaid-eligible students' education records directly related to payments for claims to the SM provider for Medicaid covered health related services specified on an IEP or IFSP and furnish such information to any state or federal agency responsible for administration or oversight of the medical assistance program as the state or federal agency may from time to time request in compliance with OAR 407-120-0310.

(10) Document any changes in the Individualized Education Program/Individualized Family Service Plan (IEP/IFSP) related to the provision of Medicaid covered health services under School-Based Health Services (SBHS).

(11) Assure that SBHS services billed are billed in accordance with OAR 410-120-0035, reflect covered health services and do not reimburse for non-covered education services or administrative activities;

(12) Retain the full payment amount for Medicaid-covered services provided.

(13) Utilize procedures to confirm that all individuals providing health services to Medicaid-eligible students, whether as employees or under contract with the SM provider, are eligible to provide Medicaid services and are not excluded from providing Medicaid services. Exclusion means the Department will not reimburse an SM provider (allied agency) who employs a medically licensed individual who has defrauded or abused the Department for items or services furnished by that individual. (See OAR 407-120-0360 Consequences of non-Compliance and Provider Sanctions, OAR 410-133-0120 Medically Qualified Staff (1) and 410-133-0200 Not Covered Services); and

(14) Comply with all applicable provisions of the Department's Administrative Services Division and Director's Office rules Chapter 407 Division 120 and the DMAP General Rules Chapter 410 Division 120, including rules related to the use of billing providers. If the SM provider seeks to submit claims to the Department electronically, it must comply with the applicable provisions of the Department's Electronic Data Interchange (EDI) rules for EDI transactions OAR 407-120-0100 through 407-120-0200, EDI does not include electronic transmission by web portal.

Stat. Auth.: ORS 409.010, 409.110 & 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0120
Medically Qualified Staff

(1) The School Medical (SM) provider shall furnish covered health services through the medically qualified staff who provide health services within the scope of their licensure. The SM provider shall document the

credentials and qualifications, updated periodically, of all medically qualified staff. The SM provider credential file shall document the manner in which the provider checked, and periodically re-checked, the Medicaid provider exclusion list to confirm that the medically qualified staff are eligible to provide health services to Medicaid-eligible students. Special education teachers are not recognized as medically qualified staff for these services. See http://oig.hhs.gov/fraud/exclusions.asp

(2) School-based health services are delivered by providers who meet the federal requirements listed below and who operate within the scope of their health care practitioner's license or certification pursuant to state law as follows:

(a) Evaluation and physical therapy treatments shall be provided by licensed physical therapists, that meet the federal requirements of 42 CFR 440.110, and are licensed by the State Physical Therapist Licensing Board. Licensed physical therapists assistants who's function is to assist the physical therapist in patient-related activities and to perform delegated procedures that are commensurate with the licensed therapist assistant's education and training may provide therapy treatments under the supervision and direction of a State licensed physical therapist within the scope of the health care practitioner's license and accreditation pursuant to State law;

(b) Occupational therapy evaluation and treatments shall be provided by licensed occupational therapists that meet the federal requirements of 42 CFR 440.110, and are licensed by the State Occupational Therapist Licensing Board. Licensed occupational therapist assistants who's function is to assist the occupational therapist in patient-related activities and to perform delegated procedures that are commensurate with the licensed therapist assistant's education and training may provide therapy treatments under the supervision and direction of a State licensed occupational therapist within the scope of the health care practitioner's license and accreditation pursuant to State law;

(c) Speech therapy evaluation and treatments shall be provided by Speech Pathologists that meet the federal requirements at 42 CFR 440.110, and are licensed by the State Board of Examiners for Speech Pathology and Audiology or hold a Certificate of Clinical Competency from the American Speech and Hearing Association;

(A) Speech therapy services may be provided by a graduate speech pathologist being supervised in the Clinical Fellowship Year (CFY) under the supervision of an ASHA licensed speech-language pathologist; or

(B) A Certified Speech-language Pathology Assistant (SLPA) performing within the scope of practice may provide therapy under the supervision of a State licensed speech-language pathologist within the scope of the health care practitioner's license and accreditation pursuant to State law. Excludes services described in OAR 335-095-0055 Permit for Supervisors of Speech-language Pathology Assistants in Schools see not covered services 410-133-0200;

(d) Audiology evaluation and services shall be provided by Audiologists that meet the federal requirements at 42 CFR 440.110;

(e) Nurse evaluation and treatments shall be provided by or under the direction of Registered Nurses (RN) licensed to practice in Oregon by the Oregon State Board of Nursing; or Nurse Practitioners that meet the federal requirements at 42 CFR 440.166, and are licensed by the Oregon State Board of Nursing to practice in Oregon as a Nurse Practitioner (See Oregon State Board of Nursing Nurse Practice Act, Division 50, Nurse Practitioners OAR 851-050-000 through 851-050-0170);

(A) Licensed Practical Nurses (LPN) may participate in the implementation of the plan of care for providing care to clients under the supervision of a licensed Registered Nurse, Nurse Practitioner, or Physician pursuant to the Oregon State Board of Nursing Practice Act Divisions 45 and 47;

(B) Treatment may also be provided by a delegated health care aide that is a non-licensed person trained and supervised by a licensed Registered Nurse (RN) or Nurse Practitioner (NP) to perform selected tasks of nursing care pursuant to The Oregon State Board of Nursing Division 47 of the Nurse Practice Act;

(f) Psychological/mental health evaluations, testing, psychological services and treatments shall be provided by individuals who meet the relevant requirements of their respective professional state licensure as follows:

(A) Psychiatrists must be licensed to practice medicine and surgery in the State of Oregon; and possess a valid license from the Oregon Licensing Board for the Healing Arts;

(B) Psychologists must have one of the following: a doctoral degree in psychology obtained from an approved doctoral program in psychology accredited by the American Psychological Association (APA) or a doctoral program in psychology accredited individually or as part of an institutional accreditation by another private or governmental accrediting agency, when the association's or agency's standards and procedures have been approved by the State Board of Psychologist Examiners by rule; and have two years of supervised employment under the direction of a psychologist licensed in Oregon or under the direction of a person considered by the board to have equivalent supervisory competence;

(C) Psychologists Associates meeting the requirements to function without immediate supervision pursuant to Oregon Board of Psychologist Examiners Division 50, OAR 858-050-0150 may apply to the Board for authority to function without immediate and direct supervision. Until the psychologist associate successfully completes the oral examination for independent practice, the associate must not practice without immediate supervision, but must at all times be under the direct supervision of a licensed psychologist who shall continue to be responsible for the practice of the associate;

(D) Psychologists Associates who do not possess a doctoral degree, and are deemed competent to perform certain functions within the practice of psychology under the periodic direct supervision of a psychologist licensed by the board:

(i) Has complied with all the applicable provisions of ORS 675.010 to 675.150;

(ii) Has received a master's degree in psychology from a psychology program approved by the board by rule;

(iii) Has completed an internship in an approved educational institution or one year of other training experience acceptable to the board, such as supervised professional experience under the direction of a psychologist licensed in Oregon, or under the direction of a person considered by the board to have equivalent supervisory competence; and

(iv) Furnishes proof acceptable to the board of at least 36 months, exclusive of internship, of full-time experience satisfactory to the board under the direct supervision of a licensed psychologist in Oregon, or under the direct supervision of a person considered by the board to have equivalent supervisory competence.

(E) Testing Technicians under the supervision of Psychologist. A licensee may delegate administration and scoring of tests to technicians as provided in ORS 675.010(4) and OAR 858-010-0001, if the licensee ensures the technicians are adequately trained to administer and score the specific test being used; and ensures that the technicians maintain standards for the testing environment and testing administration as set forth in the American Psychological Association Standards for Educational and Psychological Tests (1999) and Ethical Principles for Psychologists (2002). See OAR 858-010-0002 Guidelines for Supervising Technicians;

(F) Services provided by Clinical Social Work Associate (CSWA) or Licensed Clinical Social Worker (LCSW): must possess a master's degree from an accredited college or university accredited by the Council on Social Work Education and have completed the equivalent of two years of full-time experience in the field of clinical social work in accordance with rules of the Oregon State Board of Clinical Social Workers for a LCSW or whose plan of practice and supervision has been approved by the board, for a CSWA working toward LCSW licensure under the supervision of a LCSW for two years of post masters clinical experience and is licensed by the State Board of Clinical Social Workers to practice in Oregon. See Board of Clinical Social Workers, Chapter 877 Division 20.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 49-1991(Temp), f. & cert. ef. 10-24-91; HR 3-1992, f. & cert. ef. 1-2-92; HR 29-1993, f. & cert. ef. 10-1-93; HR 19-1994, f. & cert. ef. 4-1-94; HR 21-1995, f. & cert. ef. 12-1-95; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 31-2003, f. & cert ef. 4-1-03 ; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0140
School Medical Provider Enrollment Provisions

(1) This rule applies only to providers seeking reimbursement from the Division of Medical Assistance Programs (DMAP), except as otherwise provided in OAR 410-120-1295.

(2) Only Educational Agency (EA) providers of SBHS that meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2005 will be enrolled with the Division of Medical Assistance Programs (DMAP) as school medical (SM) providers allowed to seek reimbursement for the provision of covered health services pursuant to a Medicaid eligible child's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP).

(3) The provider enrollment process will consist of: The completion and submission of the School Medical (SM) provider enrollment application and the required attachments, disclosure documents, and provider agreement with the Division of Medical Assistance Programs.

(4) An approved enrollment application by DMAP or the DHS unit responsible for enrolling the SM provider is a contractual agreement that binds the SM provider to comply with the Department Provider Rules OAR

407-120-0300 through 407-120-0380, DMAP General Rules 410-120-1260 and School-Based Health Services (SBHS) rules.

(5) Signing the SM provider agreement enclosed in the application package constitutes agreement by performing, and billing providers for provision of SBHS to comply with all applicable rules of the Medical Assistance Program and federal and state laws and regulations.

(6) An SM provider is a performing provider. A performing provider is the provider of a service or item. A billing provider is an individual, agent, business, corporation, clinic, group, institution, or other entity who in connection with the submission of claims to the Department, receives or directs the payment (either in the name of the performing provider or the name of the billing provider) from DHS, on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider (See DMAP General Rules 410-120-1260):

(a) A billing provider is responsible for identifying to DMAP and keeping current the identification of all performing providers for whom they bill, or receive or direct payments. This identification must include the providers' names, DHS provider numbers, NPIs, and either the performing provider's Social Security Number (SSN) or Employer Identification Number (EIN). The SSN or EIN of the performing provider cannot be the same as the Tax Identification Number (TIN) of the billing provider. In order to facilitate timely claims processing and claims payment consistent with applicable privacy and security requirements, DHS requires billing providers to be enrolled consistent with the provider enrollment process described in OAR 410-120-1260 (7);

(b) If the SM performing provider uses electronic media to conduct transactions with the Department, or authorizes a billing provider to conduct such electronic transactions, the SM performing provider must comply with the DHS Electronic Data Interchange (EDI) rules, OAR 407-120-0100 through 407-120-0200. Enrollment as a SM performing provider or billing provider is a necessary requirement for submitting electronic claims, but the provider must also register as a trading partner and identify the EDI Submitter;

(c) A school medical (SM) performing provider that uses electronic media to conduct transaction with the Department or authorizes a billing provider to conduct such electronic transactions, must comply with the DHS electronic data interchange (EDI) rules OAR 407-120-0100 through 407-120-0200. Enrollment as an SM performing provider or billing provider is a necessary requirement for submitting electronic claims. If the SM provider intends to use an electronic data interchange (EDI) submitter, the SM performing provider must register with the Department of Human Services (DHS) as a trading partner and shall complete the "Trading Partner Authorization of EDI Submitter" and the EDI submitter information required in the application in compliance with the trading partner requirements of identifying the authority of the EDI submitter to submit claims on its behalf. The EDI submitter must sign the EDI certification and meet other Department of Human Services' (DHS) EDI submission requirements pursuant to the electronic data interchange (EDI) rules, before the Department of Human Services (DHS) may accept an electronic submission from the EDI) submitter on behalf of the performing provider. Information about the electronic data interchange (EDI) transaction requirements is available on the Department of Human Services' (DHS) web site. See OAR 407-120-0100 through 407-120-0200. Also, see OAR 407-120-0116 Web Portal Submitter and 407-120-0118 Conduct of Direct Data Entry Using Web Portal.

(7) To be enrolled and able to bill as an SM provider, an EA, must meet applicable licensing and regulatory requirements set forth by federal and state statutes, regulations, and rules and must comply with all Oregon statutes and regulations for provision of Medicaid and State Children's Health Insurance program (SCHIP) services. In addition, all providers of services within the State of Oregon must have a valid Oregon business license if such a license is a requirement of the state, federal, county or city government to operate a business or to provide services.

(8) An EA, individual, or organization that is currently subject to sanction(s) by the Medical Assistance Program or Federal government is not eligible for enrollment (see OAR 407-120-0360 consequences of Non-Compliance and Provider Sanctions and OAR 410-120-1400).

(9) The Department of Human Services (DHS) requires compliance with the National Provider Identification (NPI) requirements in 45 CFR Part 142. Providers that obtain an NPI should update their records with DMAP Provider Enrollment. Provider applicants that have been issued an NPI must include that NPI number with the DMAP provider enrollment application.

(10) A performing provider number will be issued to an EA providing covered health care services or items upon:

(a) Completion of the application and submission of the required School-Based Health Services SM Provider Attachment, disclosure documents, and provider agreement;

(b) The signing of the SM provider application by the authorized representative for the EA to bind the EA SM provider to compliance with these rules;

(c) Verification of licensing or certification. Loss of the appropriate licensure or certification or failure to meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2005 will result in immediate dis-enrollment of the provider and recovery of payments made subsequent to the loss of licensure or certification;

(d) Approval of the application and required documentation for an SM provider by the Division of Medical Assistance Programs (DMAP) or the Division responsible for enrolling the provider.

(11) An SM performing provider may be enrolled retroactive to the date services were provided to a medical assistance client/child if:

(a) The SM provider met the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2005, was appropriately licensed, certified, and otherwise met all Medical Assistance Program requirements at the time services were provided; and

(b) Services were provided less than 12 months prior to the date of application for medical assistance provider status as evidenced by the first date stamped on the paper claims(s) submitted with application materials for those services either manually or electronically; or

(c) Extenuating circumstances existed outside the control of the EA SM provider consistent with federal Medicaid regulations, with approval of the DMAP Provider Services Unit Manager.

(12) Issuance of a DHS assigned SM provider number establishes enrollment of an EA as a provider for limited categories of services for the Medical Assistance Program applicable to the provision of Medicaid covered School-Based Health Services (SBHS).

(13) An SM provider is required for providing and continuing to provide to the Department accurate, complete and truthful information regarding their qualification for enrollment. The SM provider is responsible for notifying DMAP in writing of a material change in any status or condition that relates to their qualifications or eligibility to provide SBHS including by not limited to change in any of the following information: changes address, business affiliation, licensure, ownership, certification, NPI, billing agents or Federal Tax Identification Number (TIN), change in status for meeting the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying the EA's programs for state reimbursement under OAR 581-015-2005, if the SM provider or a person with an ownership or control interest, or an agent or managing employee of the SM provider has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or Title XX services program, the SM provider must notify the Division of Medical Assistance Programs (DMAP) in writing within 30 calendar days of the change:

(a) Failure to notify the Division of Medical Assistance Programs (DMAP) of a change of federal tax identification number (TIN) may result in the imposing of a $50 fine;

(b) Changes in business affiliation, ownership and control of information, criminal convictions, NPI, or federal tax identification number (TIN) may require the submission of a new application;

(c) Payments made to providers who have not furnished such notification as required by this rule or to a provider that has failed to submit a new application as required by this rule and DMAP OAR 410-120-1260 may be denied or recovered.

(14) For information regarding enrollment of Billing Providers (BP) and issuance of a DHS assigned BP Provider ID in compliance with Department Provider Rules see OAR 407-120-0300 through 407-120-0380, DMAP Provider Enrollment rules OAR 410-120-1260 and Department Electronic Data Transmission Rules 407-120-0100 through 407-120-0200.

(15) Provider termination:

(a) The SM provider may terminate enrollment at any time. The request must be in writing, via certified mail, return receipt requested. The notice shall specify the provider number to be terminated and the effective date of termination. Termination of the SM provider enrollment does not terminate any obligations of the SM provider for dates of services during which the enrollment was in effect;

(b) The Division of Medical Assistance Programs (DMAP) provider terminations or suspensions may be for, but are not limited to the following:

(A) Breaches of provider agreement;

(B) Failure to comply with the statutes, regulations and policies of the Department of Human Services (DHS), Federal and State regulations that are applicable to the provider;

(C) When no claims have been submitted in an 18-month period. The provider must reapply for enrollment.

(16) When one or more of the requirements governing a provider's participation in the medical assistance program are no longer met, the provider's medical assistance program provider number may be immediately suspended. The provider is entitled to a contested case hearing as outlined in 410-120-1600 through 410-120-1840 to determine whether the provider's medical assistance program number will be revoked.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0160
Licensed Practitioner Recommendation

Requests for payment for covered health services required by a Medicaid-eligible student's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP) must be supported by written recommendation from a physician or a licensed health care practitioner acting within the scope of their practice for the treatment provided. The recommendation must be current for the treatment provided as specified on the IEP or IFSP.

Stat.Auth.: ORS 409.010
Stats. Implemented: ORS 414.065
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 22-1995, f. & cert. ef. 12-1-95; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0180
Duplication of Service

(1) The School Medical (SM) provider that utilizes a contractor to provide health services may only bill The Department of Human Services (DHS) or the Division of Medical Assistance Programs (DMAP) for health services when the school medical (SM) provider and the contracted provider have previously agreed that the contractor will not also bill for the same service.

(2) Duplicate billings are not allowed and payments will be recovered. Billings for health services to Medicaid-eligible students will be considered as duplicate if the same services are billed by more than one Educational Agency (EA) to address the same need. For example: an Education Service District (ESD) and a local school district cannot both bill the same services provided to the student.

(3) A unit of service can only be billed once; under one procedure code, under one provider number.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0200
Not Covered Services

(1) Education-based costs normally incurred to operate a school and provide an education are not covered for payment by DHS.

(2) Health services and treatment not documented on the Medicaid-eligible student's IEP or IFSP is not covered for payment by DHS under the School-Based Health Services (SBHS) rules.

(3) Reviewing records (exception: reviewing records as part of an evaluation to establish, re-establish, or terminate a SBHS covered health service on a Medicaid-eligible student's IEP or IFSP).

(4) Meeting preparation.

(5) Health services preparation including materials preparation.

(6) Report writing (exception: report writing as part of preparation of initial evaluation and initial treatment plan to establish a covered health service on a Medicaid-eligible student's IEP or IFSP).

(7) Correspondence.

(8) Treatment and care coordination for an acute medical condition.

(9) Medication management not specific to mental health related services listed in the IEP/IFSP.

(10) Purchase of an assistive technology device is not covered through SBHS.

(11) Activities related to researching student names, determining Medical Assistance Program eligibility status, administrative activities such as data entry of billing claim forms, and travel time by service providers.

(12) Family therapy where the focus of treatment is the family.

(13) Routine health nursing services provided to all students by school nurses; nursing intervention for acute medical issues in the school setting, e.g. students who become ill or are injured.

(14) Educational workshops, training classes, and parent training workshops.

(15) Regular transportation services to and from school.

(16) Vocational services.

(17) Screening services.

(18) Evaluation services that are not performed by Medically Qualified Staff within the scope of practice to establish, re-establish, or terminate a covered SBHS under IDEA.

(19) Service provided to non-Medicaid students in a group, class, or school free of charge. If only Medicaid-eligible students are charged for the service, the care is free and Medicaid will not reimburse for the service. The free care limitation does not apply to Health Services provided as a result of an Educational Agency's obligation to provide FAPE services and the Health Service is identified on the Medicaid-eligible student's IEP/IFSP. This means that School Medical Providers may bill for covered Health Services provided to Medicaid-eligible students under IDEA even though they may be provided to non-Medicaid-eligible students for free as a part of FAPE.

(20) Any non-medical unit of time spent on evaluations.

(21) Recreational services.

(22) Early and Periodic Screening, Diagnostic and Treatment (EPSDT) comprehensive examinations described in OAR 410-130-0245 are not authorized to be provided by school medical providers.

(23) Services provided by an entity that employs an excluded provider. It is the obligation of the education agency to utilize the excluded provider web site to check for providers who have been excluded from receiving any monies affiliated with Medicaid and Medicare service reimbursements.

(24) Covered health service(s) listed on an IEP or IFSP for those dates of service when the IEP/IFSP has lapsed.

(25) Covered health service(s) that do not have a current recommendation by Medically Qualified Staff within the scope of practice for the treatment provided as specified on the IEP or IFSP.

(26) Orientation and Mobility Training – Services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community.

(27) Using a rubber stamp to authenticate any entry for documentation of therapy provided to a student and billed to Medicaid for reimbursement for SBHS.

(28) Services provided by staff in an education setting licensed solely by Teachers' Standards and Practices Commission (TSPC). It is not sufficient for a state to use Department of Education provider qualifications for reimbursement of Medicaid-covered health services provided in an education setting.

(29) Services provided by speech language pathology assistants in schools under the supervision of a speech language pathologist who does not hold a license under ORS Chapter 681 but instead holds either a basic, initial, standard, or continuing license in speech impaired issued by the Teacher Standards and Practices Commission, and has obtained a permit from the Oregon Board of Examiners for Speech-Language Pathology and Audiology to supervise SLPA's in education settings under OAR 335-095-0055.

Stat. Auth.: ORS 409.010, 409.110, 409.065 & 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 21-1995, f. & cert. ef. 12-1-95; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 15-2000, f. 9-28-00, cert. ef 10-1-00; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0220
Billing and Payment

(1) The School Medical (SM) provider must bill the Department of Human Services (DHS), also termed Department, in accordance with OAR 410-120-0035; and must bill at a cost rate no greater than the education agency's cost rate for the applicable discipline reviewed and accepted by the Department based on the cost determination process described in OAR 410-133-0245.

(2) Services must be billed on a CMS-1500 or by electronic media claims (EMC) submission using only those procedure codes specified for the School-Based Health Services (SBHS) program. If the SM provider submits their claims electronically, the SM provider must become a trading partner with the Department and comply with the requirements for Electronic Data Interchange (EDI) pursuant to OAR 407-120-0100 through 407-120-0200 and 410-001-0000 et seq.

(3) The Department will accept a claim up to 12 months from the date of service. See Department Provider Rules 407-120-0340 (7) Claim and PHP Encounter Submission and General Rules OAR 410-120-1300 Timely Submission of Claims.

(4) Third party liability. In general, the Medicaid program is the payor of last resort and a provider is required to bill other resources before

submitting the claim to Medicaid. This requirement means that other payment sources, including other federal or state funding sources, must be used first before the Department can be billed for covered health services. However, the following exceptions apply to the requirement to pursue third party resources:

(a) For health services provided under the Individuals with Disabilities Education Act (IDEA), Medicaid pays before Oregon Department of Education (ODE) or the Educational Agency (EA), to the extent the health service is a covered service provided to a Medicaid-eligible student documented as required under these rules, and subject to the applicable reimbursement rate;

(b) If School-Based Health Services (SBHS) are provided under Title V of the Social Security Act (Maternal and Child Health Services Block Grant), Medicaid-covered Health Services provided by a Title V grantee are paid by Medicaid before the Title V funds;

(c) The Centers for Medicare and Medicaid Services (CMS) recognize that while schools are legally liable to provide IDEA-related health services at no cost to the eligible students, Medicaid reimbursement is available for these services because section 1903 (c) of the ACT requires Medicaid to be primary to the U.S. Department of Education for payment of the health-related services provided under IDEA.

Stat. Auth.: ORS 409.010, 409.110 & 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0245
Cost Determination and Payment

(1) DHS will make rate determinations for the purposes of payment under OAR 410-133-0220 based on annual cost determinations submitted by local education agencies (EA's).

(2) Cost determinations will:

(a) Be based on the EA's prior year's annual audited costs;

(b) Establish an hourly and 15-minute increment rate for the current year billed;

(c) Use the current year ODE-approved indirect rate for the EA;

(3) An EA shall not bill for more than its prior year's annual audited cost incurred during the previous year. There will be no required annual cost settlement for each EA, although DHS may conduct reviews or audits of cost reports.

(4) Data for cost determinations shall be submitted in a format prescribed by DHS and in accordance with Oregon's State Plan approved by the Centers for Medicare and Medicaid Services (CMS).

(5) Cost determinations shall be completed for each service discipline eligible for Medicaid billing. If an EA does not receive a confirmation from DHS indicating costs have been received and accepted, the EA may not submit payment requests for those services. Costs for services include: Nursing, Occupational Therapy, Physical Therapy, Speech Language Pathology, Audiology, Psychological, Delegated Health Care, and Clinical Social Work. DHS' acceptance of the cost calculations submitted by the SBHS provider for rates per discipline based upon the SBHS provider's previous year's audited costs and, if applicable, the current years indirect rates does not imply or validate the accuracy of the data submitted.

(6) Transportation costs for Medicaid-eligible children will be reimbursed when the IEP or IFSP for the Medicaid eligible child documents the need for necessary and appropriate transportation. Transportation cost reimbursement rates are based on the EA's prior year's audited costs for special education transportation and will be submitted in a format prescribed by DHS and in accordance to Oregon's State Plan approved by the Centers for Medicare and Medicaid Services (CMS).

Stat. Auth.: ORS 184.750 & 184.770
Stats. Implemented: ORS 414.065
Hist.: OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0280
Rebilling

In order to correct a claim reimbursed for services provided to a Medicaid-eligible student, the School Medical (SM) provider must request an adjustment. The paid claim must be corrected on the Individual Adjustment Request Form (DMAP 1036) to allow revision of the original claim. Providers may perform online claim submissions and adjustments using the DHS' web portal. The link can be found on DHS web site at: http://www.oregon.gov/DHS/healthplan/tools_prov/main.shtml Rebilling additional units of service on a CMS-1500 for the same timeframe would be denied as duplicate services. See Department Provider Rules 407-120-0350 Payments and Overpayments, DMAP Rules 410-120-1300 Timely Submission of Claims and 410-120-1397 Recovery of Overpayments to Providers- Recoupments and Refunds

[ED. NOTE: Forms referenced available from the agency.]
Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 414.065
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

410-133-0320
Documentation and Record keeping Requirements

(1) Record keeping must conform and adhere to federal, state, and local laws and regulations.

(2) Records must record- history taken, procedures performed, tests administered, results obtained, and conclusions and recommendations made. Documentation may be in the form of a "SOAP" (subjective Objective Assessment Plan) note, or equivalent.

(3) Providers will retain information necessary to support claims submitted to DHS including: documentation and supervision of the specific health services provided, the extent of the health service provided, the dates and the name and credentials of medically qualified staff who provided the service to the Medicaid-eligible student for seven (7) years. This documentation must meet the requirements of and must be made available pursuant to the requirements in the General Rules, OAR 410-120-1360 (Requirements of Financial, Clinical and Other Records). These requirements may be met if the information is included in the IEP or IFSP and the school medical provider maintains adequate supporting documentation at the time the service is rendered, consistent with the requirements of OAR 410-120-1360.

(a) Supporting documentation should:

(A) Be accurate, complete and legible;

(B) Be typed or recorded using ink;

(C) Be signed by the individual performing the service including their credentials or position;

(D) Be signed and initialed in accordance with licensing board requirements for each clinical entry by the individual performing the service;

(E) Be reviewed and authenticated by the supervising therapist in compliance with their licensing board requirements (Also see covered services 410-133-0080 and not covered services 410-133-0200)

(F) Be for covered health services provided as specified for the service period indicated on the Medicaid-eligible student's current IEP or IFSP.

(b) Corrections to entries must be recorded by:

(A) Striking out the entry with a single line which does not obliterate the original entry, or amend the electronic record preserving the original entry; and

(B) Dating and initialing the correction.

(c) Late entries or additions to entries shall be documented when the omission is discovered with the following written at the beginning of the entry: "late entry for (date)" or "addendum for (date)".

(2) Supporting documentation for Medicaid reimbursed health services described in a Medicaid-eligible student's IEP or IFSP must be kept for a period of seven (7) years, as part of the student's education record, which may be filed and kept separately by school health professionals and must include:

(a) A copy of the Medicaid-eligible student's IEP or IFSP as well as any addendum to the plan that correlates with the covered health service(s) provided and reimbursed by Medicaid;

(b) A notation of the diagnosis or condition being treated or evaluated, using specific medical or mental health diagnostic codes;

(c) Results of analysis of any mental health or medical analysis, testing, evaluations, or assessments for which reimbursement is requested;

(d) Documentation of the location, duration, and extent of each health service provided, by the date of service, signed and initialed by Medically Qualified Staff in accordance with their licensing board requirements (electronic records can be printed);

(e) The record of who performed the service and their credentials or position;

(f) The medical recommendation to support the service;

(g) Periodic evaluation of therapeutic value and progress of the Medicaid-eligible student to whom a health service is being provided;

(h) Record of medical need for necessary and appropriate transportation to a covered health service, specific date transported, client name, ID number, and point of origin and destination consistent with the record-keeping requirements in the Transportation rules, OAR 410-136-0280 (Required Documentation); and

(i) Attendance records for Medicaid-eligible students to support dates for covered services billed to Medicaid.

(j) In supervisory situations, the record documenting therapy provided must name both the assistant providing services and the supervising therapist including credentials. The licensed health care practitioner who supervises and monitors the assessment, care, or treatment rendered by licensed or certified therapy assistants, shall meet the minimum standards required by their Licensing Board and shall co-sign for those services where appropriate with their name and professional titles (documentation may not be delegated except in emergency situations).

Stat. Auth.: ORS 409.010
Stats. Implemented: ORS 414.065
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 22-1995, f. & cert. ef. 12-1-95; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05; OMAP 53-2005, f. 9-30-05, cert. ef. 10-1-05; DMAP 19-2009, f. 6-12-09, cert.ef. 7-1-09

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Rule Caption: July '09 — Change text and requirements for code 92070 and keratoconus treatment.
Adm. Order No.: DMAP 20-2009
Filed with Sec. of State: 6-12-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 410-140-0140, 410-140-0160
Subject: The Visual Services program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP amended 410-140-0140 and 410-140-0160 to remove the requirement that providers must use code 92070 for treatment of the disease keratoconus. The use of this code for keratoconus does not allow the provider to cover their costs. Provider costs are covered by billing their usual and customary fees. Other text is revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-140-0140
Ophthalmological Diagnostic and Treatment Services Coverage

(1) Ophthalmological diagnostic and treatment services are not limited except as directed by the rules contained in the Visual Services guide, General Rules — Medical Assistance Benefits: Excluded Services and Limitations, and the Health Services Commission's (HSC) Prioritized List of Health Services (List) as follows:

(a) Coverage for diagnostic services and treatment for those services funded on the HSC List; and

(b) Coverage for diagnostic services only, for those conditions that fall below the funded portion of the HSC List; (The date of service determines the appropriate version of the General Rules and HSC List to determine coverage).

(2) Adults (age 21 and over): Reimbursement for ophthalmological examinations for the purpose of prescribing glasses/contacts is limited to one complete examination which includes the refractive State every 24 months for adults. Diagnostic evaluations and examinations may be reimbursed more frequently if documentation in the physician's or optometrist's clinical record justifies the medical need.

(3) Ophthalmological intermediate and comprehensive exam services are not limited for medical diagnosis.

(4) If the client is assigned to a Primary Care Case Manager (PCCM) the provider must get a referral for a medical eye exam prior to the service being rendered.

(5) Frames and lenses for adults age 21 and over are limited to once every 24 months. No coverage for glasses with a prescription that is equal to or less than +/-.25 diopters in both eyes.

(6) Children (birth through age 20): All ophthalmological examinations are covered when documentation in the clinical record justifies the medical need.

(7) If the client is assigned to a PCCM the provider must get a referral for a medical eye exam prior to the service being rendered.

(8) Refractions: Determination of the refractive State is included in an ophthalmological examination and may not be billed as a separate service. The determination of the refractive state is limited to once every 24 months for adults age 21 and over for the purpose of prescribing glasses/contacts. The refraction can be billed as a separate sole service, if the refraction is done as a stand alone service to follow a medical condition such as, but not limited to, multiple sclerosis and is not limited for medical diagnosis.

(9) General Ophthalmological Services: See Definitions under Ophthalmology section in the current CPT/HCPCS code book for definitions and examples of levels of service.

(10) New Client: A new client is one who has not received any professional services from the physician or another physician of the same specialty who belongs to the same group practice within the past three years:

(a) 92002 Ophthalmological services: Medical examination and evaluation with initiation of diagnostic and treatment program; intermediate, new client;

(b) 92004 Comprehensive, new client, one or more visits.

(11) Established Client: An established client is one who has received professional services from the physician or another physician of the same specialty who belongs to the same group practice within the past three years:

(a) 92012 Ophthalmological services: Medical examination and evaluation with initiation or continuation of diagnostic and treatment program; intermediate, established client;

(b) 92014 Comprehensive, established client, one or more visits.

(12) Table 140-0140-1.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.040, 409.050 & 409.110
Stats. Implemented: ORS 414.065
Hist.: AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 24-1984(Temp), f. & ef. 5-29-84; AFS 31-1984(Temp), f. 7-26-84, ef. 8-1-84; AFS 5-1985, f. & ef. 1-25-85; AFS 22-1987, f. 5-29-87, ef. 7-1-87; AFS 75-1989, f. & cert. ef. 12-15-89, Renumbered from 461-018-0012; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0220; HR 37-1992, f. & cert. ef. 12-18-92; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; HR 15-1996(Temp), f. & cert. ef. 7-1-96; HR 26-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; DMAP 20-2009, f. 6-12-09, cert. ef. 7-1-09

410-140-0160
Contact Lens Services

(1) Coverage for Adults (age 21 or older):

(a) Prior Authorization (PA) is required for contact lenses for adults, except for the medical condition of Keratoconus. See OAR 410-140-0040, Prior Authorization, for information on requesting prior authorization;

(b) Contact lenses for adults are covered only when one of the following conditions exists:

(A) Refractive error which is 9 diopters or greater in any meridian;

(B) Keratoconus-contacts for Keratoconus do not require PA;

(C) Anisometropia when the difference in power between two eyes is 3 diopters or greater;

(D) Irregular astigmatism; or

(E) Aphakia;

(c) Prescription and fitting of either contact lenses or glasses is limited to once every 24 months. Replacement of contact lenses is limited to a total of two contacts every 12 months, and does not require PA;

(d) Corneoscleral lenses are not covered.

(2) Coverage for Children (birth through age 20):

(a) Contact lenses for children are covered when it is documented in the clinical record that glasses cannot be worn for medical reasons, including, but not limited to:

(A) Refractive error which is 9 diopters or greater in any meridian;

(B) Keratoconus-contacts for Keratoconus do not require PA;

(C) Anisometropia when the difference in power between two eyes is 3 diopters or greater;

(D) Irregular astigmatism; or

(E) Aphakia;

(b) Replacement of contact lenses is covered when documented as medically appropriate in the clinical record, and does not require PA;

(c) Corneoscleral lenses are not covered.

(3) General Information regarding contact lens coverage:

(a) Contact lenses for clients not enrolled in a Fully Capitated Health Plan must be billed to the Division of Medical Assistance Programs (DMAP) at the provider's acquisition cost. Acquisition cost is defined as the actual dollar amount paid by the provider to purchase the item directly from the manufacturer (or supplier) plus any shipping and/or postage for the item. Payment for contact lenses will be the lesser of the DMAP fee schedule or acquisition cost;

(b) The prescription for contact lenses includes specifying the optical and physical characteristics (such as power, size, curvature, flexibility, gas permeability);

(c) Fitting contact lenses includes instruction and training of the wearer and incidental revision of the lens during the training period;

(d) Follow-up of successfully fitted extended wear lenses is part of the general opthalmological service (such as office visits). Adaptation of contacts due to trauma or disease is not included as part of the general service. The client's record must show clear documentation of the trauma or disease to support additional reimbursement for follow-up visits;

(e) Contact lenses are not billed separately when used for treatment of disease (sometimes referred to as a corneal bandage lens rather than for vision correction). Use 92070 for fitting of contact lens for treatment of

disease which includes the supply of lenses. See OAR 410-140-0140 (Table 0140-1).

(4) Contact lens services:

(a) 92310, Prescription of optical and physical characteristics of and fitting of contact lens, with medical supervision of adaptation; corneal lens, both eyes; except for aphakia. Does not include the cost of the contact lenses. Prior authorization is required for adults only; when using this code for Keratoconus, no PA is required for adults or children.

(b) 92311, corneal lens for aphakia, one eye. Does not include the cost of the contact lenses;

(c) 92312, corneal lens for aphakia, both eyes. Does not include the cost of the contact lenses;

(d) 92325, Modification of contact lens (separate procedure), with medical supervision of adaptation;

(e) V2510-Contact lens, gas permeable, spherical, per lens;

(f) V2511-Contact lens, gas permeable, toric or prism ballast, per lens;

(g) V2520-Contact lens, hydrophilic, spherical, per lens; and

(h) V2521-Contact lens, hydrophilic, toric or prism ballast, per lens.

Stat. Auth.: ORS 409.040, 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 75-1989, f. & cert. ef. 12-15-89; HR 15-1992, f. & cert. ef. 6-1-92, Renumbered from 461-018-0230; HR 37-1992, f. & cert. ef. 12-18-92; HR 5-1995, f. & cert. ef. 3-1-95; HR 1-1996, f. 1-12-96, cert. ef. 1-15-96; OMAP 20-1999, f. & cert. ef. 4-1-99; OMAP 24-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 11-2002, f. & cert. ef. 4-1-02; OMAP 65-2004, f. 9-13-04, cert. ef. 10-1-04; DMAP 21-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 20-2009, f. 6-12-09, cert. ef. 7-1-09

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Rule Caption: Non-substantive: update to ensure dental and other references are consistent with other program OARs and documents.

Adm. Order No.: DMAP 21-2009

Filed with Sec. of State: 6-12-2009

Certified to be Effective: 7-1-09

Notice Publication Date: 5-1-2009

Rules Amended: 410-146-0085, 410-146-0380

Subject: The American Indian/Alaska Native (AI/AN) program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP amended the rules listed above to make cited references consistent for locating information in other program rules and documents. Other text is revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-146-0085

DMAP Encounter and Recognized Practitioners

(1) AI/AN DMAP-enrolled providers will bill services, items and supplies to the Division of Medical Assistance Programs (DMAP) and will be reimbursed for services that meet the criteria of a valid encounter in Sections (5) through (7) of this rule and are limited to DMAP Medicaid-covered services according to a client's Oregon Health Plan (OHP) benefit package. These services include ambulatory services included in the State Plan under Title XIX or Title XXI of the Social Security Act. Other services that are not defined in this rule or the State Plan under Title XIX or Title XXI of the Social Security Act are not reimbursed by DMAP.

(2) AI/AN providers reimbursed according to a cost-based rate under the Prospective Payment System (PPS) are directed to Oregon Administrative Rule (OAR) 410-147-0120 DMAP Encounter and Recognized Practitioners.

(3) AI/AN providers reimbursed according to the IHS rate are subject to the requirements of this rule.

(4) Services provided to Citizen/Alien-Waived Emergency Medical (CAWEM) and Qualified Medicare Beneficiary (QMB) only clients are not billed according to encounter criteria and not reimbursed at the IHS encounter rate. Refer to OARs 410-120-1210 Medical Assistance Benefit Packages and Delivery System.

(5) For the provision of services defined in Titles XIX and XXI, and provided through an IHS or Tribal 638 facility, an "encounter" is defined as a face-to-face or telephone contact between a health care professional and an eligible OHP client within a 24-hour period ending at midnight, as documented in the client's medical record. Section (7) of this rule outlines limitation's for telephone contacts that qualify as encounters.

(6) An encounter includes all services, items and supplies provided to a client during the course of an office visit, and "incident-to" services (except as excluded in section (15) of this rule). The following services are inclusive of the visit with the core provider meeting the criteria of a reimbursable valid encounter and are not reimbursed separately:

(a) Drugs or medication treatments provided during the clinic visit, with the exception of contraception supplies and medications as costs for these items are excluded from the IHS encounter rate calculation. Refer to OAR 410-146-0200 Pharmacy;

(b) Medical supplies, equipment, or other disposable products (e.g. gauze, band-aids, wrist brace); and

(c) Venipuncture for laboratory tests.

(7) Telephone encounters only qualify as a valid encounter for services provided in accordance with OAR 410-130-0595, Maternity Case Management (MCM) and 410-130-0190, Tobacco Cessation. See also 410-120-1200(2)(y)(A) and (B). Telephone encounters must include all the same components of the service when provided face-to-face. Providers must not make telephone contacts at the exclusion of face-to-face visits.

(8) The following services may be Medicaid-covered services according to an Oregon Health Plan (OHP) client's benefit package as a stand alone service; however, when furnished as a stand-alone service are not reimbursable:

(a) Case management services for coordinating care for a client;

(b) Sign language and oral interpreter services;

(c) Supportive rehabilitation services including, but not limited to, environmental intervention, supported employment, or skills training and activity therapy to promote community integration and job readiness.

(9) AI/AN providers may provide certain services, items and supplies that are prohibited from being billed under the health centers provider enrollment and that require separate enrollment. Refer to OAR 410-146-0021(2) American Indian/Alaska Native (AI/AN) Provider Enrollment. These services include:

(a) Durable medical equipment, prosthetics, orthotics or medical supplies (e.g. diabetic supplies) (DMEPOS) not generally provided during the course of a clinic visit. Refer to OAR 410 division 122, DMEPOS;

(b) Prescription pharmaceutical and/or biologicals not generally provided during the clinic visit must be billed to DMAP through the pharmacy program. Refer to OAR 410 division 121, Pharmaceutical Services;

(c) Targeted case management (TCM) services. Refer to OAR 410 division 138, TCM for specific information.

(10) Client contact with more than one health professional for the same diagnosis or multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit. For exceptions to this rule, refer to OAR 410-146-0086 for reporting multiple encounters.

(11) For claims requiring a procedure code the provider must bill as instructed in the appropriate DMAP program rules and must use the appropriate HIPAA procedure Code Set such as CPT, HCPCS, ICD-9-CM, ADA CDT, NDC, established according to 45 CFR 162.1000 to 162.1011, which best describes the specific service or item provided. For claims that require the listing of a diagnosis or procedure code as a condition of payment, the code listed on the claim form must be the code that most accurately describes the Client's condition and the service(s) provided. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate individual Provider rules. Refer to OARs 410-120-1280 Billing and 410-146-0040 ICD-9-CM Diagnosis Codes and CPT/HCPCs Procedure Codes,

(12) Services furnished by AI/AN enrolled providers that may meet the criteria of a valid encounter are (Refer to individual program administrative rules for service limitations.):

(a) Medical (OAR 410 division 130);

(b) Diagnostic: DMAP covers reasonable services for diagnosing conditions, including the initial diagnosis of a condition that is below the funding line on the Prioritized List of Health Services. Once a diagnosis is established for a service, treatment or item that falls below the funding line, DMAP will not cover any other services related to the diagnosis;

(c) Tobacco Cessation (OAR 410-146-0140);

(d) Dental — Refer to OAR 410-146-0380 and OAR 410 division 123;

(e) Vision (OAR 410 division 140);

(f) Physical Therapy (OAR 410 division 131);

(g) Occupational Therapy (OAR 410 division 131);

(h) Podiatry (OAR 410 division 130);

(i) Mental Health (OAR 309 division 16);

(j) Alcohol, Chemical Dependency, and Addiction services (OAR 415 divisions 50 and 51). Requires a letter or licensure of approval by the Addictions and Mental Health Division (AMH). Refer to 410-146-0021(4)(c) and (d);

(k) Maternity Case Management (OAR 410-146-0120);

(l) Speech (OAR 410 division 129);

(m) Hearing (OAR 410 division 129);

(n) DMAP considers a home visit for assessment, diagnosis, treatment or Maternity Case Management (MCM) as an encounter. DMAP does not consider home visits for MCM as Home Health Services;

(o) Professional services provided in a hospital setting;

(p) Other Title XIX or XXI services as allowed under Oregon's Medicaid State Plan Amendment and DMAP Administrative Rules.

(13) The following practitioners are recognized by DMAP:

(a) Doctors of medicine, osteopathy and naturopathy;

(b) Licensed Physician Assistants;

(c) Nurse Practitioners;

(d) Registered nurses — may accept and implement orders within the scope of their license for client care and treatment under the supervision of a licensed health care professional recognized by DMAP in this section and who is authorized to independently diagnose and treat according to OAR 851 division 45);

(e) Nurse Midwives;

(f) Dentists;

(g) Dental Hygienists who hold a Limited Access Permit (LAP) — may provide dental hygiene services without the supervision of a dentist in certain settings. See the section on Limited Access Permits, ORS 680.200 and OAR 818-035- 0065 through 818-035-0100 for more information;

(h) Pharmacists;

(i) Psychiatrists;

(j) Licensed Clinical Social Workers;

(k) Clinical psychologists;

(l) Acupuncturists (refer to OAR 410 division 130 for service coverage and limitations); and

(m) Other health care professionals providing services within their scope of practice and working under the supervision requirements of:

(A) Their individual provider's certification or license; or

(B) A clinic's mental health certification or alcohol and other drug program approval or licensure by the Addictions and Mental Health Division (AMH). Refer to OAR 410-146-0021 sections (4)(c) and (d).

(14) Encounters with a registered professional nurse or a licensed practical nurse and related medical supplies (including drugs and biologicals) furnished on a part-time or intermittent basis to home-bound AI/AN clients residing on tribal land and any other ambulatory services covered by DMAP are also reimbursable as permitted within the clinic's scope of services (see OAR 410-146-0080).

(15) DMAP reimburses the following services fee-for-service outside of the IHS all-inclusive encounter rate and according to the physician fee schedule:

(a) Laboratory and/or radiology services;

(b) Contraception supplies and medications. Refer to OAR 410-146-0200 Pharmacy;

(c) Administrative medical examinations and report services (See OAR 410 division 150); and

(d) Death with Dignity services (See OAR 410-130-0670).

(16) Federal law requires that state Medicaid agencies take all reasonable measures to ensure that in most instances DMAP will be the payer of last resort. Providers must make reasonable efforts to obtain payment first from other resources before billing DMAP. Refer to OAR 410-120-1140 Verification of Eligibility.

(17) When a Provider receives a payment from any source prior to the submission of a claim to DMAP, the amount of the payment must be shown as a credit on the claim in the appropriate field. Refer to OARs 410-120-1280 Billing and 410-120-1340 Payment.

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

Stat. Auth.: 409.050, 404.110 & 414.065; Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42 USC1396a(bb) & 1396d (United States Code 42, Ch. 7, Subch. 19). Public Law 93-638. Sec. 1603 of Title 25.

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-1999, f. & cert. ef. 2-1-99; OMAP 25-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 6-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 45-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 59-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 68-2003, f. 9-12-03, cert. ef. 10-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 16-2005, f. 3-11-05, cert. ef. 4-1-05; Renumbered from 410-146-0080, DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 21-2009, f. 6-12-09, cert. ef. 7-1-09

410-146-0380

OHP Standard Emergency Dental Benefit

(1) Clients with the OHP Standard benefit package have a limited dental benefit. The intent of the OHP Standard Emergency Dental benefit is to provide services requiring immediate treatment and is not intended to restore teeth. Services are limited to the treatment of conditions listed in Oregon Administrative Rule (OAR) 410-123-1670(2) OHP Standard Limited Emergency Dental Benefit.

(2) Hospital Dentistry is not a covered benefit for the OHP Standard population, except for clients specified in OAR 410-123-1670(3),

(3) Dental services for the OHP standard population are limited to those procedures listed in the Covered and Non-Covered Dental Services document. Refer to the document in effect for the date the dental service was furnished, found at website http://www.dhs.state.or.us/policy/healthplan/guides/dental/main.html — Refer to OAR 410-123-1670(2).

(4) Any limitations or prior authorization requirements for services listed in OARs 410-123-1160 and 410-123-1260 will also apply to services in the OHP Standard benefit when provided by an AI/AN provider.

Stat. Auth.: ORS 409.050, 404.110 & 414.065; Other Auth.: Title 19 of the Social Security Act, Title 42 Public Health of the Code of Federal Regulations, OAR 410-120, 42 USC1396a(bb) & 1396d (United States Code 42, Ch. 7, Subch. 19). Public Law 93-638. Section 1603 of Title 25.

Stats. Implemented: ORS 414.065

Hist: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; DMAP 19-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 24-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 21-2009, f. 6-12-09, cert. ef. 7-1-09

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Rule Caption: Non-substantive: update dental and other references and remove references to the obsolete Table 147-0120-1.
Adm. Order No.: DMAP 22-2009
Filed with Sec. of State: 6-12-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 410-147-0120, 410-147-0125, 410-147-0140
Subject: The Federally Qualified Health Centers and Rural Health Clinics (FQHC/RHC) program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services to certain clients. DMAP amended the above listed rules to make cited references consistent for locating information in other program rules and documents. Other text is revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-147-0120

DMAP Encounter and Recognized Practitioners

(1) Federally Qualified Health Center (FQHC) and Rural Health Clinic (RHC) services billed to the Division of Medical Assistance Programs (DMAP) are reimbursed according to the Prospective Payment System (PPS) when the service(s) meet the criteria of a valid encounter as defined in sections (2) through (4) of this rule. Reimbursement is limited to DMAP Medicaid-covered services according to a client's Oregon Health Plan (OHP) benefit package. These services include ambulatory services included in the State Plan under Title XIX or Title XXI of the Social Security Act. Other services that are not defined in this rule or the State Plan under Title XIX or Title XXI of the Social Security Act are not reimbursed by DMAP.

(2) For the provision of services defined in Titles XIX and XXI and provided through an FQHC or RHC, an "encounter" is defined as a face-to-face or telephone contact between a health care professional and an eligible OHP client within a 24-hour period ending at midnight, as documented in the client's medical record. Section (4) of this rule outlines limitations for telephone contacts that qualify as encounters.

(3) An encounter includes all services, items and supplies provided to a client during the course of an office visit (except as excluded in sections (6) and (12) of this rule) and those services considered "incident-to." These services are inclusive of the visit with the core provider meeting the criteria a valid encounter and reimbursed at the PPS all-inclusive encounter rate. These services include:

(a) Drugs or medication treatments provided during a clinic visit are inclusive of the encounter, with the exception of contraception supplies and medications as costs for these items are excluded from the PPS encounter rate calculation. Refer to OAR 410-147-0280 Drugs and 410-147-0480 Cost Statement (DMAP 3027) Instructions;

(b) Medical supplies, equipment, or other disposable products (e.g. gauze, band-aids, wrist brace) are inclusive of an office visit;

(c) Laboratory and/or radiology services (even if performed on another day);

(d) Venipuncture for lab tests. DMAP does not deem a visit for lab test only to be a clinic encounter;

(4) Telephone encounters only qualify as a valid encounter for services provided in accordance with OAR 410-130-0595, Maternity Case Management (MCM) and 410-130-0190, Tobacco Cessation. See also 410-120-1200(2)(y)(A) and (B). Telephone encounters must include all the same components of the service when provided face-to-face. Providers must not make telephone contacts at the exclusion of face-to-face visits.

(5) Extended care services furnished under a contract between a county Community Mental Health Program (CMHP) of the FQHC and

Addictions and Mental Health Division (AMH) are reimbursed outside of the PPS. Extended care services are those services provided under licensure requirements found in OAR 309-032-0720 through 0830 and 309-035-0100 through 0600 and receive reimbursement under the terms and conditions of 309-016-0000 through 0450.

(6) Some DMAP Medicaid-covered services are not reimbursable when furnished according to Oregon Health Plan (OHP) client's benefit package as a stand alone service. Although costs incurred for furnishing these services are inclusive of the PPS all-inclusive rate calculation, visits where these services were furnished as a stand alone service were excluded from the denominator for the PPS rate calculation, Refer to OAR 410-147-0480, Cost Statement (DMAP 3027) Instructions. The following services when furnished as a stand-alone service are not reimbursable:

(a) Case management services, including case management by a Primary Care Manager (PCM) as defined in OHP Administrative Rules (OAR 410-141-0700) and previously provided under a PCM contract;

(b) Sign language and oral interpreter services;

(c) Supportive rehabilitation services including, but not limited to, environmental intervention, supported housing and employment, or skills training and activity therapy to promote community integration and job.

(7) FQHCs and RHCs may provide certain services, items and supplies that are prohibited from being billed under the health centers provider enrollment, and requires separate enrollment. Refer to OAR 410-147-0320(1)(b) Federally Qualified Health Center (FQHC)/Rural Health Clinics (RHC) Enrollment. These services:

(a) Durable medical equipment, prosthetics, orthotics or medical supplies (e.g. diabetic supplies) (DMEPOS) not generally provided during the course of a clinic visit. Refer to OAR chapter 410 division 122, DMEPOS;

(b) Prescription pharmaceutical and/or biologicals not generally provided during the clinic visit must be billed to DMAP through the pharmacy program. Refer to OAR 410 division 121, Pharmaceutical Services;

(c) Targeted case management (TCM) services. Refer to OAR chapter 410 division 121, Pharmaceutical. Refer to OAR chapter 410 division 138, TCM for specific information.

(8) Client contact with more than one health professional for the same diagnosis or multiple encounters with the same health professional that take place on the same day and at a single location constitute a single encounter. For exceptions to this rule, refer to OAR 410-147-0140 for reporting multiple encounters.

(9) Providers are advised to include all services that can appropriately be reported using a procedure code on the claim and bill as instructed in the appropriate DMAP program rules and must use the appropriate HIPAA procedure Code Set such as CPT, HCPCS, ICD-9-CM, ADA CDT, NDC, established according to 45 CFR 162.1000 to 162.1011, which best describes the specific service or item provided. For claims that require the listing of a diagnosis or procedure code as a condition of payment, the code listed on the claim form must be the code that most accurately describes the Client's condition and the service(s) provided. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate individual Provider rules. Refer to OARs 410-120-1280 Billing and 410-147-0040 ICD-9-CM Diagnosis and CPT/HCPCs Procedure Codes,

(10) FQHC and RHC services that may meet the criteria of a valid encounter are. (Refer to individual program administrative rules for service limitations.):

(a) Medical (OAR 410 division 130);

(b) Diagnostic: DMAP covers reasonable services for diagnosing conditions, including the initial diagnosis of a condition that is below the funding line on the Prioritized List of Health Services. Once a diagnosis is established for a service, treatment or item that falls below the funding line, DMAP will not cover any other services related to the diagnosis;

(c) Tobacco Cessation (OAR 410-147-0220);

(d) Dental — Refer to OAR 410-147-0125, and OAR chapter 410 division 123;

(e) Vision (OAR chapter 410 division 140);

(f) Physical Therapy (OAR chapter 410 division 131);

(g) Occupational Therapy (OAR chapter 410 division 131);

(h) Podiatry (OAR chapter 410 division 130);

(i) Mental Health (OAR chapter 309 division 16);

(j) Alcohol, Chemical Dependency, and Addiction services (OAR 415 divisions 50 and 51). Requires a letter or licensure of approval by the Addictions and Mental Health Division (AMH). Refer to OAR 410-147-0320 (3) (j) and (5)(i);

(k) Maternity Case Management (OAR 410-147-0200);

(l) Speech (OAR chapter 410 division 129);

(m) Hearing (OAR chapter 410 division 129);

(n) DMAP considers a home visit for assessment, diagnosis, treatment or Maternity Case Management (MCM) as an encounter. DMAP does not consider home visits for MCM as Home Health Services;

(o) Professional services provided in a hospital setting; and

(p) Other Title XIX or XXI services as allowed under Oregon's Medicaid State Plan Amendment and DMAP Administrative Rules.

(11) The following practitioners are recognized by DMAP:

(a) Doctors of medicine, osteopathy and naturopathy;

(b) Licensed Physician Assistants;

(c) Dentists;

(d) Dental Hygienists who hold a Limited Access Permit (LAP) — may provide dental hygiene services without the supervision of a dentist in certain settings. See the section on Limited Access Permits, ORS 680.200 and OAR 818-035-0065 through 818-035-0100 for more information;

(e) Pharmacists;

(f) Nurse Practitioners;

(g) Nurse Midwives;

(h) Other specialized nurse practitioners;

(i) Registered nurses — may accept and implement orders within the scope of their license for client care and treatment under the supervision of a licensed health care professional recognized by DMAP in this section and who is authorized to independently diagnose and treat according to OAR 851 division 45);

(j) Psychiatrists;

(k) Licensed Clinical Social Workers;

(l) Clinical psychologists;

(m) Acupuncturists (refer to OAR 410 division 130 for service coverage and limitations); and

(n) Other health care professionals providing services within their scope of practice and working under the supervision requirements of:

(A) Their individual provider's certification or license; or

(B) A clinic's mental health certification or alcohol and other drug program approval or licensure by the Addictions and Mental Health Division (AMH). Refer to OAR 410-147-0320(3) and (5).

(12) Encounters with a registered professional nurse or a licensed practical nurse and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound clients (limited to areas in which the Secretary has determined that there is a shortage of home health agencies — Code of Federal Regulations 42 § 405.2417), and any other ambulatory services covered by DMAP are also reimbursable as permitted within the clinic's scope of services (see OAR 410-147-0020).

(13) FQHCs and RHCs may furnish services that are reimbursed outside of the PPS all-inclusive encounter rate and according to the physician fee schedule. These services include:

(a) Administrative medical examinations and report services (See OAR chapter 410 division 150);

(b) Death with Dignity services (See OAR 410-130-0670);

(c) Services provided to Citizen/Alien-Waived Emergency Medical (CAWEM) clients. (See 410-120-1210, 461-135-1070 and 410-130-0240);

(d) Services provided to Qualified Medicare Beneficiary (QMB) only clients. Refer to OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System. Specific billing information is located in the FQHC and RHC Supplemental Information billing guide;

(14) OAR 410-120-1210 describes the OHP benefit packages and delivery system. Most OHP clients have prepaid health services, contracted for by the Department of Human Services (DHS) through enrollment in a Prepaid Health Plan (PHP). Non-PHP-enrolled clients, receive services on an "open card" or "fee-for-service" (FFS) basis.

(a) DMAP is responsible for making payment for services provided to open card clients. The provider will bill DMAP the clinic's encounter rate for Medicaid-covered services provided to these clients according to their OHP benefit package. Refer to 410-147-0360, Encounter Rate Determination.

(b) A PHP is responsible to provide, arrange and make reimbursement arrangements for covered services for their DMAP members. Refer to OAR 410-120-0250, and OAR chapter 410 division 141, OHP Administrative Rules governing PHPs. The provider must bill the PHP directly for services provided to an enrolled client. See also 410-147-0080, Prepaid Health Plans, and 410-147-0460, PHP Supplemental Payment. Clinics must not bill DMAP for PHP-covered services provided to eligible OHP clients enrolled in PHPs. Exceptions include:

(A) Family planning services provided to a PHP-enrolled client when the clinic does not have a contract with the PHP, and if the PHP denies payment (see OAR 410-147-0060); and

(B) HIV/AIDS prevention provided to a PHP-enrolled client when the clinic does not have a contract with the PHP, and if the PHP denies payment (see OAR 410-147-0060).

(15) Federal law requires that state Medicaid agencies take all reasonable measures to ensure that in most instances DMAP will be the payer of last resort. Providers must make reasonable efforts to obtain payment first from other resources before billing DMAP. Refer to OAR 410-120-1140 Verification of Eligibility.

(16) When a Provider receives a payment from any source prior to the submission of a claim to DMAP, the amount of the payment must be shown as a credit on the claim in the appropriate field. See OARs 410-120-1280 Billing and 410-120-1340 Payment.

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

Stat. Auth.: ORS 409.050 & 414.065; Other Auth.: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations

Stats. Implemented: ORS 414.065

Hist.: HR 13-1993, f. & cert. ef. 71-1-93; HR 7-1995, f. 3-31-95, cert. ef. 4-1-95; OMAP 19-1999, f. & cert. ef. 4-1-99; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 21-2000, f. 9-28-00, cert. ef 10-1-00; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0390; OMAP 63-2002, f. & cert. ef. 10-1-02, Renumbered from 410-135-0150; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 22-2009, f. 6-12-09, cert. ef. 7-1-09

410-147-0125
OHP Standard Emergency Dental Benefit

(1) Clients with the OHP Standard benefit package have a limited dental benefit. The intent of the OHP Standard Emergency Dental benefit is to provide services requiring immediate treatment and is not intended to restore teeth. Services are limited to the treatment of conditions listed in Oregon Administrative Rule (OAR) 410-123-1670(2).

(2) Hospital Dentistry is not a covered benefit for the OHP Standard population, except for clients specified in OAR 410-123-1670(3).

(3) Dental services for the OHP standard population are limited to those procedures listed in the Covered and Non-Covered Dental Services document. Refer to the document in effect for the date the dental service was furnished, found at website http://www.dhs.state.or.us/policy/healthplan/guides/dental/main.html Refer to OAR 410-123-1670(2).

(4) Any limitations or prior authorization requirements for services listed in OARs 410-123-1160 and 410-123-1260 will also apply to services in the OHP Standard benefit when provided by an FQHC or RHC.

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

Stat. Auth.: ORS 409.050 & 414.065; Other Auth.: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations

Stats. Implemented: ORS 414.065

Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 25-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 22-2009, f. 6-12-09, cert. ef. 7-1-09

410-147-0140
Multiple Encounters

(1) An encounter is defined in OAR 410-147-0120.

(2) The following services may be considered as multiple encounters when two or more service encounters are provided on the same date of service with distinctly different diagnoses (Refer to OAR 410-147-0120 and individual program rules listed below for specific service requirements and limitations):

(a) Medical (Section (4) of this rule and OAR 410 division 130);

(b) Dental (OAR 410-147-0125, and OAR 410 division 123);

(c) Mental Health (OAR chapter 309 division 016). If a client is also seen for a medical office visit and receives a mental health diagnosis, then the client contacts are a single encounter;

(d) Addiction and Alcohol and Chemical Dependency (OAR 415 divisions 50 and 51). If a client is also seen for a medical office visit and receives an addiction diagnosis, then the client contacts are a single encounter;

(e) Ophthalmologic services — fitting and dispensing of eyeglasses are included in the encounter when the practitioner performs a vision examination. (OAR chapter 410 division 140);

(f) Maternity Case Management MCM (OAR 410-147-0200);

(g) Physical or occupational therapy (PT/OT) — If this service is also performed on the same date of service as the medical encounter that determined the need for PT/OT (initial referral), then it is considered a single encounter (OAR chapter 410 division 131); and

(h) Immunizations — if no other medical office visit occurs on the same date of service.

(3) Division of Medical Assistance Programs (DMAP) expects that multiple encounters will occur on an infrequent basis.

(4) Encounters with more than one health professional and multiple encounters with the same health professional that take place on the same day and that share the same or like diagnoses constitute a single encounter, except when one of the following conditions exist:

(a) After the first Medical service encounter, the patient suffers a distinctly different illness or injury requiring additional diagnosis or treatment. More than one office visit with a medical professional within a 24-hour period and receiving distinctly different diagnoses may be reported as two encounters. This does not imply that if a client is seen at a single office visit with multiple problems that the provider can bill for multiple encounters;

(b) The patient has two or more encounters as described in section (2) of this rule.

(5) A mental health encounter and an addiction and alcohol and chemical dependency encounter provided to the same client on the same date of service will only count as multiple encounters when provided by two separate health professionals and each encounter has a distinctly different diagnosis.

(6) Similar services, even when provided by two different health care practitioners, are not considered multiple encounters. Situations that would not be considered multiple encounters provided on the same date of service include, but are not limited to:

(a) A well child check and an immunization;

(b) A well child check and fluoride varnish application in a medical setting;

(c) A mental health and addiction encounter with similar diagnoses;

(d) A prenatal visit and a delivery procedure;

(e) A cesarean delivery and surgical assist;

(f) Any time a client receives only a partial service with one provider and partial service from another provider, this would be considered a single encounter.

(7) A clinic may not develop clinic procedures that routinely involve multiple encounters for a single date of service. A recipient may obtain medical, dental or other health services from any provider approved by DMAP, and/or contracts with the recipient's PHP, if the FQHC/RHC is not the recipient's primary care manager.

(8) Clinics may not "unbundle" services that are normally rendered during a single visit for the purpose of generating multiple encounters:

(a) Clinics are prohibited from asking the patient to make repeated or multiple visits to complete what is considered a reasonable and typical office visit, unless it is medically necessary to do so;

(b) Medical necessity must be clearly documented in the patient's record.

Stat. Auth.: ORS 409.050, 409.110 & 414.065; Other Auth.: 42 USC 1396a(bb), Title 42 Public Health of the Code of Federal Regulations

Stats. Implemented: ORS 414.065

Hist.: OMAP 19-1999, f. & cert. ef. 4-1-99; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 21-2000, f. 9-28-00, cert. ef 10-1-00; OMAP 8-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 19-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 42-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0520; OMAP 63-2002, f. & cert. ef. 10-1-02, Renumbered from 410-135-0155; OMAP 63-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 27-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 22-2009, f. 6-12-09, cert. ef. 7-1-09

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Rule Caption: July 2009 rule revisions to update claim form for oral nutritional supplements.
Adm. Order No.: DMAP 23-2009
Filed with Sec. of State: 6-12-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 410-148-0100, 410-148-0140, 410-148-0260
Subject: The Home Enteral/Parenteral nutrition and IV services program rules govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP amended the rules listed above to update the claim form used to bill oral nutritional supplements.

Other text is revised to improve readability and to take care of necessary "housekeeping" corrections.
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-148-0100
Reimbursement

(1) Drug ingredients (medications) shall be reimbursed as defined in the Division of Medical Assistance Programs (DMAP) Pharmaceutical Services Administrative rules (chapter 410, division 121).

(2) The following service/goods will be reimbursed on a fee-for-service basis according to the DMAP EPIV Fee Schedule found in the Home Enteral/Parenteral Nutrition and IV Services on the DMAP website:

(a) Enteral formula;

(b) Oral nutritional supplements which are medically appropriate and meet the criteria specified in 410-148-0260(3);

(c) Parenteral nutrition solutions;

(3) Reimbursement for services will be based on the lesser of the amount billed, or the DMAP maximum allowable rate. When the service is

covered by Medicare, reimbursement will be based on the lesser of the amount billed, Medicare's allowed amount, or the DMAP maximum allowable rate.

(4) Reimbursement for supplies that require authorization or services/supplies that are listed as Not Otherwise Classified (NOC) or By Report (BR) must be billed to DMAP at the providers' acquisition cost, and will be reimbursed at such rate.

(a) For purposes of this rule, Acquisition Cost is defined as the actual dollar amount paid by the provider to purchase the item directly from the manufacturer (or supplier) plus any shipping and/or postage for the item. Submit documentation identifying acquisition cost with your authorization request;

(b) Per diem, as it relates to reimbursement, represents each day that a given patient is provided access to a prescribed therapy. This definition is valid for per diem therapies of up to and including every 72 hours.

(c) Per diem reimbursement includes, but is not limited to:

(A) Professional pharmacy services:

(i) Initial and ongoing assessment/clinical monitoring;

(ii) Coordination with medical professionals, family and other caregivers;

(iii) Sterile procedures, including IV admixtures, clean room upkeep and all biomedical procedures necessary for a safe environment;

(iv) Compounding of medication/medication set-up.

(B) Infusion therapy related supplies:

(i) Durable, reusable or elastomeric disposable infusion pumps;

(ii) All infusion or other administration devices;

(iii) Short peripheral vascular access devices;

(iv) Needles, gauze, sterile tubing, catheters, dressing kits, and other supplies necessary for the safe and effective administration of infusion therapy.

(C) Comprehensive, 24-hour per day, seven days per week delivery and pickup services (includes mileage).

(5) Reimbursement will not be made for the following:

(a) Central catheter insertion or transfusion of blood/blood products in the client's home;

(b) Central catheter insertion in the nursing facility;

(c) Intradialytic parenteral nutrition in the client's home or Nursing Facility;

(d) Oral infant formula that is available through the Women's, Infant and Children (WIC) program;

(e) Oral nutritional supplements that are in addition to consumption of food items or meals.

(f) Tocolytic pumps for pre-term labor management;

(g) Home enteral/parenteral nutrition or IV services outside of the client's place of residence (i.e. home, nursing facility or AIS).

Stat. Auth.: ORS 409.050 & 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 26-1990, f. 8-31-90, cert. ef. 9-1-90; OMAP 46-2001, f. 9-24-01, cert. ef. 10-1-01, Renumbered from 410-121-0720; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 64-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 11-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 23-2009, f. 6-12-09, cert. ef. 7-1-09

410-148-0140
Billing Information

(1) For medications:

(a) Pharmacies billing electronically bill through the Division of Medical Assistance Program (DMAP) pharmacy benefit manager, point of sale. For more information on Point of Sale, contact the DMAP pharmacy benefit manager's help desk;

(b) Only those pharmacies and Home Enteral/Parenteral Nutrition and IV (EPIV) providers billing manually for medications and home IV drug ingredients that are not billed through Point of Sale may use the CMS 1500 claim form or the 837P electronic claim form (instructions in home enteral/parenteral and IV services supplemental guide;

(c) Providers who bill by paper are required to complete a CMS 1500 claim form.

(2) For home enteral/parenteral and IV services other than medications:

(a) Providers must use the CMS 1500 form to bill for home enteral/parenteral nutrition and IV services identified with a five-digit HCPCS or CPT. Use the billing instructions found in the Home Enteral/Parenteral Nutrition and IV Services supplemental materials;

(b) See rule 410-148-0160 for billing clients with Medicare coverage.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.050 & 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 26-1990, f. 8-31-90, cert. ef. 9-1-90; HR 9-1992, f. & cert. ef. 4-1-92; OMAP 7-1998, f. 2-27-98, cert. ef. 3-1-98; OMAP 46-2001, f. 9-24-01, cert. ef. 10-1-01, Renumbered from 410-121-0740; OMAP 63-2003, f. 9-5-03, cert. ef. 10-1-03; DMAP 26-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 23-2009, f. 6-12-09, cert. ef. 7-1-09

410-148-0260
Home Enteral Nutrition

(1) Codes that have PA indicated require prior authorization. Codes with BR indicated are covered by report.

(2) Enteral nutrition formula. Use B4150 through B4156 when billing for tube fed nutritional formulae. If the product dispensed is not shown in HCPCS description, select a category equivalent when billing the Division of Medical Assistance Programs (DMAP).

(3) Oral nutritional supplements:

(a) Prior authorization is required on all oral nutritional supplements;

(b) Oral nutritional supplements can be billed through the on-line point of sale pharmacy system, or by paper using the CMS 1500 claim form or the electronic 837P claim form. Use the product's NDC and HCPC code when billing the CMS 1500 or electronic 837P claim form;

(c) If the product dispensed is not shown in one of the listed categories, select a category that is equivalent when billing DMAP;

(d) Oral nutritional supplements may be approved when the following criteria has been met:

(A) Clients age 6 and above:

(i) Must have a nutritional deficiency identified by one of the following:

(I) Recent low serum protein levels; or

(II) Recent registered dietician assessment shows sufficient caloric/protein intake is not obtainable through regular, liquefied or pureed foods;

(ii) The clinical exception to the requirements of (I) and (II) must meet the following:

(I) Prolonged history (i.e. years) of malnutrition, and diagnosis or symptoms of cachexia, and

(II) Client residence in home, nursing facility, or chronic home care facility, and

(III) Where (I) and (II) would be futile and invasive

(iii) Must have a recent unplanned weight loss of at least 10%, plus one of the following:

(I) Increased metabolic need resulting from severe trauma; or

(II) Malabsorption difficulties (e.g., short-gut syndrome, fistula, cystic fibrosis, renal dialysis); or

(III) Ongoing cancer treatment, advanced Acquired Immune Deficiency Syndrome (AIDS) or pulmonary insufficiency.

(iv) Weight loss criteria may be waived if body weight is being maintained by supplements due to patient's medical condition (e.g., renal failure, AIDS)

(B) Clients under age 6:

(i) Diagnosis of 'failure to thrive;

(ii) Must meet same criteria as above, with the exception of % of weight loss.

(4) Enteral nutrition equipment:

(a) All repair and maintenance is subject to rule 410-1480-0080;

(b) Procedure codes:

(A) S5036, Repair of infusion device (each 15 minutes = 1 unit) — PA;

(B) B9998, Enteral nutrition infusion pump replacement parts will be reimbursed at provider's acquisition cost (including shipping and handling);

(C) B9000, Enteral nutrition infusion pump, without alarm -- rental (1 month = 1 unit) — PA;

(D) B9002, Enteral nutrition infusion pump, with alarm -- rental (1 month = 1 unit) — PA;

(E) E0776, IV pole — purchase;

(F) E0776, modifier RR, IV pole — rental (1 day = 1 unit);

(G) S9342, Enteral nutrition via pump (1 day = 1 unit) — PA.

(5) Home infusion therapy:

(a) S9325, Home infusion, pain management (do not use with code S9326, S9327 or S9328) — PA

(b) S9326, Home infusion, continuous pain management — PA;

(c) S9327, Home infusion, intermittent pain management — PA;

(d) S9328, Home infusion, implanted pump pain management — PA.

(6) Not Otherwise Classified (NOC):

(a) B9998, NOC for enteral supplies;

(b) S9379, Home infusion therapy, NOC — PA/BR.

Stat. Auth.: ORS 409.050 & 414.065
Stats. Implemented: ORS 414.065
Hist.: HR 26-1990, f. 8-31-90, cert. ef. 9-1-90; HR 26-1993, f. & cert. ef. 10-1-93; HR 3-1995, f. & cert. ef. 2-1-95; OMAP 7-1998, f. 2-27-98, cert. ef. 3-1-98; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 46-2001, f. 9-24-01, cert. ef. 10-1-01, Renumbered from 410-121-0840; OMAP 22-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 63-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 15-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 52-2006, f. 12-28-06 cert. ef. 1-1-07; DMAP 23-2009, f. 6-12-09, cert. ef. 7-1-09

Department of Human Services,
Public Health Division
Chapter 333

Rule Caption: Public Drinking Water Systems Compliance.
Adm. Order No.: PH 4-2009
Filed with Sec. of State: 5-18-2009
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Rules Amended: 333-061-0020, 333-061-0025, 333-061-0030, 333-061-0031, 333-061-0032, 333-061-0034, 333-061-0036, 333-061-0040, 333-061-0042, 333-061-0043, 333-061-0045, 333-061-0050, 333-061-0058, 333-061-0060, 333-061-0064, 333-061-0065, 333-061-0070, 333-061-0071, 333-061-0076, 333-061-0077, 333-061-0090, 333-061-0097, 333-061-0220, 333-061-0225, 333-061-0270
Subject: The Oregon Department of Human Services, Public Health Division is permanently amending Oregon Administrative Rules 333-061-0020 through 333-061-0270 to comply with federal regulations published in the January 4, January 5, and November 8, 2006 Federal registers. These rule amendments change surface water treatment requirements to include monitoring and treatment for Cryptosporidium, microbiological monitoring requirements for water systems supplied by groundwater sources, monitoring requirements for disinfection byproducts, and the required response by water systems supplied by groundwater sources following a sanitary survey. These rule amendments also include changes to lead and copper public education requirements, water treatment plant classification, variances from treatment techniques, wellfield determination criteria, facility disinfection requirements following construction or maintenance, and operator certification suspension.
Rules Coordinator: Sally Peters—(971) 673-0561

333-061-0020
Definitions

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

(1) "Act" means the Oregon Drinking Water Quality Act of 1981 (ORS 448.115-448.990 as amended).

(2) "Action Level" means the concentration of lead or copper in water which determines, in some cases, the treatment requirements that a water system is required to complete.

(3) "Administrator" means the Director of the Department of Human Services or his/her designee.

(4) "Approval" or "Approved" means approved in writing.

(5) "Approved Air Gap (AG)" means a physical separation between the free-flowing discharge end of a potable water supply pipeline and an open or non-pressurized receiving vessel. An "Approved Air Gap" shall be at least twice the diameter of the supply pipe measured vertically above the overflow rim of the vessel and in no case less than 1 inch (2.54 cm), and in accord with Oregon Plumbing Specialty Code.

(6) "Approved Backflow Prevention Assembly" means a Reduced Pressure Principle Backflow Prevention Assembly, Reduced Pressure Principle-Detector Backflow Prevention Assembly, Double Check Valve Backflow Prevention Assembly, Double Check-Detector Backflow Prevention Assembly, Pressure Vacuum Breaker Backsiphonage Prevention Assembly, or Spill-Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly, of a make, model, orientation, and size approved by the Department. Assemblies listed in the currently approved backflow prevention assemblies list developed by the University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research, or other testing laboratories using equivalent testing methods, are considered approved by the Department.

(7) "Aquifer" means a water saturated and permeable geological formation, group of formations, or part of a formation that is capable of transmitting water in sufficient quantity to supply wells or springs.

(8) "Aquifer Parameter" means a characteristic of an aquifer, such as thickness, porosity or hydraulic conductivity.

(9) "Aquifer Test" means pumping a well in a manner that will provide information regarding the hydraulic characteristics of the aquifer.

(10) "Atmospheric Vacuum Breaker (AVB)" means a non-testable device consisting of an air inlet valve or float check, a check seat and an air inlet port(s). This device is designed to protect against a non-health hazard or a health hazard under a backsiphonage condition only. Product and material approval is under the Oregon Plumbing Specialty Code.

(11) "Auxiliary Water Supply" means any supply of water used to augment the supply obtained from the public water system, which serves the premise in question.

(12) "Average Groundwater Velocity" means the average velocity at which groundwater moves through the aquifer as a function of hydraulic gradient, hydraulic conductivity and porosity.

(13) "AWWA" means the American Water Works Association.

(14) "Backflow" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any sources other than its intended source, and is caused by backsiphonage or backpressure.

(15) "Backflow Preventer" means a device, assembly or method to prevent backflow into the potable water system.

(16) "Backflow Prevention Assembly" means a backflow prevention assembly such as a Pressure Vacuum Breaker Backsiphonage Prevention Assembly, Spill-Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly, Double Check Valve Backflow Prevention Assembly, Double Check-Detector Backflow Prevention Assembly, Reduced Pressure Principle Backflow Prevention Assembly, or Reduced Pressure Principle-Detector Backflow Prevention Assembly and the attached shutoff valves on the inlet and outlet ends of the assembly, assembled as a complete unit.

(17) "Backpressure" means an elevation of pressure downstream of the distribution system that would cause, or tend to cause, water to flow opposite of its intended direction.

(18) "Backsiphonage" means a drop in distribution system pressure below atmospheric pressure (partial vacuum), that would cause, or tend to cause, water to flow opposite of its intended direction.

(19) "Bag filter" means a pressure-driven separation device that removes particulate matter larger than one micrometer using an engineered porous filtration media. It is typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.

(20) "Bank Filtration" means a water treatment process that uses a horizontal or vertical well to recover surface water that has naturally infiltrated into groundwater through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply.

(21) "Best Available Technology" or "BAT" means the best technology, treatment techniques, or other means which the EPA finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).

(22) "Bore-Sighted Drain to Daylight" means an unrestricted straight-line opening in an enclosure that vents to grade, and is sized and constructed to adequately drain the full flow discharge from a reduced pressure principle backflow prevention assembly thus preventing any potential for submersion of the assembly.

(23) "Bottled Water" means potable water from a source approved by the Department for domestic use which is placed in small, easily transportable containers.

(24) "Calculated Fixed Radius" means a technique to delineate a wellhead protection area, based on the determination of the volume of the aquifer needed to supply groundwater to a well over a given length of time.

(25) "Cartridge filter" means a pressure-driven separation device that removes particulate matter larger than one micrometer using an engineered porous filtration media. It is typically constructed of rigid or semi-rigid, self-supporting filter elements housed in a pressure vessel in which flow is from the outside of the cartridge to the inside.

(26) "CFR" means the Code of Federal Regulations. Specifically, it refers to those sections of the code which deal with the National Primary and Secondary Drinking Water Regulations.

(27) "Check Valve" means a valve, which allows flow in only one direction.

(28) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into floc.

(29) "Coliform-Positive" means the presence of coliform bacteria in a water sample.

(30) "Combined distribution system" means the interconnected distribution system consisting of the distribution systems of wholesale water systems and of the purchasing water systems that receive finished water.

(31) "Community Water System" means a public water system that has 15 or more service connections used by year-round residents, or that regularly serves 25 or more year-round residents.

(32) "Compliance Cycle" means the nine-year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993 and ends December 31, 2001.

(33) "Compliance Period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; and the third from January 1, 1999 to December 31, 2001.

(34) "Comprehensive performance evaluation (CPE)" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. The CPE must consist of at least the following components: Assessment of plant performance; evaluations of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

(35) "Conceptual Model" means a three-dimensional representation of the groundwater system, including the location and extent of the hydrogeologic units, areas of recharge and discharge, hydrogeologic boundaries and hydraulic gradient.

(36) "Confined Well" means a well completed in a confined aquifer. More specifically, it is a well which produces water from a formation that is overlain by an impermeable material of extensive area. This well shall be constructed according to OAR chapter 690, division 200 "Well Construction and Maintenance" standards.

(37) "Confluent Growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

(38) "Constructed Conveyance" means any human-made conduit such as ditches, culverts, waterways, flumes, mine drains, canals or any human-altered natural water bodies or waterways as determined by the Department.

(39) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water that creates a health hazard.

(40) "Contingency Plan" means a document setting out an organized, planned and coordinated course of action to be followed in the event of a loss of capacity to supply water to the distribution system or in case of a fire, explosion or release of hazardous waste which could threaten human health or the environment.

(41) "Corrosion Inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

(42) "Cross Connection" means any actual or potential unprotected connection or structural arrangement between the public or user's potable water system and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas, or substances other than the intended potable water with which the system is supplied. Bypass arrangements, jumper connections, removable sections, swivel, or change-over devices, and other temporary or permanent devices through which, or because of which, backflow can occur are considered to be cross connections.

(43) "CT" means the product of the residual disinfectant concentration "C" (measured in mg/l) and disinfectant contact time(s), "T" (measured in minutes).

(44) "Degree of Hazard" means either pollution (non-health hazard) or contamination (health hazard) and is determined by an evaluation of hazardous conditions within a system.

(45) "Delineation" means the determination of the extent, orientation and boundaries of a wellhead protection area using factors such as geology, aquifer characteristics, well pumping rates and time of travel.

(46) "Demonstration Study" means a series of tests performed to prove an overall effective removal and/or inactivation rate of a pathogenic organism through a treatment or disinfection process.

(47) "Department" means the Department of Human Services (DHS).

(48) "Discharge" means the volume rate of loss of groundwater from the aquifer through wells, springs or to surface water.

(49) "Disinfectant Contact Time" means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfection residual measurement to a point before or at the point where residual disinfectant concentration is measured.

(50) "Disinfectant Residual Maintenance" means a process where public water systems add chlorine (or other chemical oxidant) for the purpose of maintaining a disinfectant residual in the distribution system, when the source(s) is not at risk of microbial contamination.

(51) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(52) "Disinfection profile" means a summary of Giardia lamblia inactivation through the treatment plant.

(53) "Distribution System" means the network of pipes and other facilities, which are used to distribute water from the source, treatment, transmission, or storage facilities to the water user.

(54) "Domestic or other non-distribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(55) "Dose Equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

(56) "Double Check-Detector Backflow Prevention Assembly (DCDA)" means a specially designed assembly composed of a line size approved double check valve assembly assembled with a bypass containing a specific water meter and an approved double check valve assembly. The meter shall register accurately for only very low rates of flow up to three gallons per minute and shall show a registration for all rates of flow. This assembly is designed to protect against a non-health hazard.

(57) "Double Check Valve Backflow Prevention Assembly (DC)" means an assembly of two independently acting approved check valves, including tightly closing resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient seated test cocks. This assembly is designed to protect against a non-health hazard.

(58) "Drawdown" means the difference, measured vertically, between the static water level in the well and the water level during pumping.

(59) "Drinking Water Protection" means implementing strategies within a drinking water protection area to minimize the potential impact of contaminant sources on the quality of water being used as a drinking water source by a Public Water System.

(60) "Drinking Water Protection Area (DWPA)" means the source area supplying drinking water to a Public Water System. For a surface water-supplied drinking water source the DWPA is all or a specifically determined part of a lake's, reservoir's or stream's watershed that has been certified by the Department of Environmental Quality. For a groundwater-supplied drinking water source the DWPA is the area on the surface that directly overlies that part of the aquifer that supplies groundwater to a well, well field or spring that has been certified by the Department.

(61) "Drinking Water Protection Plan" means a plan, certified by the Department of Environmental Quality according to OAR 340-040-0160 to 340-040-0180, which identifies the actions to be taken at the local level to protect a specifically defined and certified drinking water protection area. The plan is developed by the local Responsible Management Authority and/or team and includes a written description of each element, public participation efforts, and an implementation schedule.

(62) "Dual sample set" means a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other for HAA5. Dual sample sets are collected for the purposes of conducting an Initial Distribution System Evaluation (IDSE) as prescribed in 333-061-0036(4)(b) of these rules, and for determining compliance with the maximum contaminant levels for TTHM and HAA5 listed in 333-061-0030(2)(b) of these rules.

(63) "Effective Corrosion Inhibitor Residual" means a concentration sufficient to form a passivating film on the interior walls of a pipe.

(64) "Effective Porosity" means the ratio of the volume of interconnected voids (openings) in a geological formation to the overall volume of the material.

(65) "Element" means one of seven objectives considered by the U.S. EPA as the minimum required components in any state wellhead protection program: specification of duties, delineation of the wellhead protection area, inventory of potential contaminant sources, specification of management approaches, development of contingency plans, addressing new (future) wells, and ensuring public participation.

(66) "Emergency" means a condition resulting from an unusual calamity such as a flood, storm, earthquake, drought, civil disorder, volcanic eruption, an accidental spill of hazardous material, or other occurrence which disrupts water service at a public water system or endangers the quality of water produced by a public water system.

(67) "Emergency Response Plan" means a written document establishing contacts, operating procedures, and actions taken for a public water system to minimize the impact or potential impact of a natural disaster, accident, or intentional act which disrupts or damages, or potentially disrupts or potentially damages the public water system or drinking water supply, and returns the public water system to normal operating condition.

(68) "Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

(69) "Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

(70) "EPA" means the United States Environmental Protection Agency.

(71) "Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from start-up to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

(72) "Filtration" means a process for removing particulate matter from water through porous media.

(a) "Conventional Filtration Treatment" means a series of processes including coagulation (requiring the use of a primary coagulant and rapid mix), flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(b) "Direct Filtration Treatment" means a series of processes including coagulation (requiring the use of a primary coagulant and rapid mix) and filtration but excluding sedimentation resulting in substantial particulate removal.

(c) "Slow Sand Filtration" means a treatment process involving passage of raw water through a bed of sand at low velocity (generally less than 235 gallons per square foot per day) resulting in substantial particulate removal by physical and biological mechanisms.

(d) "Diatomaceous Earth Filtration" means a process resulting in substantial particulate removal in which:

(A) A precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum); and

(B) While the water is filtered by passing through the cake on the septum, additional filter media, known as body feed, is continuously added to the feed water, in order to maintain the permeability of the filter cake.

(73) "Finished water" means water that is introduced into the distribution system of a public water system and intended for distribution and consumption without further treatment, except as necessary to maintain water quality in the distribution system such as booster disinfection or the addition of corrosion control chemicals.

(74) "First Customer" means the initial service connection or tap on a public water supply after any treatment processes.

(75) "First Draw Sample" means a one-liter sample of tap water that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

(76) "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

(77) "Flowing stream" means a course of running water flowing in a definite channel.

(78) "Future Groundwater Sources" means wells and/or springs that may be required by the public water system in the future to meet the needs of the system.

(79) "GAC 10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with OAR 333-061-0030(2)(b) shall be 120 days.

(80) "GAC 20" means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.

(81) "Gross Alpha Particle Activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

(82) "Gross Beta Particle Activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

(83) "Groundwater System" means any public water system that uses groundwater, including purchasing water systems that receive finished groundwater, but excluding public water systems that combine all of their groundwater with surface water or groundwater under the direct influence of surface water prior to treatment.

(84) "Groundwater under the direct influence of surface water (GWUDI)" means any water beneath the surface of the ground with significant occurrence of insects or other macro-organisms, algae or large-diameter pathogens such as Giardia lamblia or Cryptosporidium, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(85) "Haloacetic acids (five) (HAA5)" mean the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid and dibromoacetic acid), rounded to two significant figures after addition.

(86) "Hauled Water" means water for human consumption transported from a Public Water System in a manner approved by the Department.

(87) "Health Hazard (Contamination)" means an impairment of the quality of the water that could create an actual hazard to the public health through poisoning or through the spread of disease by sewage, industrial fluids, waste, or other substances.

(88) "Human Consumption" means water used for drinking, personal hygiene bathing, showering, cooking, dishwashing and maintaining oral hygiene.

(89) "Hydraulic Conductivity" means the capacity of the medium, e.g., soil, aquifer, or any hydrogeological unit of interest, to transmit water.

(90) "Hydraulic Connection" refers to a well, spring or other groundwater collection system in which it has been determined that part of the water supplied by the collection system is derived, either naturally or induced, from a surface water source.

(91) "Hydraulic Gradient" means the slope of the water table or potentiometric surface, calculated by dividing the change in hydraulic head between two points by the horizontal distance between the points in the direction of groundwater flow.

(92) "Hydraulic Head" means the energy possessed by the water mass at a given point, related to the height above the datum plane that water resides in a well drilled to that point. In a groundwater system, the hydraulic head is composed of elevation head and pressure head.

(93) "Hydrogeologic Boundary" means physical features that bound and control direction of groundwater flow in a groundwater system. Boundaries may be in the form of a constant head, e.g. streams, or represent barriers to flow, e.g. groundwater divides and impermeable geologic barriers.

(94) "Hydrogeologic Mapping" means characterizing hydrogeologic features (e.g. hydrogeologic units, hydrogeologic boundaries, etc.) within an area and determining their location, areal extent and relationship to one another.

(95) "Hydrogeologic Unit" means a geologic formation, group of formations, or part of a formation that has consistent and definable hydraulic properties.

(96) "Impermeable Material" means a material that limits the passage of water.

(97) "Impounding Reservoir" means an uncovered body of water formed behind a dam across a river or stream, and in which water is stored.

(98) "Infiltration Gallery" means a system of perforated pipes laid along the banks or under the bed of a stream or lake installed for the purpose of collecting water from the formation beneath the stream or lake.

(99) "Initial Compliance Period" means the 1993-95 three-year compliance period for systems with 150 or more service connections and the 1996-98 three-year compliance period for systems having fewer than 150 service connections for the contaminants prescribed in OAR 333-061-0036(2)(a)(A)(v), 333-061-0036(3)(a)(J) and (3)(c)(N).

(100) "Interfering Wells" means wells that, because of their proximity and pumping characteristics, and as a result of the aquifer's hydraulic properties, produce drawdown cones that overlap during simultaneous pumping. The result is a lowering of the pumping level in each well below what it would be if that well were pumping by itself.

(101) "Inventory of Potential Contaminant Sources" means the reconnaissance level location of land use activities within the Drinking Water Protection Area that as a category have been associated with groundwater or surface water contamination in Oregon and elsewhere in the United States.

(102) "Lake/reservoir" means a natural or man-made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

(103) "Lead Free" when used with respect to solders and flux shall mean solders and flux containing not more than 0.2 percent lead, and when used with respect to pipes and fittings shall mean pipes and fittings containing not more than 8.0 percent lead. When used with respect to plumbing fittings and fixtures intended for dispensing water for human consumption shall mean in compliance with standards established in accordance with 42 U.S.C. 300g-6(e) and ANSI/NSF standard 61, section 9.

(104) "Lead Service Line" means a service line made of lead, which connects the water main to the building inlet and any pigtail, gooseneck or other fitting, which is connected to such lead line.

(105) "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

(106) "Local Administrative Authority" means the individual official, board, department or agency established and authorized by a state, county or city to administer and enforce the provisions of the Oregon State Plumbing Specialty Code adopted under OAR 918-750-0110.

(107) "Locational running annual average (LRAA)" means the arithmetic average of analytical results for samples taken at a specific monitoring location during the previous four calendar quarters.

(108) "Major Additions or Modifications" means changes of considerable extent or complexity including, but not limited to, projects involving water sources, treatment facilities, facilities for continuous disinfection, finished water storage, pumping facilities, transmission mains, and distribution mains, except main replacements of the same length and diameter.

(109) "Man-made Beta Particle and Photon Emitters" means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69, except the daughter products of Thorium-232, Uranium-235 and Uranium-238.

(110) "Master Plan" means an overall plan, which shows the projected development of a distribution system and alternatives for source development.

(111) "Maximum Contaminant Level (MCL)" means the maximum allowable level of a contaminant in water delivered to the user's of a public water system, except in the case of turbidity where the maximum allowable level is measured at the point of entry to the distribution system.

(112) "Maximum Residual Disinfectant Level (MRDL)" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.

(113) "Membrane filtration" means a pressure or vacuum driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

(114) "Multi-purpose Piping System" means a piping system within residential dwellings intended to serve both domestic and fire protection needs. This type of system is considered part of a potable water system.

(115) "New Groundwater Sources" means additional or modified wells and/or springs owned by the Public Water System.

(116) "Non-Health Hazard (Pollution)" means an impairment of the quality of the water to a degree that does not create a hazard to the public health, but does adversely affect the aesthetic qualities of such water for potable use.

(117) "Non-Transient Non-Community Water System (NTNC)" means a public water system that is not a Community Water System and that regularly serves at least 25 of the same persons over 6 months per year.

(118) "Open Interval" means in a cased well, the sum of the length(s) of the screened or perforated zone(s) and in an uncased (open-hole) well, the sum of the thickness(es) of the water-bearing zones or, if undeterminable, 10 percent of the length of the open hole.

(119) "Optimal Corrosion Control Treatment" means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

(120) "Pathogenic" means a specific agent (bacterium, virus or parasite) causing or capable of causing disease.

(121) "Peak Daily Demand" means the maximum rate of water use, expressed in gallons per day, over the 24-hour period of heaviest consumption.

(122) "Permit" means official permission granted by the Department for a public water system which exceeds maximum contaminant levels to delay, because of economic or other compelling factors, the installation of water treatment facilities which are necessary to produce water which does not exceed maximum contaminant levels.

(123) "Person" means any individual, corporation, association, firm, partnership, municipal, state or federal agency, or joint stock company and includes any receiver, special master, trustee, assignee, or other similar representative thereof.

(124) "Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

(125) "Pilot Study" means the construction and operation of a scaled down treatment system during a given period of time to determine the feasibility a full-scale treatment facility.

(126) "Plant intake" means the works or structures at the head of a conduit through which water is diverted from a source, such as a river or lake, into the treatment plant.

(127) "Plug Flow" means movement of water in a pipe such that particles pass through the pipe and are discharged in the same sequence in which they entered.

(128) "Point of Delivery (POD)" means the point of connection between a public water system and the user's water system. Beyond the point of delivery, the Oregon Plumbing Specialty Code applies. See "Service Connection."

(129) "Point of Disinfectant Application" is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

(130) "Point-of-Entry Treatment Device" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

(131) "Point-of-Use Treatment Device" is a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

(132) "Pollutant" means a substance that creates an impairment of the quality of the water to a degree which does not create a hazard to the public health, but which does adversely affect the aesthetic qualities of the water.

(133) "Porous Media Assumption" means the assumption that groundwater moves in the aquifer as if the aquifer were granular in character, i.e. moves directly down-gradient, and the velocity of the groundwater can be described by Darcy's Law.

(134) "Potable Water." See Safe Drinking Water.

(135) "Potential Contaminant Source Inventory" means the determination of the location within the wellhead protection area of activities known to use or produce materials that can contaminate groundwater.

(136) "Potential Cross Connection" means a cross connection that would most likely occur, but may not be taking place at the time of an inspection.

(137) "Potentiometric Surface" means a surface that denotes the variation of hydraulic head in the given aquifer across an area.

(138) "Premise" means real estate and the structures on it.

(139) "Premise Isolation" means the practice of protecting the public water supply from contamination or pollution by installing backflow prevention assemblies at, or near, the point of delivery where the water supply enters the premise. Premise isolation does not guarantee protection to persons on the premise.

(140) "Presedimentation" means a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

(141) "Pressure Vacuum Breaker Backsiphonage Prevention Assembly (PVB)" means an assembly consisting of an independently operating, internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. This assembly is to be equipped with properly located resilient seated test cocks and tightly closing resilient seated shutoff valves attached at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard under backsiphonage conditions only.

(142) "Provisional Delineation" means approximating the wellhead protection area for a well by using the wellhead protection area from another well in the same hydrogeologic setting or by using generalized values for the aquifer characteristics to generate an approximate wellhead protection area for the well. Used only for the purpose of evaluating potential siting of new or future groundwater sources. Not an acceptable way to formally delineate a wellhead protection area.

(143) "Public Health Hazard" means a condition, device or practice which is conducive to the introduction of waterborne disease organisms, or harmful chemical, physical, or radioactive substances into a public water system, and which presents an unreasonable risk to health.

(144) "Public Water System" means a system for the provision to the public of piped water for human consumption, if such system has more than three service connections, or supplies water to a public or commercial establishment that operates a total of at least 60 days per year, and that is used by 10 or more individuals per day. Public water system also means a system for the provision to the public of water through constructed conveyances other than pipes to at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days of the year. A public water system is either a "Community Water System," a "Transient Non-Community Water System," a "Non-Transient Non-Community Water System" or a "State Regulated Water System."

(145) "Purchasing Water System" means a public water system which obtains its water in whole or in part from another public water system. Delivery may be through a direct connection or through the distribution system of one or more purchasing water systems.

(146) "Recharge" means the process by which water is added to a zone of saturation, usually by downward infiltration from the surface.

(147) "Recharge Area" means a land area in which water percolates to the zone of saturation through infiltration from the surface.

(148) "Recovery" means the rise in water level in a well from the pumping level towards the original static water level after pumping has been discontinued.

(149) "Reduced Pressure Principle Backflow Prevention Assembly (RP)" means an assembly containing two independently acting approved check valves, together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and at the same time below the first check valve. The unit shall include properly located resilient seated test cocks and tightly closing resilient seated shutoff valves at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard.

(150) "Reduced Pressure Principle-Detector Backflow Prevention Assembly (RPDA)" means a specifically designed assembly composed of a line size approved reduced pressure principle backflow prevention assembly with a bypass containing a specific water meter and an approved reduced pressure principle backflow prevention assembly. The meter shall register accurately for only very low rates of flow up to three gallons per minute and shall show a registration for all rates of flow. This assembly is designed to protect against a non-health hazard or a health hazard.

(151) "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1/1000 of a rem.

(152) "Repeat Compliance Period" means any subsequent compliance period after the initial compliance period.

(153) "Residual disinfectant concentration" means the concentration of disinfectant measured in mg/l in a representative sample of water.

(154) "Responsible Management Authority" means the Public Water System whose water supply is being protected and any government entity having management, rule or ordinance-making authority to implement wellhead protection management strategies within the wellhead protection area. The Responsible Management Authority is responsible for implementation of the Wellhead Protection Plan and includes cities, counties, special districts, Indian tribes, state/federal entities as well as public water systems.

(155) "Safe Drinking Water" means water which has sufficiently low concentrations of microbiological, inorganic chemical, organic chemical, radiological or physical substances so that individuals drinking such water at normal levels of consumption, will not be exposed to disease organisms or other substances which may produce harmful physiological effects.

(156) "Sanitary Survey (Water System Survey)" means an on-site review of the water source(s), facilities, equipment, operation, maintenance and monitoring compliance of a public water system to evaluate the adequacy of the water system, its sources and operations in the distribution of safe drinking water. The sanitary survey also identifies sources of contamination by using the results of source water assessments where available.

(157) "Secondary Contaminant" means those contaminants, which, at the levels generally found in drinking water, do not present an unreasonable risk to health, but do:

(a) Have adverse effects on the taste, odor and color of water;

(b) Produce undesirable staining of plumbing fixtures; or

(c) Interfere with treatment processes applied by water suppliers.

(158) "Secondary Maximum Contaminant Level (SMCL)" means the level of a secondary contaminant which when exceeded may adversely affect the aesthetic quality of the drinking water which thereby may deter public acceptance of drinking water provided by public water systems or may interfere with water treatment methods.

(159) "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

(160) "Sensitivity" means the intrinsic characteristics of a drinking water source such as depth to the aquifer for groundwater or highly erodible soils in a watershed that increase the potential for contamination to take place if a contaminant source is present.

(161) "Service Connection" means the piping connection by means of which water is conveyed from a distribution main of a public water system to a user's premise. For a community water system, the portion of the service connection that conveys water from the distribution main to the user's property line, or to the service meter, where provided, is under the jurisdiction of the water supplier.

(162) "Significant Deficiency" means a defect in design, operation, or maintenance, or a malfunction of the source(s), treatment, storage, or distribution system that has been determined to cause or have the potential for causing the introduction of contamination into the water delivered to consumers.

(163) "Single Connection System" means a public water system serving only one installation, such as a restaurant, campground or place of employment.

(164) "Single Family Structure" means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

(165) "Source Water Assessment" means the information compiled by the Department and the Department of Environmental Quality (DEQ), consisting of the delineation, inventory and susceptibility analyses of the drinking water source, which enable public water systems to develop and implement drinking water protection plans.

(166) "Specific Ultraviolet Absorption (SUVA) at 254 nanometers" means an indicator of the humic content of water as a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nanometers (UV254) by its concentration of dissolved organic carbon (DOC) (in milligrams per liter).

(167) "Spill Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly (SVB)" means an assembly containing an independently operating, internally loaded check valve and independently operating loaded air inlet valve located on the discharge side of the check valve. The assembly is to be equipped with a properly located resilient seated test cock, a properly located bleed/vent valve, and tightly closing resilient seated shutoff valves attached at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard under a backsiphonage condition only.

(168) "Spring" means a naturally occurring discharge of flowing water at the ground surface, or into surface water. Springs can be derived from groundwater or they can be surface water influenced.

(169) "Stand-alone Fire Suppression System" means a piping system within a premise intended to only serve as a fire protection system separated from the potable water system.

(170) "State Regulated Water System" means a public water system, which serves 4 to 14 service connections or serves 10 to 24 people. Monitoring requirements for these systems are the same as those for Transient Non-Community water systems.

(171) "Static Water Level" means the vertical distance from ground surface to the water level in the well when the well is at rest, i.e., the well has not been pumped recently and the water level is stable. The natural level of water in the well.

(172) "Surface Water" means all water, which is open to the atmosphere and subject to surface runoff.

(173) "Susceptibility" means the potential, as a result of the combination of land use activities and source water sensitivity that contamination of the drinking water source may occur.

(174) "Team" means the local Wellhead Protection team, which includes representatives from the Responsible Management Authorities and various interests and stakeholders potentially affected by the Wellhead Protection Plan.

(175) "Thermal Expansion" means the pressure increase due to a rise in water temperature that occurs in water piping systems when such systems become "closed" by the installation of a backflow prevention assembly or other means, and will not allow for expansion beyond that point of installation.

(176) "These Rules" means the Oregon Administrative Rules encompassed by OAR 333-061-0005 through 333-061-0098.

(177) "Time-of-Travel (TOT)" means the amount of time it takes groundwater to flow to a given well. The criterion that effectively determines the radius in the calculated fixed radius method and the up-gradient distance to be used for the analytical and numerical models during delineation of the wellhead protection area.

(178) "Too Numerous To Count (TNTC)" means that the total number of bacterial colonies exceeds 200 on a 47 mm diameter membrane filter used for coliform bacteria detection.

(179) "Total Organic Carbon (TOC)" means total organic carbon in milligrams per liter measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

(180) "Total Trihalomethanes (TTHM)" means the sum of the concentrations in milligrams per liter of the trihalomethane compounds bromodichloromethane, dibromochloromethane, tribromomethane (bromoform) and trichloromethane (chloroform), rounded to two significant figures after addition.

(181) "Transient Non-Community Water System" means a public water system that serves a transient population of 25 or more persons.

(182) "Turbidity" means a measure of the cloudiness of water caused by suspended particles. The units of measure for turbidity are nephelometric turbidity units (NTU).

(183) "Two-stage lime softening" means a process in which a chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

(184) "Unconfined Well" means a well completed in an unconfined aquifer. More specifically, a well which produces water from a formation that is not overlaying by impermeable material. This well shall be constructed according to OAR chapter 690, division 200 "Well Construction and Maintenance" standards.

(185) "Uncovered finished water storage facility" means a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens except residual disinfection and is directly open to the atmosphere.

(186) "University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research (USC FCCCHR)" is an agency that conducts laboratory and field tests to evaluate and grant "Certificates of Approval" to backflow prevention assemblies meeting approved standards.

(187) "Vadose Zone" means the zone between the ground surface and the water table where the available open spaces between soil and sediment particles, in rock fractures, etc., are most filled with air.

(188) "Variance" means official permission granted by the Department for public water systems to exceed maximum contaminant levels because the quality of the raw water is such that the best available treatment techniques are not capable of treating the water so that it complies with maximum contaminant levels, and there is no unreasonable risk to health.

(189) "Vault" means an approved enclosure above or below ground to house a backflow prevention assembly that complies with the local administrative authority having jurisdiction.

(190) "Virus" means a virus of fecal origin, which is infectious to humans by waterborne transmission.

(191) "Waiver" means official permission from the Department for a public water system to deviate from the construction standards set forth in these rules.

(192) "Water-bearing Zone" means that part or parts of the aquifer encountered during drilling that yield(s) water to a well.

(193) "Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the Department.

(194) "Water Supplier" means a person, group of persons, municipality, district, corporation or other entity, which owns or operates a public potable water system.

(195) "Water Source" means any lake, stream, spring, groundwater supply, impoundment or other source of water from which water is obtained for a public water system. In some cases, a public water system can be the source of supply for one or more other public water systems.

(196) "Water System" means a system for the provision of piped water for human consumption.

(197) "Water System Operations Manual" means a written document describing the actions and procedures necessary to operate and maintain the entire water system.

(198) "Water Table" means the upper surface of an unconfined aquifer, the surface of which is at atmospheric pressure and fluctuates seasonally. It is defined by the levels at which water stands in wells that penetrate the aquifer.

(199) "Well" means an artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn or injected, provided that this definition shall not include a natural spring, or wells drilled for the purpose of exploration or production of oil or gas.

(200) "Wellfield" means two or more drinking water wells, belonging to the same water system that are within 2,500 feet, or as determined by the Department, and produce from the same and no other aquifer.

(201) "Wellhead Protection." See Drinking Water Protection.

(202) "Wellhead Protection Area (WHPA)." See Drinking Water Protection Area.

(203) "Wellhead Protection Plan." See Drinking Water Protection Plan.

(204) "Wholesale system" means a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more purchasing water systems.

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

Stat. Auth.: ORS 448

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.273, 448.279

Hist.: HD 106, f. & ef. 2-6-76; HD 4-1980, f. & ef. 3-21-80; HD 10-1981, f. & ef. 6-30-81; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0205, HD 2-1983, f. & ef. 2-23-83; HD 21-1983, f. 10-20-83, ef. 11-1-83; HD 11-1985, f. & ef. 7-2-85; HD 30-1985, f. & ef. 12-4-85; HD 3-1987, f. & ef. 2-17-87; HD 3-1988(Temp), f. & cert. ef. 2-12-88; HD 17-1988, f. & cert. ef. 7-27-88; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 7-1992, f. & cert. ef. 6-9-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 34-2004, f. & cert. ef. 11-2-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0025
Responsibilities of Water Suppliers

Water suppliers are responsible for taking all reasonable precautions to assure that the water delivered to water users does not exceed maximum contaminant levels, to assure that water system facilities are free of public health hazards, and to assure that water system operation and maintenance are performed as required by these rules. This includes, but is not limited to, the following:

(1) Routinely collect and submit water samples for laboratory analyses at the frequencies prescribed by OAR 333-061-0036;

(2) Take immediate corrective action when the results of analyses or measurements indicate that maximum contaminant levels have been exceeded and report the results of these analyses as prescribed by OAR 333-061-0040;

(3) Continue to report as prescribed by OAR 333-061-0040, the results of analyses or measurements which indicate that maximum contaminant levels have not been exceeded;

(4) Notify all customers of the system, as well as the general public in the service area, when the maximum contaminant levels have been exceeded;

(5) Notify all customers served by the system when the reporting requirements are not being met, or when public health hazards are found to exist in the system, or when the operation of the system is subject to a permit or a variance;

(6) Maintain monitoring and operating records and make these records available for review when the system is inspected;

(7) Maintain a pressure of at least 20 pounds per square inch (psi) at all service connections at all times;

(8) Follow-up on complaints relating to water quality from users and maintain records and reports on actions undertaken;

(9) Conduct an active program for systematically identifying and controlling cross connections;

(10) Submit, to the Department, plans prepared by a professional engineer registered in Oregon for review and approval before undertaking the construction of new water systems or major modifications to existing water systems, unless exempted from this requirement;

(11) Assure that the water system is in compliance with OAR 333-061-0205 relating to certification of water system operators; and

(12) Assure that Transient Non-Community water systems utilizing surface water sources or groundwater sources under the influence of surface water are in compliance with OAR 333-061-0065(2)(c) relating to required special training.

Stat. Auth.: ORS 431 & 448.131

Stats. Implemented:

Hist.: HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0206, HD 2-1983, f. & ef. 2-23-83; HD 9-1989, f. & cert. ef. 11-13-89; HD 7-1992, f. & cert. ef. 6-9-92; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0030
Maximum Contaminant Levels and Action Levels

(1) Maximum contaminant levels (MCLs) and Action Levels (ALs) for inorganic chemicals are applicable to all Community and Non-transient Non-community water systems and are listed in Table 1. The MCL for Fluoride is applicable only to Community Water Systems and the MCL for Nitrate is applicable to all water systems. [Table not included. See ED. NOTE.]

(a) Compliance with the maximum contaminant levels for inorganic contaminants is calculated pursuant to OAR 333-061-0036(2)(j).

(b) Violations of secondary contaminant levels for fluoride (2.0 mg/l) require a special public notice. Refer to OAR 333-061-0042(7).

(c) The lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with OAR 333-061-0036(2)(d)(A) through (E) is greater than 0.015 mg/L (i.e., if the "90th percentile" lead level is greater than 0.015 mg/L). The copper action level is exceeded if the concentration of copper in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with OAR 333-061-0036(2)(d)(A) through (E) is greater than 1.3 mg/L (i.e., if the "90th percentile" copper level is greater than 1.3 mg/L).

(A) The 90th percentile lead and copper levels shall be computed as follows: The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the

lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken. The number of samples taken during the monitoring period shall be multiplied by 0.9. The contaminant concentration in the numbered sample yielded by this calculation is the 90th percentile contaminant level.

(B) For water systems serving fewer than 100 people that collect five samples per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentrations. For a water system allowed by the Department to collect fewer than five samples the sample result with the highest concentration is considered the 90th percentile value.

(2) Maximum contaminant levels for organic chemicals:

(a) The maximum contaminant levels for synthetic organic chemicals are shown in Table 2 and apply to all Community and Non-Transient Non-Community water systems: [Table not included. See ED. NOTE.]

(A) Compliance with MCLs shall be calculated pursuant to OAR 333-061-0036(3)(a)(G).

(b) The maximum contaminant levels for disinfection byproducts are shown in Table 3 and apply to all Community and Non-Transient Non-Community water systems that add a disinfectant (oxidant) to the water supply at any point in the treatment process or deliver water in which a disinfectant has been added to the water supply. [Table not included. See ED. NOTE.]

(A) Compliance with the MCLs for TTHM and HAA5 shall be calculated as a running annual arithmetic average pursuant to OAR 333-061-0036(4)(c), (r) and (s). All systems must comply with OAR 333-061-0036(4)(c) and (4)(q) until the dates specified in Table 4, at which time compliance with the MCLs shall be calculated as a locational running annual arithmetic average pursuant to OAR 333-061-0036(4)(d). [Table not included. See ED. NOTE]

(B) Compliance with the MCL for Bromate shall be calculated as a running annual arithmetic average pursuant to OAR 333-061-0036(4)(l) and (r).

(C) Compliance with the MCL for Chlorite shall be calculated as a running annual arithmetic average pursuant to OAR 333-061-0036(4)(k) and (s).

(c) The maximum contaminant levels for volatile organic chemicals are indicated in Table 5 and apply to all Community and Non-Transient Non-Community water systems: [Table not included. See ED. NOTE.]

(A) Compliance with MCLs shall be calculated pursuant to OAR 333-061-0036(3)(b)(K).

(d) When the Department has reason to believe that a water supply has been contaminated by a toxic organic chemical, it will determine whether a public health hazard exists and whether control measures must be carried out;

(e) The Department may establish maximum contaminant levels for additional organic chemicals as deemed necessary when there is reason to suspect that the use of those chemicals will impair water quality to an extent that poses an unreasonable risk to the health of the water users;

(f) Persons who apply pesticides on watersheds above surface water intakes of public water systems shall comply with federal and state pesticide application requirements. (Safe Drinking Water Act (EPA), Clean Water Act (EPA), Federal Insecticide, Fungicide and Rodenticide Act (EPA), ORS 536.220 to 536.360 (Water Resources), 468B.005 (DEQ), 527.610 to 527.990 (DOF), 634.016 to 634.992 (Department of Agriculture)). Any person who has reasonable cause to believe that his or her actions have led to organic chemical contamination of a public water system shall report that fact immediately to the water supplier.

(3) Maximum contaminant levels for turbidity are applicable to all public water systems using surface water sources or groundwater sources under the direct influence of surface water in whole or in part. Compliance with MCLs shall be calculated pursuant to OAR 333-061-0036(5).

(a) Beginning January 1, 1992, the maximum contaminant levels for turbidity for systems which do not provide filtration treatment are as follows:

(A) The turbidity level cannot exceed 5 NTU in representative samples of the source water immediately prior to the first or only point of disinfectant application unless:

(i) The Department determines that any such event was caused by circumstances that were unusual and unpredictable; and

(ii) As a result of any such event, there have not been more than two events in the past 12 months the system served water to the public, or more than five events in the past 120 months the system served water to the public, in which the turbidity level exceeded 5 NTU. An "event" is a series of consecutive days during which at least one turbidity measurement each day exceeds 5 NTU. Turbidity measurements must be collected as required by OAR 333-061-0036(5)(a)(B).

(b) Beginning June 29, 1993 or 18 months after failure to meet the requirements of OAR 333-061-0032(1) through (3) whichever is later, the maximum contaminant levels for turbidity in drinking water measured at a point representing filtered water prior to any storage are as follows:

(A) Conventional filtration treatment or direct filtration treatment.

(i) For systems using conventional filtration or direct filtration treatment the turbidity level of representative samples of a system's filtered water, measured as soon after filtration as possible and prior to any storage, must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month, measured as specified in OAR 333-061-0036(5).

(ii) For systems using conventional filtration or direct filtration treatment the turbidity level of representative samples of a system's filtered water, measured as soon after filtration as possible and prior to any storage, must at no time exceed 1 NTU measured as specified in OAR 333-061-0036(5).

(B) Slow sand filtration.

(i) For systems using slow sand filtration, the turbidity level of representative samples of filtered water, measured as soon after filtration as possible and prior to any storage, must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month, measured as specified in OAR 333-061-0036(5)(b), except that if the Department determines there is no significant interference with disinfection at a higher turbidity level, the Department may substitute this higher turbidity limit for that system.

(ii) The turbidity level of representative samples of filtered water must at no time exceed 5 NTU, measured as specified in OAR 333-061-0036(5)(b).

(C) Diatomaceous earth filtration.

(i) For systems using diatomaceous earth filtration, the turbidity level of representative samples of filtered water, measured as soon after filtration as possible and prior to any storage, must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month, measured as specified in OAR 333-061-0036(5)(b).

(ii) The turbidity level of representative samples of filtered water must at no time exceed 5 NTU, measured as specified in OAR 333-061-0036(5)(b).

(D) Other filtration technologies. Systems using filtration technologies other than those listed in paragraphs (3)(b)(A) through (C) of this rule must meet the maximum contaminant level for turbidity of 1 NTU in at least 95 percent of the measurements taken each month and at no time exceed 5 NTU, as specified in OAR 333-061-0036(5)(b)(A). The Department may substitute a lower turbidity value(s) if it is determined that the above limit(s) cannot achieve the required level of treatment. The water system must demonstrate to the Department that the alternative filtration technology in combination with disinfection treatment as specified in OAR 333-061-0032 and monitored as specified by 333-061-0036 consistently achieves 99.9% removal and/or inactivation of Giardia lamblia cysts and 99.99% removal and/or inactivation of viruses, and for all of those systems serving at least 10,000 people and beginning January 1, 2005 for all of those systems serving less than 10,000 people, 99% removal of Cryptosporidium oocysts.

(4) Maximum microbiological contaminant levels for all public water systems are as follows:

(a) The MCL is based on the presence or absence of total coliforms in a sample, rather than coliform density.

(A) For a system which collects 40 or more samples per month, total coliform-positive samples shall not exceed 5.0 percent of the samples collected during a month.

(B) For a system which collects fewer than 40 samples per month total coliform-positive samples shall not exceed more than one sample collected during a month.

(b) Any fecal coliform-positive repeat sample or E. coli-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample shall be a violation of the total coliform MCL. Public notification for this potential acute health risk is prescribed in OAR 333-061-0042(2)(a)(A).

(c) All public water systems must determine compliance with the MCL for total coliforms in subsections (4)(a) and (b) of this rule on a monthly basis.

(d) A water system may demonstrate to the Department that a violation of the total coliform MCL is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. The system making the demonstration may use the health effects language of OAR 333-061-0097(4)(d) in the

required public notice in addition to the mandatory language of OAR 333-061-0097(4)(a). This demonstration, made by the system in writing and submitted to the Department for review and approval, shall show to the satisfaction of the Department that the system meets the following conditions:

(A) No occurrence of E. coli in distribution system samples;

(B) No occurrence of coliforms at the entry point to the distribution system;

(C) The system meets treatment requirements prescribed in OAR 333-061-0032 as applicable;

(D) The system meets the turbidity MCL, if surface water sources are used;

(E) The system maintains a detectable disinfectant residual in the distribution system;

(F) The system has no history of waterborne disease outbreaks;

(G) The system has addressed requirements and recommendations of the previous sanitary survey conducted by the Department; and

(H) The system fully complies with cross connection control program requirements.

(5) Maximum contaminant levels for radionuclides are applicable only to Community water systems and are indicated in Table 6: [Table not included. See ED. NOTE.]

(a) The average annual concentration of beta particle and photon radioactivity from man-made sources shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem per year according to the criteria listed in the National Bureau of Standards Handbook 69 as amended August, 1963. If two or more radionuclides are present, the sum total of their annual dose equivalent to the total body or to any organ shall not exceed 4 millirem/year.

(A) The average annual concentration of tritium assumed to produce a total body dose of 4 mrem/year is 20,000 pCi/L;

(B) The average annual concentration of strontium-90 assumed to produce a bone marrow dose of 4 mrem/year is 8 pCi/L.

(b) Compliance with the MCLs shall be calculated pursuant to OAR 333-061-0036(7)(c).

(6) Contaminant levels for secondary contaminants are applicable to all public water systems. These are indicated in Table 7. (Also note OAR 333-061-0036(8)). [Table not included. See ED. NOTE.]

(a) Violations of secondary contaminant levels for fluoride require a special public notice. Refer to OAR 333-061-0042(7).

(b) Violations of maximum contaminant levels for fluoride (4.0 mg/l) require public notification as specified in OAR 333-061-0042(2)(b)(A).

(7) Acrylamide and Epichlorohydrin.

(a) Each public water system must certify annually to the state in writing, using third party certification approved by the state or manufacturer's certification, that when acrylamide and epichlorohydrin are used in drinking water systems, the combination, or product, of dose and monomer level does not exceed the levels specified as follows:

(A) Acrylamide: 0.05% dosed at 1 ppm or equivalent.

(B) Epichlorohydrin: 0.01% dosed at 20 ppm or equivalent.

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

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

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150 & 448.273

Hist.: HD 106, f. & ef. 2-6-76; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0210, HD 2-1983, f. & ef. 2-23-83; HD 21-1983, f. 10-20-83, ef. 11-1-83; HD 11-1985, f. & ef. 7-2-85; HD 30-1985, f. & ef 12-4-85; HD 9-1989, f. & cert, ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 9-1991(Temp), f. & cert. ef. 6-24-91; HD 1-1992, f. & cert. ef. 3-5-92; HD 7-1992, f. & cert. ef. 6-9-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 11-1994, f. & cert. ef. 4-11-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 2-2008, f. & cert. ef. 2-15-08; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0031

Maximum Residual Disinfectant Levels

(1) The maximum residual disinfectant levels (MRDLs) are specified as follows in Table 8: [Table not included. See ED. NOTE.]

(2) Compliance Dates:

(a) Community Water Systems and Non-Transient Non-Community Water Systems. These systems serving at least 10,000 people using either surface water or groundwater under the direct influence of surface water must comply with this rule beginning January 1, 2002. Systems serving less than 10,000 people using either surface water or groundwater under the direct influence of surface water or any system using only groundwater must comply with this rule beginning January 1, 2004.

(b) Transient Non-Community Water Systems. These systems serving at least 10,000 people using surface water or groundwater under the direct influence of surface water using chlorine dioxide as a disinfectant or oxidant must comply with this rule beginning January 1, 2002. Systems serving less than 10,000 people using surface water or groundwater under the direct influence of surface water using chlorine dioxide as a disinfectant or oxidant and systems using only groundwater not under the direct influence of surface water using chlorine dioxide as a disinfectant or oxidant must comply with this rule beginning January 1, 2004.

(3) MRDLs are enforceable in the same manner as maximum contaminant levels (MCLs) as found in OAR 333-061-0030.

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

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150 & 448.273

Hist.: OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0032

Treatment Requirements and Performance Standards for Surface Water, Groundwater Under Direct Influence of Surface Water, and Groundwater

(1) General requirements for all public water systems supplied by a surface water source or a groundwater source under the direct influence of surface water.

(a) These regulations establish criteria under which filtration is required and treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, Cryptosporidium, and turbidity. Each public water system with a surface water source or a groundwater source under the direct influence of surface water must provide treatment of that source water that complies with these treatment technique requirements. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(A) At least 99.9 percent (3-log) removal and/or inactivation of Giardia lamblia cysts between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer, and

(B) At least 99.99 percent (4-log) removal and/or inactivation of viruses between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

(C) At least 99 percent (2-log) removal of Cryptosporidium between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer for filtered systems, or Cryptosporidium control under the watershed control plan for unfiltered systems; and

(D) Compliance with any applicable disinfection profiling and benchmark requirements as specified in OAR 333-061-0030(3)(b)(C) and (D) and 333-061-0060(1)(e).

(E) Sampling and Bin Classification for Cryptosporidium:

(i) All systems must conduct an initial and second round of source water monitoring, as prescribed in subsection 333-061-0036(5)(e) of these rules, for each plant that treats a surface water or GWUDI source to determine what level, if any, of additional Cryptosporidium treatment they must provide.

(ii) Filtered systems must determine their Cryptosporidium treatment bin classification as prescribed in subsection (4)(f) of this rule and provide additional treatment for Cryptosporidium, if required, as prescribed in subsection (4)(g) of this rule. All unfiltered systems must provide treatment for Cryptosporidium as prescribed in subsections (3)(e) through (g) of this rule. Filtered and unfiltered systems must implement Cryptosporidium treatment according to the schedule in paragraph (1)(a)(F) of this rule.

(iii) Systems required to provide additional treatment for Cryptosporidium must implement microbial toolbox options that are designed and operated as prescribed in sections (13) through (17) of this rule and in OAR 333-061-0036(5)(c), 333-061-0050(4) and 333-061-0050(5)(k).

(F) Schedule for compliance with Cryptosporidium treatment requirements.

(i) Following initial bin classification as prescribed in subsection (4)(f) of this rule, filtered water systems must provide the level of treatment for Cryptosporidium required under subsection (4)(g) of this rule according to the schedule in paragraph (1)a)(F)(iii) of this rule.

(ii) Following initial determination of the mean Cryptosporidium level under subsection (2)(d) of this rule, unfiltered water systems must provide the level of treatment for Cryptosporidium required under subsection (2)(d) of this rule according to the schedule in paragraph (iii) of this section.

(iii) Cryptosporidium treatment compliance dates. The Department may allow up to an additional two years from the date specified below for water systems making capital improvements.

(I) Water systems that serve at least 100,000 people must comply with Cryptosporidium treatment by April 1, 2012.

(II) Water systems that serve from 50,000 to 99,999 people must comply with Cryptosporidium treatment by October 1, 2012.

(III) Water systems that serve from 10,000 to 49,999 people must comply with Cryptosporidium treatment by October 1, 2013.

(IV) Water systems that serve fewer than 10,000 people must comply with Cryptosporidium treatment by October 1, 2014.

(V) State-Regulated public water systems must comply with Cryptosporidium treatment by October 1, 2015.

(iv) If the bin classification for a filtered water system changes following the second round of source water monitoring as prescribed in subsection (4)(f) of this rule, the water system must provide the level of treatment for Cryptosporidium required by subsection (4)(g) of this rule on a schedule approved by the Department.

(v) If the mean Cryptosporidium level for an unfiltered water system changes following the second round of monitoring as prescribed in paragraph (2)(d)(A) of this rule, the water system must provide the level of Cryptosporidium treatment required by subsection (2)(d) of this rule due to the change, following a schedule approved by the Department.(b) A public water system using a surface water source or a ground water source under the direct influence of surface water is considered to be in compliance with the requirements of this rule if:

(A) The system meets the requirements for avoiding filtration in section (2) of this rule and the disinfection requirements in section (3) of this rule, and the disinfection benchmarking requirements of OAR 333-061-0060(1)(e); or

(B) The system meets the filtration requirements in section (4) of this rule and the disinfection requirements in section (5) of this rule and the disinfection benchmarking requirements of OAR 333-061-0060(1)(e).

(c) Water systems that utilize sources that have been determined to be under the direct influence of surface water according to section (7) of this rule have 18 months to meet the requirements of sections (2) and (3) of this rule, or the requirements of sections (4) and (5) of this rule. During that time, the system must meet the following Interim Standards:

(A) The turbidity of water entering the distribution system must never exceed 5 NTU. Turbidity measurements must be taken a minimum of once per day. If continuous turbidimeters are in place, measurements should be taken every four hours; and

(B) Disinfection must be sufficient to reliably achieve at least 1.0 log inactivation of Giardia lamblia cysts prior to the first user. Daily disinfection "CT" values must be calculated and recorded daily, including pH and temperature measurements, and disinfection residuals at the first customer.

(C) Reports must be submitted to the Department monthly as prescribed in 333-061-0040.

(D) If these interim standards are not met, the owner or operator of the water system must notify customers of the failure as required in OAR 333-061-0042(2)(b)(A).

(2) Requirements for systems utilizing surface water or GWUDI sources without filtration:

(a) A public water system that uses a surface water source or a groundwater source under the direct influence of surface water must meet all of the conditions of this section.

(b) Source water quality conditions.

(A) The fecal coliform concentration must be equal to or less than 20/100 ml, or the total coliform concentration must be equal to or less than 100/100 ml in representative samples of the source water immediately prior to the first or only point of disinfectant application in at least 90 percent of the measurements made for the 6 previous months that the system served water to the public on an ongoing basis. If a system measures both fecal and total coliform, the fecal coliform criterion, but not the total coliform criterion, in this paragraph must be met. All samples must be collected as prescribed in OAR 333-061-0036(5(a)(A).

(B) The turbidity level cannot exceed the maximum contaminant level prescribed in OAR 333-061-0030(3)(a)(A).

(c) Site-specific conditions. The public water supply must:

(A) Meet the disinfection requirements as prescribed in section (3) of this rule at least 11 of the 12 previous months that the system served water to the public, on an ongoing basis, unless the system fails to meet the requirements during 2 of the 12 previous months that the system served water to the public, and the Department determines that at least one of these failures was caused by circumstances that were unusual and unpredictable.

(B) Maintain a comprehensive watershed control program which minimizes the potential for contamination by Giardia lamblia cysts, Cryptosporidium oocysts, and viruses in the source water. For groundwater systems under the direct influence of surface water, and at the discretion of the Department, a certified drinking water protection plan (OAR 340-040-0160 to 340-040-00180) that addresses both the groundwater- and surface water components of the drinking water supply may be substituted for a watershed control program. Groundwater systems relying on a drinking water protection plan would still be subject to the requirements of subsection (c) of this rule. The watershed control program shall be developed according to guidelines in OAR 333-061-0075. The public water system must demonstrate through ownership and/or written agreements with landowners within the watershed that it can control all human activities which may have an adverse impact on the microbiological quality of the source water. The system must submit an annual report to the Department identifying any special concerns about the watershed, the procedures used to resolve the concern, current activities affecting water quality, and projections of future adverse impacts or activities and the means to address them. At a minimum, the watershed control program must:

(i) Characterize the watershed hydrology and land ownership;

(ii) Identify watershed characteristics and activities which have or may have an adverse effect on source water quality; and

(iii) Monitor the occurrence of activities which may have an adverse effect on source water quality.

(C) Be subject to an annual on-site inspection of the watershed control program and the disinfection treatment process by the Department. The on-site inspection must indicate to the Department's satisfaction that the watershed control program and disinfection treatment process are adequately designed and maintained including the adequacy limiting the potential contamination by Cryptosporidium oocysts. The inspection must include:

(i) A review of the effectiveness of the watershed control program;

(ii) A review of the physical condition of the source intake and how well it is protected;

(iii) A review of the system's equipment maintenance program to ensure there is low probability for failure of the disinfection process;

(iv) An inspection of the disinfection equipment for physical deterioration;

(v) A review of operating procedures;

(vi) A review of data records to ensure that all required tests are being conducted and recorded and disinfection is effectively practiced; and

(vii) Identification of any improvements which are needed in the equipment, system maintenance and operation, or data collection.

(D) Shall not have been identified by the Department as a source of waterborne disease outbreak under the system's current configuration. If such an outbreak occurs, the system must sufficiently modify the treatment process, as determined by the Department, to prevent any future such occurrence.

(E) Comply with the maximum contaminant level (MCL) for total coliform bacteria in OAR 333-061-0030(4) at least 11 months of the 12 previous months that the system served water to the public on an ongoing basis, unless the Department determines that failure to meet this requirement was not caused by a deficiency in treatment of the source water.

(F) Comply with the requirements for total trihalomethanes, haloacetic acids (five), bromate, chlorite, chlorine, chloramines, and chlorine dioxide as specified in OAR 333-061-0036(4).

(d) Determination of mean Cryptosporidium level.

(A) Unfiltered water systems must calculate the arithmetic average of all Cryptosporidium sample concentrations following completion of the initial and second round of source water monitoring conducted in accordance with 333-061-0036(5)(e). Systems must report this value to the Department for approval no later than 6 months after the date the system was required to complete the required monitoring.

(B) If the frequency of monthly Cryptosporidium sampling varies, water systems must calculate a monthly average for each month of sampling. Systems must then use these monthly average concentrations, rather than individual sample concentrations, in the calculation of the mean Cryptosporidium level prescribed in paragraph (2)(d)(A) of this rule.

(C) The report to the Department of the mean Cryptosporidium levels calculated in accordance with paragraph (2)(d)(A) of this rule must include a summary of the source water monitoring data used for the calculation.

(D) Failure to comply with the conditions of paragraph (5)(d)(A) of this rule is a violation of the treatment technique requirement.

(e) A public water system which fails to meet any of the criteria in section (2) of this rule is in violation of a treatment technique requirement. The Department can require filtration to be installed where it determines necessary.

(3) Disinfection requirements for systems utilizing surface water or GWUDI sources without filtration. Each public water system that does not provide filtration treatment must provide disinfection treatment as follows:

(a) The disinfection treatment must be sufficient to ensure at least 99.9 percent (3-log) inactivation of Giardia lamblia cysts and 99.99 percent (4-log) inactivation of viruses, every day the system serves water to the public, except any one day each month. Each day a system serves water to the public, the public water system must calculate the CT value(s) from the system's treatment parameters, using the procedure specified in OAR 333-

061-0036(5)(a)(C) and determine whether this value(s) is sufficient to achieve the specified inactivation rates for Giardia lamblia cysts and viruses. If a system uses a disinfectant other the chlorine, the system must demonstrate to the Department through the use of an approved protocol for on-site disinfection demonstration studies or other information satisfactory to the Department that the system is achieving the required inactivation rates on a daily basis instead of meeting the "CT" values in this rule.

(b) The disinfection system must have either:

(A) Redundant components, including an auxiliary power supply with automatic start-up and alarm to ensure that disinfectant application is maintained continuously while water is being delivered to the distribution system; or

(B) Automatic shut-off of delivery of water to the distribution system whenever there is less than 0.2 mg/l of residual disinfectant concentration in the water. If the Department determines than automatic shut-off would cause unreasonable risk to health or interfere with fire protection, the system must comply with paragraph (3)(b)(A) of this rule.

(c) The residual disinfectant concentration in the water entering the distribution system, measured as specified in OAR 333-061-0036(5)(a)(E), cannot be less than 0.2 mg/l for more than four hours.

(d) Disinfectant residuals in the distribution system. The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified in OAR 333-061-0036(4)(a)(F), cannot be undetectable in more than 5 percent of the samples each month, for any two consecutive months that the system serves water to the public.

(e) Unfiltered water systems must provide the level of Cryptosporidium inactivation specified in this subsection, based on their mean Cryptosporidium levels, and determined in accordance with subsection (2)(d) of this rule and according to the schedule in subsection (1)(a) of this rule.

(A) Unfiltered systems with a mean Cryptosporidium level of 0.01 oocysts/L or less must provide at least 2-log Cryptosporidium inactivation.

(B) Unfiltered systems with a mean Cryptosporidium level of greater than 0.01 oocysts/L must provide at least 3-log Cryptosporidium inactivation.

(f) Inactivation treatment technology requirements. Unfiltered systems must use chlorine dioxide, ozone, or UV as prescribed by 333-061-0036(5)(c) of these rules to meet the Cryptosporidium inactivation requirements of this section.

(A) Systems that use chlorine dioxide or ozone and fail to achieve the Cryptosporidium inactivation required in subsection (3)(e) of this rule on more than one day in the calendar month are in violation of the treatment technique requirement.

(B) Systems that use UV light and fail to achieve the Cryptosporidium inactivation required in subsection (18)(c) of this rule are in violation of the treatment technique requirement.

(g) Use of two disinfectants. Unfiltered water systems must meet the combined Cryptosporidium inactivation requirements of subsection (3)(e) of this rule, and the Giardia lamblia and virus inactivation requirements of OAR 333-061-0036(5)(c) using a minimum of two disinfectants. Each of the two disinfectants must achieve by itself, the total inactivation required for at least one of the following pathogens: Cryptosporidium, Giardia lamblia, or viruses.

(4) Requirements for systems utilizing surface water or GWUDI sources that provide filtration:

(a) A public water system that uses a surface water source or a groundwater source under the direct influence of surface water, and does not meet all of the criteria in sections (1), (2), and (3) of this rule for avoiding filtration, violates a treatment technique and must provide treatment consisting of both disinfection, as specified in section (5) of this rule, and filtration treatment which complies with the requirements of either subsection (4)(b), (c), (d), or (e) of this rule by June 29, 1993 or within 18 months of the failure to meet the criteria in section (2) of this rule for avoiding filtration, whichever is later. Failure to install a required treatment by the prescribed dates is a violation of the treatment technique requirements.

(b) Conventional filtration treatment or direct filtration. Systems using conventional filtration treatment or direct filtration treatment shall meet the turbidity requirements as specified in OAR 333-0061-0030 (3)(b)(A)(i) and (ii).

(c) Slow sand filtration. Systems using slow sand filtration treatment shall meet the turbidity requirements prescribed in OAR 333-061-0030(3)(b)(B).

(d) Diatomaceous earth filtration. Systems using diatomaceous earth filtration treatment shall meet the turbidity requirements prescribed in OAR 333-061-0030(3)(b)(C).

(e) Other filtration technologies. Systems using other filtration technologies shall meet the turbidity requirements prescribed in OAR 333-061-0030(3)(b)(D).

(A) GWUDI systems using bank filtration as an alternate filtration technology must meet the requirements listed in section (9) of this rule.

(B) Systems using membrane filtration must conduct continuous indirect integrity testing and daily direct integrity testing in accordance with paragraphs 333-061-0050(4)(c)(J) and (K) of these rules.

(f) Cryptosporidium Bin classification for filtered water systems. Following completion of the initial round of source water monitoring required by OAR 333-061-0036(5)(e), filtered water systems must calculate an initial Cryptosporidium bin concentration for each plant for which monitoring was required. Calculation of the bin concentration must be based upon the Cryptosporidium results reported in accordance with OAR 333-061-0036(5)(e), and must comply with paragraphs (4)(f)(A) through (F) of this rule.

(A) For water systems that collect 48 or more samples, the bin concentration is equal to the arithmetic average of all sample concentrations.

(B) For water systems that collect at least 24 samples, but not more than 47 samples, the bin concentration is equal to the highest arithmetic average of all sample concentrations in any 12 consecutive months during which Cryptosporidium samples were collected.

(C) For water systems that serve fewer than 10,000 people and only collect Cryptosporidium samples for 12 months, i.e., collect 24 samples in 12 months, the bin concentration is equal to the arithmetic average of all sample concentrations.

(D) For water systems with plants operating only part of the year, and that monitor fewer than 12 months per year as prescribed by OAR 333-061-0036(5)(e)(E), the bin concentration is equal to the highest arithmetic average of all sample concentrations during any year of Cryptosporidium monitoring.

(E) If the monthly Cryptosporidium sampling frequency varies, water systems must first calculate a monthly average for each month of monitoring. Water systems must then use these monthly average concentrations, rather than individual sample concentrations, in the applicable calculation for bin classification of this subsection.

(F) Filtered water systems must determine their initial bin classification from Table 9 as follows and using the Cryptosporidium bin concentration calculated under subsection (4)(f) of this rule: [Table not included. See ED. NOTE.]

(i) Following completion of the second round of source water monitoring required as prescribed by OAR 333-061-0036(5)(e)(B), filtered water systems must recalculate their Cryptosporidium bin concentration based upon the sample results reported in accordance with OAR 333-061-0036(5)(e)(B) and following the procedures specified in paragraphs (4)(f)(A) through (D) of this rule. Water systems must then re-determine their bin classification using Table 9 in paragraph (4)(f)(F) of this rule. [Table not included. See ED. NOTE.]

(G) Filtered water systems must report their bin classification as prescribed by paragraph (4)(f)(F) of this rule to the Department for approval no later than 6 months after the system is required to complete the initial and second round of source water monitoring based on the schedule in OAR 333-061-0036(4)(e)(C).

(H) The bin classification report to the Department must include a summary of source water monitoring data and the calculation procedure used to determine bin classification. Failure to comply with the conditions of this paragraph is a violation of treatment technique requirements.

(g) Additional Cryptosporidium treatment requirements.

(A) Filtered water systems must provide the level of additional treatment for Cryptosporidium specified in Table 10 based on their bin classification as determined under subsection (4)(f) of this rule, and according to the schedule in paragraph (1)(a)(F) of this rule. [Table not included. See ED. NOTE.](B) Filtered water systems must use one or more of the treatment and management options listed in section (13) of this rule, termed the microbial toolbox, to comply with the additional Cryptosporidium treatment required by paragraph (4)(g)(A) of this rule.

(C) Systems classified in Bin 3 or Bin 4 must achieve at least 1-log of the additional Cryptosporidium treatment, as required by paragraph (4)(g)(A) of this rule, using either one or a combination of the following: bag filters, bank filtration, cartridge filters, chlorine dioxide, membranes, ozone, or UV, as described in sections (14) through (18) of this rule and in OAR 333-061-0036(5)(c).

(i) Failure by a water system, in any month, to achieve the treatment credit required by sections (14) through (18) of this rule and OAR 333-061-0036(5)(c) that is at least equal to the level of treatment required by paragraph (4)(g)(A) of this rule, is a violation of treatment technique requirements.

(ii) If the Department determines during a sanitary survey or equivalent source water assessment, that after a system completed the monitoring conducted as required by OAR 333-061-0036(5)(e)(A) or (B), significant changes occurred in the system's watershed that could lead to increased contamination of the source water by Cryptosporidium, the system must take action as specified by the Department to address the contamination. These actions may include additional source water monitoring and/or implementing microbial toolbox options specified in section (13) of this rule.

(5) Disinfection requirements for systems utilizing surface water or GWUDI sources with filtration:

(a) The disinfection treatment must be sufficient to ensure that the total treatment processes of that system achieve at least 99.9 percent (3-log) inactivation and/or removal of Giardia lamblia cysts and at least 99.99 percent (4-log) inactivation and/or removal of viruses as determined by the Department.

(b) The residual disinfectant concentration in the water entering the distribution system, measured as specified in OAR 333-061-0036(5)(b)(B), cannot be less than 0.2 mg/l for more than 4 hours.

(c) The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified is OAR 333-061-0036(5)(b)(C) cannot be undetectable in more than 5 percent of the samples each month, for any two consecutive months that the system serves water to the public.

(6) Requirements for groundwater systems with significant deficiencies or source water fecal contamination. The requirements of subsections (6)(a) through (6)(i) of this rule take effect on December 1, 2009.

(a) Groundwater systems must meet the treatment technique requirements of this rule when a significant deficiency is identified, or when a groundwater source sample collected as prescribed in OAR 333-061-0036(6)(s) is E. coli-positive.

(b) Groundwater systems with a groundwater source sample collected in accordance with OAR 333-061-0036(6)(r), (t), or (w) that is E. coli -positive must comply with the treatment technique requirements of this section.

(c) When a significant deficiency is identified at a public water system that uses both groundwater and surface water or groundwater under the direct influence of surface water, the system must comply with provisions of this section except in cases where the Department determines that the significant deficiency is in a portion of the distribution system that is served solely by surface water or groundwater under the direct influence of surface water.

(d) Groundwater systems must consult with the Department regarding the appropriate corrective action within 30 days of receiving written notice from the Department of a significant deficiency, written notice from a laboratory that a groundwater source sample collected in accordance with OAR 333-061-0036(6)(s) was found to be E. coli -positive, or direction from the Department that an E. coli -positive collected in accordance with OAR 333-061-0036(6)(r), (u)(A), or (w)requires corrective action.

(e) Within 120 days (or earlier if directed by the Department) of receiving written notification from the Department of a significant deficiency, written notice from a laboratory that a groundwater source sample collected in accordance with OAR 333-061-0036(6)(s) was found to be E. coli -positive, or direction from the Department that a E. coli -positive sample collected in accordance with OAR 333-061-036(6)(r), (t), or (w) requires corrective action, the groundwater system must either:

(A) Have completed corrective action in accordance with applicable Department plan review processes or other Department guidance, including any Department-specified interim measures; or

(B) Be in compliance with a Department-approved corrective action plan and schedule subject to the following conditions:

(i) Any subsequent modifications to an approved corrective action plan and schedule must be approved by the Department; and

(ii) If the Department specifies interim measures for protection of the public health pending Department approval of the corrective action plan and schedule, or pending completion of the corrective action plan, the system must comply with these interim measures as well as with any schedule specified by the Department.

(f) Groundwater systems that meet the conditions of subsections (6)(a) or (6)(b) of this rule must implement one or more of the following corrective action alternatives:

(A) Correct all significant deficiencies;

(B) Provide an alternate source of water;

(C) Eliminate the source of contamination; or

(D) Provide treatment that reliably achieves at least 4-log inactivation, removal, or a combination of inactivation and removal of viruses before or at the first customer, for the groundwater source.

(g) A groundwater system with a significant deficiency is in violation of treatment technique requirements if, within 120 days (or earlier if directed by the Department) of receiving written notice from the Department of the significant deficiency, the water system:

(A) Does not complete corrective action in accordance with applicable Department plan review processes or other Department guidance, including Department specified interim actions and measures; or

(B) Is not in compliance with a Department-approved corrective action plan and schedule.

(h) A groundwater system receiving notification of an E. coli -positive groundwater source sample (unless the Department invalidates the sample in accordance with OAR 333-061-0036(6)(x)) is in violation of treatment technique requirements if, within 120 days (or earlier if directed by the Department), the system:

(A) Does not complete corrective action in accordance with any applicable Department plan review processes or other Department guidance, including Department-specified interim actions and measures; or

(B) Is not in compliance with a Department-approved corrective action plan and schedule.

(i) A groundwater system, subject to the requirements of subsection (7)(b) of this rule, that fails to maintain at least 4-log treatment of viruses (using inactivation, removal, or a Department-approved combination of 4-log virus inactivation and removal) before or at the first customer for a groundwater source is in violation of treatment technique requirements if the failure is not corrected within four hours of determining the system is not maintaining at least 4-log treatment of viruses before or at the first customer.

(j) Systems using ground water sources shall provide continuous disinfection as prescribed in OAR 333-061-0050(5) under the following conditions:

(A) When there are consistent violations of the total coliform rule attributed to source water quality;

(B) When a potential health hazard exists as determined by the Department.

(7) Compliance monitoring requirements for groundwater systems that provide at least 4-log treatment of viruses. Water systems must comply with the requirements of (7)(a) through (7)(c) of this rule beginning on December 1, 2009.

(a) A groundwater system that is not required to meet the source water monitoring requirements of 333-061-0036(6)(r) through 333-061-0036(6)(u) of these rules, because it provides at least 4-log treatment of viruses (using inactivation, removal, or a Department-approved combination of 4-log virus inactivation and removal) before or at the first customer for any groundwater source, must comply with the requirements of this subsection by December 1, 2009 or within 30 days of placing the groundwater source in service, whichever is later.

(A) The water system must notify the Department in writing, that it provides at least 4-log treatment of viruses (using inactivation, removal, or a Department-approved combination of 4-log virus inactivation and removal) before or at the first customer for the groundwater source. Notification to the Department must include engineering, operational, or other information that the Department requests to evaluate the submission.

(B) The system must conduct compliance monitoring as required by subsection (7)(b) of this rule.

(C) The system must conduct groundwater source monitoring under OAR 333-061-0036(6) if the system subsequently discontinues 4-log treatment of viruses (using inactivation, removal, or a Department-approved combination of 4-log virus inactivation and removal)before or at the first customer for the groundwater source.

(b) Monitoring requirements. A groundwater system subject to the requirements of section (6) or subsection (7)(a) of this rule must monitor the effectiveness and reliability of treatment for that groundwater source before or at the first customer as follows:

(A) Chemical Disinfection:

(i) Groundwater systems serving greater than 3,300 people must continuously monitor the residual disinfectant concentration using analytical methods as specified in OAR 333-061-0036(1), at a location approved by the Department, and must record the lowest residual disinfectant concentration each day that water from the groundwater source is served to the public. The groundwater system must maintain the Department-determined residual disinfectant concentration every day the groundwater system serves water from the groundwater source to the public. If there is a failure in the continuous monitoring equipment, the groundwater system must conduct grab sampling every four hours until the continuous monitoring equipment is returned to service. The system must resume continuous residual disinfectant monitoring within 14 days.

(ii) Groundwater systems serving 3,300 or fewer people must monitor the residual disinfectant concentration using analytical methods as spec-

ified in OAR 333-061-0036(1), at a location approved by the Department, and record the residual disinfection concentration each day that water from the groundwater source is served to the public. The groundwater system must maintain the Department-determined residual disinfectant concentration every day the groundwater system serves water from the groundwater source to the public. The groundwater system must take a daily grab sample during the hour of peak flow or at another time specified by the Department. If any daily grab sample measurement falls below the Department-determined residual disinfectant concentration, the groundwater system must take follow-up samples every four hours until the residual disinfectant concentration is restored to the Department-determined level. Alternately, a groundwater system that serves 3,300 or fewer people may monitor continuously and meet the requirements of paragraph (7)(b)(A)(i) of this rule.

(B) Membrane filtration. A groundwater system that uses membrane filtration to achieve at least 4-log removal of viruses must monitor the membrane filtration process in accordance with all Department-specified monitoring and compliance requirements. A groundwater system that uses membrane filtration is in compliance with the requirement to achieve at least 4-log removal of viruses when:

(i) The membrane has an absolute molecular weight cut-off (MWCO), or an alternate parameter describing the exclusion characteristics of the membrane, that can reliably achieve at least 4-log removal of viruses;

(ii) The membrane process is operated in accordance with Department-specified compliance requirements; and

(iii) The integrity of the membrane is intact as verified per OAR 333-061-0050(4)(c)(J).

(C) Alternative treatment. A groundwater system that uses a Department-approved alternative treatment to provide at least 4-log treatment of viruses (using inactivation, removal, or a Department-approved combination of 4-log virus inactivation and removal) before or at the first customer must:

(i) Monitor the alternative treatment in accordance with all Department-specified monitoring requirements; and

(ii) Operate the alternative treatment in accordance with all compliance requirements that the Department determines to be necessary to achieve at least 4-log treatment of viruses.

(c) Discontinuing treatment. A groundwater system may discontinue 4-log treatment of viruses (using inactivation, removal, or a Department-approved combination of 4-log virus inactivation and removal)before or at the first customer for a groundwater source if the Department determines, and documents in writing, that 4-log treatment of viruses is no longer necessary for that groundwater source. A system that discontinues 4-log treatment of viruses is subject to the source water monitoring requirements of OAR 333-061-0036(6).

(8) Determination of groundwater under the direct influence of surface water (GWUDI).

(a) Except as listed in (8)(b) of this rule, all Public Water Systems using groundwater as a source of drinking water must evaluate their source(s) for the potential of direct influence of surface water if the source(s) is:

(A) In proximity to perennial or intermittent surface water, the source meets one of the distance-hydrogeologic setting criteria outlined below as specified by the Source Water Assessment or other Department-approved hydrogeologic study:

(i) 500 feet within a fractured bedrock or layered volcanic aquifer;

(ii) 200 feet within a coarse sand, gravel and boulder aquifer;

(iii) 100 feet within a sand and gravel aquifer;

(iv) 75 feet within a sand aquifer;

(v) Greater distances if geologic conditions or historical monitoring data indicate additional risk and the source.

(B) Has a confirmed or suspected history of coliform bacteria in the source; or

(C) Through the Source Water Assessment the source has been determined by the Department to be highly sensitive as a result of aquifer characteristics, vadose zone characteristics, monitoring history or well construction.

(b) Notwithstanding the requirement given in subsection (8)(a) of this rule, systems that derive their water from wells using a hand pump only are not subject to this rule.

(c) Groundwater sources that meet one of the criteria in paragraph (8)(a)(A) of this rule and meet either the criteria in paragraphs (8)(a)(B) or (C) in this rule, must begin raw water (before treatment) coliform sampling of their drinking water source.

(d) Raw water samples must be collected monthly for a period not to exceed 12 months.

(e) Samples shall be marked as "special" and cannot be used in lieu of sampling required for routine coliform monitoring within the distribution system (after treatment). Nor can samples collected to satisfy routine coliform monitoring requirements be used to satisfy the requirements of this rule.

(f) If a raw water sample is reported as fecal or E. coli positive, then the system must collect five (5) additional raw water special samples within 24 hours of receiving notification from the laboratory.

(g) If any of the five (5) additional special samples are fecal or E. coli positive then the original fecal or E. coli positive is considered confirmed and the system must have the raw water analyzed for surface water indicators using the microscopic particulate analysis (MPA) method described in subsection (8)(o) of this rule. Systems whose raw water samples are consistently total coliform positive may be required to conduct microscopic particulate analyses at the discretion of the Department.

(h) A confirmed fecal or E. coli positive sample from the raw water in an otherwise treated water system is not considered a violation of the coliform MCL and is not subject to the public notice or direct laboratory reporting requirements.

(i) If a water system experiences a confirmed fecal or E. coli positive test result of their raw water, no further monthly raw water testing is required.

(j) Sources may be re-evaluated if geologic conditions or water quality trends change over time, as determined by the Department.

(k) Sources that have been determined by the Source Water Assessment as not susceptible to being under the direct surface water influence are considered groundwater and do not need further evaluation.

(l) Public water systems that are required to evaluate their source(s) for direct influence of surface water may submit results of a hydrogeological assessment to demonstrate that the source is not potentially under the direct influence of surface water. The assessment must be consistent with the Oregon State Board of Geologist Examiners "Hydrology Report Guidelines," shall be completed within a time frame specified by the Department and shall include the following:

(A) Well characteristics: well depth, screened or perforated interval, casing seal placement;

(B) Aquifer characteristics: thickness of the vadose zone, hydraulic conductivity of the vadose zone and the aquifer, presence of low permeability zones in the vadose zone, degree of connection between the aquifer and surface water;

(C) Hydraulic gradient: gradient between the aquifer and surface water source during pumping conditions, variation of static water level and surface water level with time;

(D) Groundwater flow: flow of water from the surface water source to the groundwater source during pumping conditions, estimated time-of-travel for groundwater from the surface water source to the well(s), spring(s), etc.; and

(E) The hydrogeologic assessment must be completed by an Oregon registered geologist or other licensed professional with demonstrated experience and competence in hydrogeology in accordance with ORS 672.505 through 672.705.

(m) Emergency groundwater sources that meet the criteria of subsection (a) of this section can either be evaluated as prescribed in subsection (8)(c) of this rule, or the evaluation can be waived if a Tier 2 public notice prescribed in 333-061-0042 is issued each time the source is used. The notice must explain that the source has been identified as potentially under the direct influence of surface water, but has not been fully evaluated, and therefore may not be treated sufficiently to inactivate pathogens such as Giardia lamblia or Cryptosporidium.

(n) Water systems that derive their water from a confined aquifer and have been determined to be potentially under the direct influence of surface water solely as a result of inadequate well construction under paragraph (8)(a)(B) of this rule may choose to reconstruct their source according to construction standards as prescribed in OAR 333-061-0050.

(o) Water system sources that have been determined to be potentially under the direct influence of surface water must conduct a minimum of two Microscopic Particulate Analyses (MPAs) according to the "Consensus Method for Determining Groundwaters under the Direct Influence of Surface Water Using Microscopic Particulate Analysis (MPA)". Both Samples are to be taken during a period of high runoff or streamflow, separated by a period of at least four weeks, or at other times as determined by the Department.

(p) Scoring of MPAs shall be partially modified from the "Consensus Method" according to Table 11. Scoring for Giardia, coccidia, rotifers, and plant debris remains unchanged. [Table not included. See ED. NOTE.]

(q) Determinations of water system source classification based on MPAs are made as follows:

(A) If all MPAs have a risk score of less than 10, the water system source is classified as groundwater;

(B) If any MPA risk score is greater than 19, or two or more are greater than 14, the water system source is classified as under the direct influence of surface water;

(C) If at least one MPA risk score is between 10 and 19 or both are between 10 and 15, an additional set of two MPAs must be taken. Determinations are made as follows:

(i) If four or all MPA risk scores are less than 15, the water system source is classified as groundwater; and

(ii) If two or more MPA risk scores are greater than 14, or one or more is greater than 19, the water system source is classified as under the direct influence of surface water;

(iii) Two additional MPAs must be taken if only one of four MPA risk scores is greater than 14. Scores will be evaluated according to subsection (8)(o) and (p) of this rule, or by further evaluation by the Department.

(r) If an infiltration gallery, Ranney well, or dug well has been determined to be classified as groundwater under this rule, the turbidity of the source must be monitored and recorded daily and kept by the water system operator. If the turbidity exceeds 5 NTU or if the surface water body changes course such that risk to the groundwater source is increased, an MPA must be taken at that time. Re-evaluation may be required by the Department.

(s) The Department can determine a groundwater source to be under the direct influence of surface water if the criteria in subsection (8)(a) of this rule are true and there are significant or relatively rapid shifts in groundwater characteristics, such as turbidity, which closely correlate to changes in weather or surface water conditions.

(t) If geologic conditions, water quality trends, or other indicators change, the Department can require re-evaluation, as detailed in this section, of a source despite any data previously collected or any determination previously made.

(u) The Department may determine that a source is not under direct influence of surface water based on criteria other than MPAs including the Source Water Assessment, source water protection, and other water quality parameters. The determinations shall be based on the criteria indicating that the water source has a very low susceptibility to contamination by parasites, including Giardia and Cryptosporidium. The Department may impose additional monitoring or disinfection treatment requirements to ensure that the risk remains low.

(9) Requirements for groundwater sources under the direct influence of surface water seeking alternative filtration credit through bank filtration:

(a) Water systems with all MPA risk scores less than 30 may choose the option to evaluate for bank filtration credit. The water system must conduct a demonstration of performance study that includes an assessment of the ability of the local hydrogeologic setting to provide a minimum of 2-log reduction in the number of particles and microorganisms in the Giardia and Cryptosporidium size range between surface water and the groundwater source. The bank filtration study must include the following elements or other Department approved methods:

(A) The bank filtration study must involve the collection of data on removal of biological surrogates and particles in the Cryptosporidium size range of 2 – 5 microns or other surrogates approved by the Department, and related hydrogeologic and water quality parameters during the full range of operating conditions. The demonstration study methods shall be reviewed and approved by the Department prior to implementation. Final assessment of removal credit granted to the well shall be made by the Department based on the study results.

(b) If a GWUDI system using bank filtration as an alternative filtration technology violates the MCL for turbidity specified in OAR 333-061-0030(3)(b)(D), the water system must investigate the cause of the high turbidity within 24 hours of the exceedance. Pending the results of the investigation by the water system, the Department may require a new bank filtration study.

(10) Disinfection Byproduct Control Requirements:

(a) This rule establishes criteria under which community water systems and Non-transient, Non-community water systems which add a chemical disinfectant to the water in any part of the drinking water treatment process must modify their practices to meet MCLs and MRDLs in OAR 333-061-0030 and 0031, respectively. This rule also establishes the treatment technique requirements for disinfection byproduct precursors. This rule establishes criteria under which transient non-community water systems that use chlorine dioxide as a disinfectant or oxidant must modify their practices to meet the MRDL for chlorine dioxide as specified in OAR 333-061-0031.

(b) Compliance dates.

(A) Community and Non-transient Non-community water systems serving at least 10,000 people using surface water or groundwater under the direct influence of surface water must comply with the treatment technique requirements of this rule as well as monitoring and maximum contaminants requirements for disinfection byproduct control as specified in OAR 333-061-0030 and 0036, respectively beginning January 1, 2002. Those systems serving fewer than 10,000 people using surface water or groundwater under the direct influence of surface water and those systems using only groundwater not under the direct influence of surface water must comply with the rules identified in this paragraph beginning January 1, 2004.

(B) Transient non-community water systems serving at least 10,000 people using surface water or groundwater under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the requirements for chlorine dioxide in this rule and OAR 333-061-0030 and 0036 beginning January 1, 2002. Those systems serving fewer than 10,000 persons using surface water or groundwater under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant and systems using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the requirements for chlorine dioxide in this rule and OAR 333-061-0030 and 0036 beginning January 1, 2004.

(c) Water systems may increase residual disinfectant levels in the distribution system of chlorine or chloramines (but not chlorine dioxide) to a level and for a time necessary to protect public health, to address specific microbiological contamination problems caused by circumstances such as, but not limited to, distribution line breaks, storm run-off events, source water contamination events, or cross connection events.

(d) Treatment technique for control of disinfection by-product precursors. Community and Non-transient Non-community water systems using conventional filtration treatment must operate with enhanced coagulation or enhanced softening to achieve the total organic carbon (TOC) percent removal levels specified in subsection (10)(e) of this rule unless the system meets at least one of the alternative compliance criteria listed in paragraph (9)(d)(A) or (9)(d)(B) of this rule.

(A) Alternative compliance criteria for enhanced coagulation and enhanced softening systems. Water systems may use the alternative compliance criteria in paragraphs (9)(d)(A)(i) through (vi) of this rule in lieu of complying with the performance criteria specified in subsection (e) of this section. Systems must still comply with monitoring requirements specified in OAR 333-061-0036(4)(n).

(i) The system's source water TOC level is less than 2.0 mg/L, calculated quarterly as a running annual average.

(ii) The system's treated water TOC level is less than 2.0 mg/L, calculated quarterly as a running annual average.

(iii) The system's source water TOC is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity is greater than 60 mg/L (as CaCO3 calculated quarterly as a running annual average; and either the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or prior to the effective date for compliance, the system has made a clear and irrevocable financial commitment not later than the effective date for compliance in this rule to use of technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. Systems must submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the Department for approval not later than the effective date for compliance in this rule. These technologies must be installed and operating not later than June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule will constitute a violation of National Primary Drinking Water Regulations.

(iv) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(v) The system's source water SUVA, prior to any treatment and measured monthly is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(vi) The system's finished water SUVA, measured monthly is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(B) Additional alternative compliance criteria for softening systems. Systems practicing enhanced softening that cannot achieve the TOC removals required by paragraph (9)(e)(B) of this rule may use the alternative compliance criteria in paragraphs (9)(d)(B)(i) and (ii) of this rule in lieu of complying with subsection (9)(e) of this rule. Systems must still comply with monitoring requirements in specified in OAR 333-061-0036(4)(n).

(i) Softening that results in lowering the treated water alkalinity to less than 60 mg/L (as CaCO3), measured monthly and calculated quarterly as a running annual average.

(ii) Softening that results in removing at least 10 mg/L of magnesium hardness (as CaCO3), measured monthly and calculated quarterly as an annual running average.

(e) Enhanced coagulation and enhanced softening performance requirements.

(A) Systems must achieve the percent reduction of TOC specified in paragraph (9)(e)(B) in this rule between the source water and the combined filter effluent, unless the Department approves a system's request for alternate minimum TOC removal (Step 2) requirements under paragraph (9)(e)(C) of this rule.

(B) Required Step 1 TOC reductions, specified in Table 12, are based upon specified source water parameters. Systems practicing softening are required to meet the Step 1 TOC reductions in the far-right column (Source water alkalinity >120 mg/L) for the specified source water TOC: [Table not included. See ED. NOTE.]

(C) Water systems that cannot achieve the Step 1 TOC removals required by paragraph (9)(e)(B) of this rule due to water quality parameters or operational constraints must apply to the Department, within three months of failure to achieve the TOC removals required by paragraph (9)(e)(B) of this rule, for approval of alternative minimum TOC (Step 2) removal requirements submitted by the water system. If the Department approves the alternative minimum TOC removal (Step 2) requirements, the Department may make those requirements retroactive for the purposes of determining compliance. Until the Department approves the alternate minimum TOC removal (Step 2) requirements, the water system must meet the Step 1 TOC removals contained in paragraph (9)(e)(B) of this rule.

(D) Alternate minimum TOC removal (Step 2) requirements. Applications made to the Department by enhanced coagulation systems for approval of alternative minimum TOC removal (Step 2) requirements under paragraph (9)(e)(C) of this rule must include, as a minimum, results of bench-scale or pilot-scale testing conducted under paragraph (9)(e)(D)(i) of this rule. The submitted bench-scale or pilot scale testing must be used to determine the alternate enhanced coagulation level.

(i) Alternate enhanced coagulation level is defined as coagulation at a coagulant dose and pH as determined by the method described in paragraphs (9)(e)(D)(i) through (v) of this rule such that an incremental addition of 10 mg/L of alum (or equivalent amount of ferric salt) results in a TOC removal of less than or equal to 0.3 mg/ L. The percent removal of TOC at this point on the "TOC removal versus coagulant dose" curve is then defined as the minimum TOC removal required for the system. Once approved by the Department, this minimum requirement supersedes the minimum TOC removal required by the Table 12 in paragraph (9)(e)(B) of this rule. This requirement will be effective until such time as the Department approves a new value based on the results of a new bench-scale and pilot-scale test. Failure to achieve Department-set alternative minimum TOC removal levels is a violation. [Table not included. See ED. NOTE.]

(ii) Bench-scale or pilot-scale testing of enhanced coagulation must be conducted by using representative water samples and adding 10 mg/L increments of alum (or equivalent amounts of ferric salt) until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH as specified in Table 13: [Table not included. See ED. NOTE.]

(iii) For waters with alkalinities of less than 60 mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below 5.5 before significant TOC removal occurs, the system must add necessary chemicals to maintain the pH between 5.3 and 5.7 in samples until the TOC removal of 0.3 mg/L per 10 mg/L alum added (or equivalent addition of iron coagulant) is reached.

(iv) The system may operate at any coagulant dose or pH necessary, consistent with these rules to achieve the minimum TOC percent removal approved under paragraph (9)(e)(C) of this rule.

(v) If the TOC removal is consistently less than 0.3 mg/L of TOC per 10 mg/L of incremental alum dose at all dosages of alum (or equivalent addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The water system may then apply to the Department for a waiver of enhanced coagulation requirements.

(f) Compliance calculations.

(A) Water systems other than those identified in paragraphs (9)(d)(A) or (d)(B) of this rule must comply with requirements contained in paragraph (9)(e)(B) or (C) of this rule. Systems must calculate compliance quarterly, beginning after the system has collected 12 months of data, by determining an annual average using the following method:

(i) Determine actual monthly TOC percent removal, equal to: {1-(treated water TOC/source water TOC)}x100

(ii) Determine the required monthly TOC percent removal (from either Table 9 in paragraph (12)(e)(B) of this rule or from paragraph (9)(e)(C) of this rule). [Table not included. See ED. NOTE.]

(iii) Divide the value in paragraph (9)(f)(A)(i) of this rule by the value in paragraph (9)(f)(A)(ii) of this rule.

(iv) Add together the results of paragraph (9)(f)(A)(iii) of this rule for the last 12 months and divide by 12.

(v) If the value calculated in paragraph (9)(f)(A)(iv) of this rule is less than 1.00, the water system is not in compliance with the TOC percent removal requirements.

(B) Water systems may use the provisions in paragraphs (9)(f)(B)(i) through (v) of this rule in lieu of the calculations in paragraph (9)(f)(A)(i) through (v) of this rule to determine compliance with TOC percent removal requirements.

(i) In any month that the water system's treated or source water TOC level is less than 2.0 mg/L, the water system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (9)(f)(A)(iii) of this rule) when calculating compliance under the provisions of paragraph (9)(f)(A) of this rule.

(ii) In any month that a system practicing softening removes at least 10 mg/L of magnesium hardness (as CaCO3), the water system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (9)(f)(A)(iii) of this rule) when calculating compliance under the provisions of paragraph (9)(f)(A) of this rule.

(iii) In any month that the water system's source water SUVA, prior to any treatment is less than or equal to 2.0 L/mg-m, the water system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (9)(f)(A)(iii) of this rule) when calculating compliance under the provisions of paragraph (9)(f)(A) of this rule.

(iv) In any month that the water system's finished water SUVA is less than or equal to 2.0 L/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (9)(f)(A)(iii) of this rule) when calculating compliance under the provisions of paragraph (9)(f)(A) of this rule.

(v) In any month that a system practicing enhanced softening lowers alkalinity below 60 mg/L (as CaCO3), the water system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (9)(f)(A)(iii) of this rule) when calculating compliance under the provisions of paragraph (9)(f)(A) of this rule.

(C) Water systems using conventional treatment may also comply with the requirements of this section by meeting the criteria in paragraph (9)(d)(A) or (B) of this rule.

(g) Treatment technique requirements for DBP precursors. Treatment techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems are recognized by the Department for water systems using surface water or groundwater under the direct influence of surface water using conventional treatment as enhanced coagulation or enhanced softening.

(11) Requirements for Water Treatment Plant Recycled Water

(a) Any water system using surface water or groundwater under the direct influence of surface water that uses conventional filtration treatment or direct filtration treatment and that recycles spent filter backwash water, thickener, supernatant, or liquids from dewatering processes must meet the requirements of subsections (10)(b) and (c) of this rule and OAR 333-061-0040(2)(i).

(b) A water system must notify the Department in writing by December 8, 2003 if that water system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes. This notification must include, at a minimum, the information specified in paragraphs (10)(b)(A) and (B) of this rule.

(A) A water treatment plant schematic showing the origin of all flows which are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, and liquids from dewatering processes), the hydraulic conveyance used to transport them, and the location where they are re-introduced back into the water treatment plant.

(B) Typical recycle flow in gallons per minute (gpm), the highest observed water treatment plant flow experienced in the previous year (gpm), the design flow for the water treatment plant (gpm), and the operating capacity of the water treatment plant (gpm) that has been determined by the Department where the Department has made such determinations.

(c) Any water system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes must return these flows through the processes of a system's existing conventional filtration treatment plant or direct filtration treatment plant as defined by these rules or at an alternate location approved by the Department by June 8, 2004. If capital improvements are required to modify the recycle location to meet this requirement, all capital improvements must be completed no later than June 8, 2006.

(12) Water systems using uncovered finished water storage facilities must comply with the conditions of either subsections (12)(a) or (b) of this rule for each uncovered finished water storage facility, or be in compliance with a Department-approved schedule to meet these conditions no later than April 1, 2009.

(a) Water systems must cover any uncovered finished water storage facility; or

(b) Treat the discharge from the uncovered finished water storage facility into the distribution system to achieve at least 4-log virus, 3-log Giardia lamblia, and 2-log Cryptosporidium inactivation or removal using a protocol approved by the Department.

(c) Failure to comply with the requirements of this section is a violation of the treatment technique requirement.

(13) Summary and General Requirements of Microbial toolbox options for meeting Cryptosporidium treatment requirements. Filtered water systems are eligible for the treatment credits listed in Table 14 of this section by meeting the conditions for microbial toolbox options described in sections (14) through (18) of this rule and in OAR 333-061-0036(5)(c). Unfiltered water systems are eligible only for the treatment credits specified as inactivation toolbox options in Table 14. Water systems apply these treatment credits to meet the requirements of subsections (2)(d) or (4)(g) of this rule, as applicable. [Table not included. See ED. NOTE.]

(14) Source toolbox components for meeting Cryptosporidium treatment requirements.

(a) Watershed control program. Water systems receive 0.5-log Cryptosporidium treatment credit for implementing a watershed control program that meets the requirements of this subsection.

(A) Water systems must notify the Department of the intent to apply for the watershed control program credit no later than two years prior to the treatment compliance date applicable to the system in subsection (1)(a) of this rule.

(B) Water systems must submit a proposed watershed control plan to the Department no later than one year before the applicable treatment compliance date in subsection (1)(a) of this rule. The Department must approve the watershed control plan for the water system to receive the applicable treatment credit. The watershed control plan must include the following elements:

(i) Identification of an area of influence, outside of which the likelihood of Cryptosporidium or fecal contamination affecting the treatment plant intake is not significant. This is the area to be evaluated in future watershed surveys under paragraph (14)(a)(E)(ii) of this rule;

(ii) Identification of both potential and actual sources of Cryptosporidium contamination, and an assessment of the relative impact of these contamination sources on the water system's source water quality;

(iii) An analysis of the effectiveness and feasibility of control measures that could reduce Cryptosporidium loading from sources of contamination to the system's source water; and

(iv) A statement of goals and specific actions the system will undertake to reduce source water Cryptosporidium levels. The plan must explain how the actions are expected to contribute to specific goals, identify watershed partners and their roles, identify resource requirements and commitments, and include a schedule for plan implementation with deadlines for completing specific actions identified in the plan.

(C) Water Systems with existing watershed control programs are eligible to seek this credit, but must meet the requirements prescribed in paragraph (14)(a)(B) of this rule, and must specify ongoing and future actions that will reduce source water Cryptosporidium levels.

(D) If the Department does not respond to a water system regarding approval of a watershed control plan submitted in accordance with this section, and the system meets the other requirements of this section, the watershed control program will be considered approved and a 0.5 log Cryptosporidium treatment credit will be awarded unless the Department subsequently withdraws such approval.

(E) Water systems must complete the actions specified in this paragraph to maintain the 0.5-log credit.

(i) Water systems must submit an annual watershed control program status report to the Department. The status report must describe the water system's implementation of the approved plan, and assess the adequacy of the plan to meet its goals. It must explain how the water system is addressing any deficiencies in plan implementation, including those previously identified by the Department, or as the result of the watershed survey conducted in accordance with paragraph (14)(a)(E)(ii) of this rule. The watershed control program status report must also describe any significant changes that have occurred in the watershed since the last watershed sanitary survey.

(ii) Water systems must undergo a watershed sanitary survey every three years for community water systems and every five years for non-community water systems and submit the survey report to the Department. The survey must be conducted according to Department guidelines and by persons the Department approves.

(I) The watershed sanitary survey must meet the following criteria: encompass the region identified in the Department approved watershed control plan as the area of influence; assess the implementation of actions to reduce source water Cryptosporidium levels; and identify any significant new sources of Cryptosporidium.

(II) If the Department determines that significant changes may have occurred in the watershed since the previous watershed sanitary survey, water systems must undergo another watershed sanitary survey by a date determined by the Department regardless of the regular date specified in paragraph (14)(a)(E)(ii) of this rule.

(iii) The water system must make the watershed control plan, annual status reports, and watershed sanitary survey reports available to the public upon request. These documents must be in a plain language style and include criteria by which to evaluate the success of the program in achieving plan goals. The Department may approve withholding portions of the annual status report, watershed control plan, and watershed sanitary survey from the public based on water supply security considerations.

(F) If the Department determines that a water system is not implementing the approved watershed control plan, the Department may withdraw the watershed control program treatment credit.

(G) If a water system determines, during implementation, that making a significant change to its approved watershed control program is necessary, the system must notify the Department prior to making any such changes. If any change is likely to reduce the level of source water protection, the system must notify the Department of the actions the water system will take to mitigate this effect.

(b) Alternative source. A water system may conduct source water monitoring that reflects a different intake location (either in the same source or from an alternate source), or a different procedure for the timing or level of withdrawal from the source. If the Department approves, a system may determine its bin classification under subsection (4)(f) of this rule based on the alternative source monitoring results.

(A) If a water system conducts alternative source monitoring as prescribed by this subsection, the water system must also monitor their current plant intake concurrently as prescribed by OAR 333-061-0036(5)(e).

(B) Alternative source monitoring as prescribed by this subsection must meet the requirements for source monitoring to determine bin classification, as described in OAR 333-061-0036(5)(e) and 333-061-0040(1)(m). Water systems must report the alternative source monitoring results to the Department, including supporting information that documents the operating conditions under which the samples were collected.

(C) If a system determines its bin classification according to subsection (4)(f) of this rule using alternative source monitoring results that reflect a different intake location or a different procedure for managing the timing or level of withdrawal from the source, the system must relocate the intake or permanently adopt the withdrawal procedure, as applicable, no later than the applicable treatment compliance date in subsection (1)(a) of this rule.

(15) Pre-filtration treatment toolbox components for meeting Cryptosporidium treatment requirements.

(a) Presedimentation. Systems receive 0.5-log Cryptosporidium treatment credit for a presedimentation basin during any month the process meets the criteria specified in this paragraph:

(A) The presedimentation basin must be in continuous operation, and must treat the entire plant flow taken from a surface water or GWUDI source;

(B) The water system must continuously add a coagulant to the presedimentation basin; and

(C) The presedimentation basin must achieve the performance criteria specified in this paragraph.

(i) The basin must demonstrate at least 0.5-log mean reduction of influent turbidity. This reduction must be determined using daily turbidity measurements of the presedimentation process influent and effluent, and must be calculated as follows: log10(monthly mean of daily influent turbidity)-log10(monthly mean of daily effluent turbidity).

(ii) The basin must also comply with Department-approved performance criteria that demonstrates at least 0.5-log mean removal of micron-sized particulate material through the presedimentation process.

(b) Two-stage lime softening. Systems receive an additional 0.5-log Cryptosporidium treatment credit for a two-stage lime softening plant if chemical addition and hardness precipitation occur in two separate and sequential softening stages prior to filtration. Both softening stages must treat the entire plant flow taken from a surface water or GWUDI source.

(c) Bank filtration. Water systems receive Cryptosporidium treatment credit for bank filtration that serves as pretreatment to a filtration plant by meeting the criteria specified in this section. Water systems using bank filtration when they begin source water monitoring according to OAR 333-061-0036(5)(e) must collect samples as prescribed by OAR 333-061-0036(5)(g) and are not eligible for this credit.

(A) Wells with a groundwater flow path of at least 25 feet receive 0.5-log treatment credit. Wells with a groundwater flow path of at least 50 feet

receive 1.0-log treatment credit. The groundwater flow path must be determined as specified in paragraph (D) of this subsection.

(B) Only wells in granular aquifers are eligible for treatment credit. Granular aquifers are those comprised of sand, clay, silt, rock fragments, pebbles or larger particles, and minor cement. A water system must characterize the aquifer at the well site to determine aquifer properties.

(i) Water systems must extract a core from the aquifer and demonstrate that in at least 90 percent of the core length, grains less than 1.0 mm in diameter constitute at least 10 percent of the core material.

(C) Only horizontal and vertical wells are eligible for treatment credit.

(D) For vertical wells, the groundwater flow path is the measured distance from the edge of the surface water body under high flow conditions (as determined by the 100 year floodplain elevation boundary or by the floodway, as defined in Federal Emergency Management Agency flood hazard maps) to the well screen. For horizontal wells, the groundwater flow path is the measured distance from the bed of the river under normal flow conditions to the closest horizontal well lateral screen.

(E) Water systems must monitor each wellhead for turbidity at least once every four hours while the bank filtration process is in operation. If monthly average turbidity levels, based on daily maximum values in the well, exceed 1 NTU, the system must report this result to the Department and conduct an assessment within 30 days to determine the cause of the high turbidity levels in the well. If the Department determines that microbial removal has been compromised, the Department may revoke treatment credit until the water system implements Department-approved corrective actions to remediate the problem.

(F) Springs and infiltration galleries are not eligible for treatment credit under this section, but are eligible for a treatment credit in accordance with subsection (16)(c) of this rule.

(G) Bank filtration demonstration of performance. The Department may approve Cryptosporidium treatment credit for bank filtration based on a demonstration of performance study that meets the criteria in this paragraph. This treatment credit may be greater than 1.0-log and may be awarded to bank filtration that does not meet the criteria in (15)(c)(A) through (E) of this rule.

(i) The study must follow a Department-approved protocol, and must include the collection of data on the removal of Cryptosporidium or a surrogate for Cryptosporidium and related hydrogeologic and water quality parameters during the full range of operating conditions.

(ii) The study must include sampling from both the production well(s) and monitoring wells that are screened and located along the shortest flow path between the surface water source and the production well(s).

(16) Treatment performance toolbox components for meeting Cryptosporidium treatment requirements.

(a) Combined filter performance. Water systems using conventional filtration treatment or direct filtration treatment receive an additional 0.5-log Cryptosporidium treatment credit during any month that the water system meets the criteria in this subsection. Combined filter effluent (CFE) turbidity must be less than or equal to 0.15 NTU in at least 95 percent of the measurements. Turbidity must be measured as described in OAR 333-061-0036(5)(a)(B).

(b) Individual filter performance. Water systems using conventional filtration treatment or direct filtration treatment receive 0.5-log Cryptosporidium treatment credit, which can be in addition to the 0.5-log credit under subsection (16)(a) of this rule, during any month the system meets the criteria in this subsection. Compliance with this criteria must be based on individual filter turbidity monitoring as described in OAR 333-061-0036(5)(d).

(A) The filtered water turbidity for each individual filter must be less than or equal to 0.15 NTU in at least 95 percent of the measurements recorded each month.

(B) No individual filter may have a measured turbidity greater than 0.3 NTU in two consecutive measurements taken 15 minutes apart.

(C) Any system that has received treatment credit for individual filter performance and fails to meet the requirements of paragraphs (16)(b)(A) or (B) of this rule, during any month, is in violation of treatment technique requirements as prescribed by subsection (4)(g) of this rule unless the Department determines the following:

(i) The failure was due to unusual and short-term circumstances that could not reasonably be prevented through optimizing treatment plant design, operation, or maintenance; and

(ii) The system has experienced no more than two such failures in any calendar year.

(c) Demonstration of performance. The Department may approve Cryptosporidium treatment credit for water treatment processes based on a demonstration of performance study that meets the criteria in this subsection. This treatment credit may be greater than or less than the prescribed treatment credits in subsection (4)(g) or sections (15) through (18) of this rule and may be awarded to treatment processes that do not meet the criteria for the prescribed credits.

(A) Water systems cannot receive the prescribed treatment credit for any toolbox option in sections (15) through (18) of this rule, if that toolbox option is included in a demonstration of performance study for which treatment credit is awarded under this subsection.

(B) The demonstration of performance study must follow a Department-approved protocol, and must demonstrate the level of Cryptosporidium reduction achieved by the treatment process under the full range of expected operating conditions for the water system.

(C) Approval by the Department must be in writing, and may include monitoring and treatment performance criteria that the system must demonstrate and report on an ongoing basis to remain eligible for the treatment credit. The Department may require such criteria where necessary to verify that the conditions under which the demonstration of performance credit was approved are maintained during routine operation.

(17) Additional filtration toolbox components for meeting Cryptosporidium treatment requirements.

(a) Bag and cartridge filters. Systems receive Cryptosporidium treatment credit of up to 2.0-log for individual bag or cartridge filters and up to 2.5-log for bag or cartridge filters operated in series by meeting the requirements in OAR 333-061-0050(4)(c)(L). To be eligible for this credit, water systems must report to the Department, the results of challenge testing conducted in accordance with OAR 333-061-0050(4)(c)(L). The filters must treat the entire plant flow.

(b) Membrane filtration. Systems receive Cryptosporidium treatment credit for membrane filtration that meets the requirements of this paragraph. Membrane cartridge filters that meet the definition of membrane filtration in OAR 333-061-0020(115) are eligible for this credit. The level of treatment credit a system receives is equal to the lower of the values determined under OAR 333-061-0050(4)(c)(H)(i) and (ii).

(c) Second stage filtration. Water systems receive 0.5-log Cryptosporidium treatment credit for a separate second stage of Department-approved filtration that consists of sand, dual media, GAC, or other fine grain media following granular media filtration. To be eligible for this credit, the first stage of filtration must be preceded by a coagulation step and, both filtration stages must treat the entire plant flow taken from a surface water or GWUDI source. The Department must assign the treatment credit based on an assessment of the design characteristics of the filtration process. A cap (added layer of filter media), such as GAC, on a single stage of filtration is not eligible for this credit.

(d) Slow sand filtration (as secondary filter). Water systems are eligible to receive 2.5-log Cryptosporidium treatment credit for a slow sand filtration process that follows a separate stage of filtration if both filtration stages treat the entire plant flow taken from a surface water or GWUDI source, and no disinfectant residual is present in the influent water to the slow sand filtration process. The Department must assign the treatment credit based on an assessment of the design characteristics of the filtration process. This subsection does not apply to treatment credit awarded to slow sand filtration used as a primary filtration process.

(18) Inactivation toolbox components for meeting Cryptosporidium treatment requirements.

(a) If Chlorine Dioxide is used, CT values in Table 35 must be met. [Table not included. See ED. NOTE.]

(b) If Ozone is used, CT values in Table 36 must be met. [Table not included. See ED. NOTE.]

(c) To receive treatment credit for UV light, water systems must treat at least 95 percent of the water delivered to the public during each month by UV reactors operating within validated conditions for the required UV dose, as prescribed by OAR 333-061-0036(5)(c)(D) and 333-061-0050(5)(k)(I). Systems must demonstrate compliance with this condition by the monitoring required in OAR 333-061-0036(5)(c)(D)(ii). [ED. NOTE: Tables referenced are available from the agency.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 431 & 448
Stats. Implemented: ORS 431.110, 431.150, 448.175 & 448.273
Hist.: HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 7-1992, f. & cert. ef. 6-9-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 7-2000, f. 7-1-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 2-2008, f. & cert. ef. 2-15-08; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0034
Treatment Requirements and Performance Standards for Corrosion Control

(1) General requirements:

(a) All Community and Non-Transient Non-Community water systems required to provide corrosion control shall install and operate optimal corrosion control treatment.

(b) Any water system that complies with the applicable corrosion control treatment requirements specified by the Department under sections (2) and (3) of this rule shall be deemed in compliance with the treatment requirement contained in subsection (1)(a) of this rule.

(c) Any system exceeding the lead or copper action level shall implement all applicable source water treatment requirements specified by the Department under section (4) of this rule.

(d) Any system exceeding the lead action level shall implement the public education requirements contained in section (5) of this rule.

(e) Tap water monitoring for lead and copper, monitoring for water quality parameters, source water monitoring for lead and copper, and analyses of the monitoring results shall be completed in accordance with OAR 333-061-0036(1)(a) and 333-061-0036(2)(d).

(f) Systems shall report to the Department all required treatment provision information and maintain appropriate records as prescribed in OAR 333-061-0034 and 0040.

(g) Failure to comply with the applicable requirements prescribed in these rules, shall constitute a violation of the national primary drinking water regulations for lead and/or copper.

(2) Systems shall complete the corrosion control treatment requirements as prescribed in section (3) of this rule as follows:

(a) Large systems (serving >50,000 persons) shall complete the following corrosion control treatment steps, unless it is deemed to have optimized corrosion control as prescribed in paragraphs (d)(B) or (d)(C) of this section:

(A) Systems shall conduct initial tap and water quality parameter monitoring for two consecutive six-month periods as prescribed in OAR 333-061-0036(2)(d)(D)(i) and (F) beginning January 1, 1992;

(B) Systems shall complete corrosion control studies prescribed in subsection (3)(c) of this rule by July 1, 1994;

(C) The Department shall designate optimal corrosion control treatment as prescribed in subsection (3)(i) of this rule by January 1, 1995;

(D) Systems shall install optimal corrosion control treatment as prescribed in subsection (3)(k) of this rule by January 1, 1997;

(E) Systems shall complete follow-up sampling as prescribed in OAR 333-061-0036(2)(d)(D)(ii) and (F)(iv) by January 1, 1998;

(F) The Department shall review installation of treatment and designate optimal water quality control parameters as prescribed in subsection (3)(l) of this rule by July 1, 1998.

(G) Systems shall operate in compliance with the Department-specified optimal water quality control parameters as prescribed in subsection (3)(m) of this rule and continue to conduct tap sampling.

(b) Medium systems (serving 3,301 to 50,000 persons) shall complete the following corrosion control treatment steps, unless it is deemed to have optimized corrosion control under paragraph (d)(A),(d)(B), or (d)(C) of this section:

(A) Systems shall conduct initial tap sampling beginning July 1,1992 until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring under OAR 333-061-0036(e)(D)(iv). A system exceeding the lead or copper action level shall recommend optimal corrosion control treatment within six months after the end of the monitoring period during which it exceeds one of the action levels.

(B) Within 12 months after the end of the monitoring period during which a system exceeds the lead or copper action level, the Department may require the system to perform corrosion control studies. If the Department does not require the system to perform such studies, the Department shall specify optimal corrosion control treatment within the following time frames:

(i) For medium systems, within 18 months after the end of the monitoring period during which such system exceeds the lead or copper action level;

(ii) For small systems, within 24 months after the end of the monitoring period during which such system exceeds the lead or copper action level.

(C) If the Department requires a system to perform corrosion control studies under paragraph (2)(b)(B) of this rule, the system shall complete the studies within 18 months after the Department requires that such studies be conducted.

(D) If the system has performed corrosion control studies under paragraph (2)(b)(B) of this rule, the Department shall designate optimal corrosion control treatment within 6 months after completion of paragraph (2)(b)(C) of this rule.

(E) Systems shall install optimal corrosion control treatment within 24 months after the Department designates such treatment.

(F) Systems shall complete follow-up sampling within 36 months after the Department designates optimal corrosion control treatment.

(G) The Department shall review the system's installation of treatment and designate optimal water quality control parameters within 6 months after completion of follow-up sampling.

(H) Systems shall operate in compliance with the Department-designated optimal water quality control parameters and continue to conduct tap sampling.

(c) Small systems (serving 3,300 or less persons) shall complete the corrosion control treatment steps prescribed in subsection (2)(b) of this rule, unless it is deemed to have optimized corrosion control under paragraphs (d)(A),(d)(B), or (d)(C) of this section. Small systems shall conduct initial tap sampling beginning July 1, 1993.

(d) A system is deemed to have optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this section if the system satisfies one of the following criteria. Any system deemed to have optimized corrosion control under this rule, and which has treatment in place, shall continue to operate and maintain optimal corrosion control treatment and meet any requirements that the Department determines appropriate to ensure optimal corrosion control treatment is maintained:

(A) A small or medium-size water system meets the lead and copper action levels during each of two consecutive six-month monitoring periods conducted in accordance with OAR 333-061-0036(2)(d)(A) through (E).

(B) Any water system that demonstrates to the satisfaction of the Department that it has conducted activities equivalent to the corrosion control steps applicable to such system under this section. If the Department makes this determination, it shall provide the system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with subsection (3)(l) of this rule. Water systems deemed to have optimized corrosion control under this paragraph shall operate in compliance with the Department-designated optimal water quality control parameters in accordance with subsection (3)(m) of this rule and continue to conduct lead and copper tap and water quality parameter sampling in accordance with OAR 333-061-0036(2)(d)(D)(iii) and 333-061-0036(2)(d)(F)(v), respectively. A system shall provide the Department with the following information in order to support a determination under this paragraph:

(i) The results of all test samples collected for each of the water quality parameters in subsection (3)(d) of this rule;

(ii) A report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in subsection (3)(c) of this rule, the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

(iii) A report explaining how corrosion control has been installed and how it is being maintained to insure minimal lead and copper concentrations at consumers' taps; and

(iv) The results of tap water samples collected in accordance with OAR 333-061-0036(2)(d)(A) through (E) at least once every six months for one year after corrosion control has been installed.

(C) Any water system is deemed to have optimized corrosion control if it submits results of tap water monitoring and source water monitoring conducted in accordance with OAR 333-061-0036(2)(d)(A) through (E), (G) and (H) that demonstrates for two consecutive six-month monitoring periods that the difference between the 90th percentile tap water lead level computed under OAR 333-061-0030(1)(c)(A) and the highest source water lead concentration, is less than 0.005 mg/l:

(i) Those systems whose highest source water lead level is below the MDL may also be deemed to have optimized corrosion control if the 90th percentile tap water lead level is less than or equal to the PQL for lead for two consecutive 6-month monitoring periods;

(ii) Any water system deemed to have optimized corrosion control shall continue monitoring for lead and copper at the tap no less frequently than once every three years using the reduced number of sampling sites and collecting the samples at the specified times and locations. Any such system that has not conducted a round of monitoring since September 30, 1997, shall complete a round of monitoring no later than September 30, 2,000;

(iii) Any water system deemed to have optimized corrosion control shall notify the Department in writing of any upcoming long-term change in treatment (eg. changing disinfectants or corrosion control chemicals) or the addition of a new source. The Department must review and approve the addition of a new source or long-term change in water treatment before it is implemented by the water system. The Department may require any such system to conduct additional monitoring or to take other action the Department deems appropriate to ensure that such systems maintain minimal levels of corrosion in the distribution system;

(iv) As of July 2001, a system is not deemed to have optimized corrosion control unless it meets the copper action level.

(v) Any system triggered into corrosion control because it is no longer deemed to have optimized corrosion control shall implement corrosion control treatment in accordance with the deadlines prescribed in subsections (b) and (c) of this rule. Any such large system shall adhere to the schedule specified for medium size systems, with the time periods for completing each step being triggered by the date the system is no longer deemed to have optimized corrosion control.

(e) Any small or medium-size water system that is required to complete the corrosion control steps due to its exceedance of the lead or copper action level may cease completing the treatment steps whenever the system meets both action levels during each of two consecutive monitoring periods conducted pursuant to OAR 333-061-0036(2)(d)(A) through (E) and submits the results to the Department. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the system (or the Department, as the case may be) shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety. The Department may require a system to repeat treatment steps previously completed by the system where the Department determines that this is necessary to implement properly the treatment requirements of this section. The Department shall notify the system in writing of such a determination and explain the basis for its decision. The requirement for any small- or medium- size system to implement corrosion control treatment steps in accordance with subsection (2)(b) of this rule (including systems deemed to have optimized corrosion control under paragraph (2)(d)(A) of this rule) is triggered whenever any small- or medium- size system exceeds the lead or copper action level.

(3) Each system shall complete the corrosion control treatment requirements described below which are applicable to such system under section (2) of this rule:

(a) Based upon the results of lead and copper tap monitoring and water quality parameter monitoring, small and medium-size water systems exceeding the lead or copper action level shall recommend installation of one or more of the corrosion control treatments listed in subsection (3)(c) of this rule which the system believes constitutes optimal corrosion control for that system. The Department may require the system to conduct additional water quality parameter monitoring in accordance with OAR 333-061-0036(2)(d)(F)(iii) to assist the Department in reviewing the system's recommendation.

(b) The Department may require any small or medium-size system that exceeds the lead or copper action level to perform corrosion control studies under subsection (3)(c) of this rule to identify optimal corrosion control treatment for the system.

(c) Any public water system performing corrosion control studies shall evaluate the effectiveness of each of the treatments which follow, and, if appropriate, combinations of the treatments which follow to identify the optimal corrosion control treatment for that system. The water system shall evaluate each of the corrosion control treatments using either pipe rig/loop tests, metal coupon tests, partial-system tests, or analyses based on documented analogous treatments with other systems of similar size, water chemistry and distribution system configuration:

(A) Alkalinity and pH adjustment;

(B) Calcium hardness adjustment; and

(C) The addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(d) The water system shall measure the following water quality parameters in any tests conducted under this subsection before and after evaluating the corrosion control treatments listed in subsection (3)(c) of this rule:

(A) Lead;

(B) Copper;

(C) pH;

(D) Alkalinity;

(E) Calcium;

(F) Conductivity;

(G) Orthophosphate (when an inhibitor containing a phosphate compound is used);

(H) Silicate (when an inhibitor containing a silicate compound is used);

(I) Water temperature.

(e) Any additional chemical treatment approaches considered by the water system shall be evaluated by the water system by conducting appropriate studies and analyses approved by the Department that are equivalent in scope to the studies and analyses required in this section.

(f) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document such constraints with at least one of the following:

(A) Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; and/or

(B) Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(g) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes.

(h) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the Department in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in subsections (3)(c) through (g) of this rule.

(i) Based upon consideration of available information including, where applicable, studies performed under subsection (3)(c) through (g) of this rule and a system's recommended treatment alternative, the Department shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment(s) from among those listed in subsection (3)(c) of this rule. When designating optimal treatment the Department shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(j) The Department shall notify the system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the Department requests additional information to aid its review, the water system shall provide the information.

(k) Each system shall properly install and operate throughout its distribution system the optimal corrosion control treatment designated by the Department under subsection (3)(i) of this rule.

(l) The Department shall evaluate the results of all lead and copper tap samples and water quality parameter samples submitted by the water system and determine whether the system has properly installed and operated the optimal corrosion control treatment designated by the Department in subsection (3)(i) of this rule. Upon reviewing the results of tap water and water quality parameter monitoring by the system, both before and after the system installs optimal corrosion control treatment, the Department shall designate values for the applicable water quality control parameters as listed below and shall be those that the Department determines to reflect optimal corrosion control treatment for the system. The Department may designate values for additional water quality control parameters determined by the Department to reflect optimal corrosion control for the system. The Department shall notify the system in writing of these determinations and explain the basis for its decisions.

(A) A minimum value or a range of values for pH measured at each entry point to the distribution system;

(B) A minimum pH value, measured in all tap samples. Such value shall be 7.0, unless the Department determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control;

(C) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the Department determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system;

(D) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples;

(E) If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

(m) All systems that have installed treatment optimizing corrosion control shall continue to operate and maintain optimal corrosion control treatment, including maintaining water quality parameters at or above minimum values or within ranges designated by the Department under subsection (3)(l) of this rule for all samples collected under OAR 333-061-0036(2)(d)(F)(v)-(vii). Compliance shall be determined every six months, as specified under OAR 333-061-0036(2)(d)(F)(v). A water system is out of compliance for a six-month period if it has excursions for any Department-designated water quality parameter on more than nine days during the period. An excursion occurs whenever the daily value for one or more of the water quality parameters measured at a sampling location is below the min-

imum value or outside the range designated by the Department. Daily values are calculated as follows:

(A) On days when more than one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the average of all results collected during the day regardless of whether they are collected through continuous monitoring, grab sampling or a combination of both;

(B) On days when only one measurement for the water quality parameter is collected at the sampling location, the daily value shall be the result of that measurement.

(C) On days when no measurement is collected for the water quality parameter at the sampling location, the daily value shall be the daily value calculated on the most recent day on which the water quality parameter was measured at the sample site;

(n) Upon its own initiative or in response to a request by a water system or other interested party, the Department may modify its determination of the optimal corrosion control treatment under subsection (3)(i) of this rule or optimal water quality control parameters under subsection (3)(l) of this rule. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The Department may modify its determination where it concludes that such change is necessary to ensure that the system continues to optimize corrosion control treatment. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the Department's decision, and provide an implementation schedule for completing the treatment modifications.

(4) Source water treatment requirements:

(a) Systems shall complete the applicable source water monitoring and treatment requirements prescribed in subsection (4)(b) of this rule and OAR 333-061-0036(2)(d)(A) through (E), (G) and (H) by the following deadlines:

(A) A system exceeding the lead or copper action level shall complete lead and copper source water monitoring as prescribed in OAR 333-061-0036(2)(d)(G) and (H) and make a treatment recommendation to the Department as prescribed in paragraph (4)(b)(A) of this rule no later than 180 days after the end of the monitoring period during which the lead or copper action level was exceeded.

(B) The Department shall make a determination regarding source water treatment as prescribed in paragraph (4)(b)(B) of this rule within 6 months after submission of monitoring results required under paragraph (4)(a)(A) of this rule.

(C) If the Department requires installation of source water treatment, the system shall install the treatment as prescribed in paragraph (4)(b)(C) of this rule within 24 months after completion of requirements prescribed in paragraph (4)(a)(B) of this rule.

(D) The system shall complete follow-up tap water monitoring as prescribed in OAR 333-061-0036(2)(d)(D)(ii) and source water monitoring as prescribed in OAR 333-061-0036(2)(d)(I) within 36 months after completion of requirements prescribed in paragraph (4)(a)(B) of this rule.

(E) The Department shall review the system's installation and operation of source water treatment and specify maximum permissible source water levels as prescribed in paragraph (4)(b)(D) of this rule within 6 months after completion of requirements prescribed in paragraph (4)(a)(D) of this rule.

(F) The system shall operate in compliance with the Department-specified maximum permissible lead and copper source water levels as prescribed in paragraph (4)(b)(D) of this rule and continue source water monitoring as prescribed in OAR 333-061-0036(2)(d)(J).

(b) Source water treatment description:

(A) Any system which exceeds the lead or copper action level shall recommend in writing to the Department the installation and operation of one of the source water treatments listed in paragraph (4)(b)(B) of this rule. A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(B) The Department shall complete an evaluation of the results of all source water samples submitted by the water system to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users' taps. If the Department determines that treatment is needed, the Department shall either require installation and operation of the source water treatment recommended by the system (if any) or require the installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening or coagulation/filtration. If the Department requests additional information to aid in its review, the water system shall provide the information by the date specified by the Department in its request. The Department shall notify the system in writing of its determination and set forth the basis for its decision.

(C) Each system shall properly install and operate the source water treatment designated by the Department under paragraph (4)(b)(B) of this rule.

(D) The Department shall review the source water samples taken by the water system both before and after the system installs source water treatment, and determine whether the system has properly installed and operated the source water treatment designated by the Department. Based upon its review, the Department shall designate the maximum permissible lead and copper concentrations for finished water entering the distribution system. Such levels shall reflect the contaminant removal capability of the treatment properly operated and maintained. The Department shall notify the system in writing and explain the basis for its decision.

(E) Each water system shall maintain lead and copper levels below the maximum permissible concentrations designated by the Department at each sampling point monitored in accordance with OAR 333-061-0036(2)(d)(G) through (K). The system is out of compliance with this paragraph if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the Department.

(F) Upon its own initiative or in response to a request by a water system or other interested party, the Department may modify its determination of the source water treatment under paragraph (4)(b)(B) of this rule, or maximum permissible lead and copper concentrations for finished water entering the distribution system under paragraph (4)(b)(D) of this rule. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The Department may modify its determination where it concludes that such change is necessary to ensure that the system continues to minimize lead and copper concentrations in source water. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the Department's decision, and provide an implementation schedule for completing the treatment modifications.

(5) All water systems must deliver a consumer notice of lead tap water monitoring results to persons served by the water system at sites that are tested, as specified in subsection (5)(e) of this rule. Water systems that exceed the lead action level must sample the tap water of any customer who requests it in accordance with subsection (5)(d) of this rule. A water system that exceeds the lead action level based on tap water samples collected in accordance with OAR 333-061-0036(2)(d)(A) through (E) shall deliver the public education materials contained in subsections (5)(a) and (b) of this rule in accordance with the requirements in subsection (5)(c) of this rule.

(a) Content of written materials. Community and non-transient non-community water system(s) shall include the following elements in all of the printed materials it distributes through its lead public education program in the same order listed below. Paragraphs (5)(a)(A), (B) and (F) of this rule must be included in the materials exactly as written except for the text in braces in these paragraphs for which the system must include system-specific information. Any additional information presented by a system shall be consistent with the information below and be in plain language that can be understood by the general public. Water systems must submit all written public education materials to the Department prior to delivery.

(A) IMPORTANT INFORMATION ABOUT LEAD IN YOUR DRINKING WATER. {INSERT NAME OF WATER SYSTEM} found elevated levels of lead in drinking water in some homes/buildings. Lead can cause serious health problems, especially for pregnant women and young children. Please read this information closely to see what you can do to reduce lead in your drinking water.

(B) HEALTH EFFECTS OF LEAD: Lead can cause serious health problems if too much enters your body from drinking water or other sources. It can cause damage to the brain and kidneys, and can interfere with the production of red blood cells that carry oxygen to all parts of the body. The greatest risk of lead exposure is to infants, young children and pregnant women. Scientists have linked the effects of lead on the brain with lowered IQ in children. Adults with kidney problems and high blood pressure can be affected by low levels of lead more than healthy adults. Lead is stored in the bones, and it can be released later in life. During pregnancy, the child receives lead from the mother's bones, which may affect brain development.

(C) SOURCES OF LEAD:

(i) Explain what lead is.

(ii) Explain the possible sources of lead in drinking water and how lead enters drinking water. Include information on home/building plumbing materials and service lines that contain lead.

(iii) Discuss other important sources of lead exposure in addition to drinking water (e.g., paint).

(D) STEPS THE CONSUMER CAN TAKE TO REDUCE THEIR EXPOSURE TO LEAD IN DRINKING WATER:

(i) Encourage running the water to flush out the lead.

(ii) Explain concerns with using hot water from the tap and specifically caution against the use of hot water for preparing baby formula.

(iii) Explain that boiling water does not reduce lead levels.

(iv) Discuss other options consumers can take to reduce exposure to lead in drinking water, such as alternative sources or treatment of water.

(v) Suggest that parents have their child's blood tested for lead.

(E) Explain why there are elevated levels of lead in the system's drinking water (if known) and what the water system is doing to reduce the lead levels in homes/buildings in this area.

(F) For more information, call us at {INSERT YOUR NUMBER}, {(if applicable include the following) or visit our web site at {INSERT YOUR WEB SITE HERE)}. For more information on reducing lead exposure around your home/building and the health effects of lead, visit EPA's web site at http://www.epa.gov/lead or contact your health care provider.

(b) Community water systems must also:

(A) Tell consumers how to get their water tested;

(B) Discuss lead in plumbing components and the difference between low lead and lead free.

(c) Delivery of public education materials.

(A) For public water systems serving a large proportion of non-English speaking consumers, as determined by the Department, the public education materials must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the public education materials or to request assistance in the appropriate language.

(B) A community water system that exceeds the lead action level on the basis of tap water samples collected in accordance with tap water monitoring requirements of these rules and that is not already conducting public education tasks under this rule must conduct the public education tasks under this section within 60 days after the end of the monitoring period in which the exceedance occurred.

(i) Deliver printed materials meeting the content requirements of subsections (5)(a) and (5)(b) of this rule to all bill paying customers;

(ii) Contact customers who are most at risk by delivering education materials that meet the content requirements of subsections (5)(a) and (5)(b) of this rule to local public health agencies even if they are not located within the water system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or community water system's users. The water system must contact the local public health agencies directly by phone or in person. The local public health agencies may provide a specific list of additional community based organizations serving target populations, which may include organizations outside the service area of the water system. If such lists are provided, systems must deliver education materials that meet the content requirements of subsections (5)(a) and (5)(b) of this rule to all organizations on the provided lists.

(iii) Contact customers who are most at risk by delivering materials that meet the content requirements of subsections (5)(a) and (5)(b) of this rule to public and private schools or school boards; Women, Infants and children (WIC), and Head Start programs; public and private hospitals and medical clinics; Pediatricians; family planning clinics; and local welfare agencies located within the water system's service area along with an informational notice that encourages distribution to all of the organization's potentially affected customers or community water system's users.

(iv) Make a good faith effort to locate licensed childcare centers; public and private preschools; and Obstetricians-Gynecologists and Midwives within the service area and deliver materials that meet the content requirements of subsections (5)(a) and (5)(b) of this rule to them, along with an informational notice that encourages distribution to all potentially affected customers or users. The good faith effort to contact at-risk customers may include requesting a specific contact list of these organizations from the local public health agencies, even if the agencies are not located within the water system's service area.

(v) No less often than quarterly, provide information on or in each water bill as long as the system exceeds the action level for lead. The message on the water bill must include the following statement exactly as written: {INSERT NAME OF WATER SYSTEM} found high levels of lead in drinking water in some homes. Lead can cause serious health problems. For more information please call {INSERT NAME OF WATER SYSTEM}, {[if applicable include the following) or visit our web site at}(INSERT YOUR WEB SITE HERE)}. The message or delivery mechanisms can be modified in consultation with the Department; specifically the Department may allow a separate mailing of public education materials to customers if the water system cannot place the information on water bills.

(vi) Post material meeting the content requirements of subsection (5)(a) and (5)(b) of this rule on the water system's web site if the system serves a population greater than 100,000.

(vii) Submit a press release to newspaper, television and radio stations.

(viii) In addition to (5)(c)(B)(i) through (vii) of this rule systems must implement at least three activities from the following: public service announcements; paid advertisements; public area information displays; emails to customers; public meetings; household deliveries, targeted individual customer contact; direct material distribution to all multi-family homes and institutions or other methods approved by the Department. The educational content and selection of these activities must be determined in consultation with the Department.

(ix) For systems that are required to conduct monitoring annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or, if the Department has established an alternate monitoring period, the last day of that period.

(C) As long as a community water system exceeds the action level, it must repeat the activities in subsection (5)(c) of this rule as follows:

(i) A community water system shall repeat the tasks contained in (5)(c)(B)(i),(ii),(iii),(iv) and (viii) of this rule every 12 months.

(ii) A community water system shall repeat tasks contained in (5)(c)(B)(v) of this rule with each billing cycle.

(iii) A community water system serving a population greater than 100,000 shall post and retain material on a publicly accessible web site pursuant to (5)(c)(B)(vi) of this rule.

(iv) The community water system shall repeat the task in (5)(c)(B)(vii) of this rule twice every 12 months on a schedule agreed upon with the Department. The Department can allow activities in (5)(c)(B) of this rule to extend beyond the 60-day requirement if needed for implementation purposes on a case-by-case basis; however, this extension must be approved in writing by the Department in advance of the 60-day deadline.

(D) Within 60 days after the end of the monitoring period in which the exceedance occurred (unless it already is repeating public education tasks), a non-transient non-community water system shall deliver the public education materials specified by (5)(a) of this rule as follows:

(i) Post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(ii) Distribute informational pamphlets and/or brochures on lead in drinking water to each person served by the non-transient non-community water system. The Department may allow the system to utilize electronic transmission in lieu of or combined with printed materials as long as it achieves at least the same coverage.

(iii) For systems that are required to conduct monitoring annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or, if the Department has established an alternate monitoring period, the last day of that period.

(E) A non-transient non-community water system shall repeat the tasks contained in (5)(c)(D) at least once during each calendar year in which the system exceeds the action level. The Department can allow activities to extend beyond the 60-day requirement if needed for implementation purposes on a case-by-case basis, however, this extension must be approved in writing by the Department in advance of the 60-day deadline.

(F) A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period conducted pursuant to the monitoring requirements of these rules. Such a system shall recommence public education requirements if it subsequently exceeds the lead action level during any monitoring period.

(G) A community water system may apply to the Department, in writing to use only the text specified in (5)(a) of this rule in lieu of the text in (5)(a) and (5)(b) of this rule and to perform the tasks listed in (5)(c)(D) and (E) in lieu of the tasks in (5)(c)(B) and (C) of this rule if:

(i) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices: and

(ii) The system provides water as part pf the cost of services provided and does not separately charge for water consumption.

(H) A community water system serving 3,300 or fewer people may limit certain aspects of their public education programs as follows:

(i) With respect to the requirements of (5)(c)(B)(viii), a system serving 3,300 or fewer must implement at least one of the activities listed.

(ii) With respect to the requirements of (5)(c)(B)(ii), (iii) and (iv) of this rule, a system serving 3,300 or fewer people may limit the distribution of the public education materials required to facilities and organizations served by the system that are most likely to be visited regularly by pregnant women and children.

(iii) With respect to the requirements of (5)(c)(B)(vii) of this rule the Department may waive this requirement for systems serving 3,300 or fewer persons as long as the system distributes notices to every household served by the system.

(d) Supplemental monitoring and notification of results. A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with OAR 333-061-0036(2)(d)(A) through (E) shall offer to sample the tap water of any customer who requests it. The system is not required to pay for collecting or analyzing the sample, nor is the system required to collect and analyze the sample itself.

(e) Notification of results.

(A) All water systems must provide a notice of the individual tap results from lead tap water monitoring carried out under the monitoring requirements of these rules to the persons served by the water system at the specific sampling site from which the sample was taken (e.g. the occupants of the residence where the tap was tested).

(B) A water system must provide the consumer notice as soon as practical, but no later than 30 days after the system learns of the tap monitoring results.

(C) The consumer notice must include the results of lead tap water monitoring for the tap that was tested, an explanation of the health effects of lead, list steps consumers can take to reduce exposure to lead in drinking water and contact information for the water utility. The notice must also provide the maximum contaminant level goal and the action level for lead and the definitions for these two terms.

(D) The Consumer notice must be provided to persons served at the tap that was tested, either by mail or by another method approved by the Department. For example, upon approval by the Department, a non-transient, non-community water system could post the results on a bulletin board in the facility to allow users to review the information. The system must provide the notice to customers at sample taps tested, including consumers who do not receive water bills.

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

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150 & 448.273

Hist.: HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; OHD 7-2000, f. 7-1-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2008, f. & cert. ef. 2-15-08; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0036

Sampling and Analytical Requirements

(1) General:

(a) Analyses must be conducted by EPA Methods in accordance with the analytical requirements set forth in 40 CFR 141. Samples analyzed for the purposes of this rule shall be collected after the water has been allowed to flow from the sample tap for a sufficient length of time to assure that the collected sample is representative of water in the distribution system or from the water source as applicable, except for samples collected to determine corrosion by-products.

(A) Analysis for Cryptosporidium must be conducted by EPA Methods in accordance with the analytical requirements set forth in 40 CFR 141.704.

(b) Alternate Analytical Methods:

(A) With the written permission of the Department, an alternate analytical method may be employed on the condition that it is substantially equivalent to the prescribed test in both precision and accuracy as it relates to the determination of compliance with any MCL; and

(B) The use of the alternate analytical method shall not decrease the frequency of sampling required by these rules.

(c) Approved laboratories:

(A) For the purpose of determining compliance with the maximum contaminant levels and the sampling requirements of these rules, sampling results may be considered only if they have been analyzed by a laboratory certified by the Department, except that measurements for turbidity, disinfectant residual, temperature, alkalinity, calcium, conductivity, chlorite, bromide, TOC, SUVA, dissolved organic carbon (DOC), UV254, orthophosphate, silica and pH may be performed on site using approved methods by individuals trained in sampling and testing techniques. Daily chlorite samples measured at the entrance to the distribution system must be performed by a party approved by the Department.

(B) Nothing in these rules shall be construed to preclude the Department or any of its duly authorized representatives from taking samples and from using the results of such samples to determine compliance with applicable requirements of these rules.

(C) All analysis for Cryptosporidium must be conducted by a laboratory that is approved by EPA's Laboratory Quality Assurance Evaluation Program for Analysis of Cryptosporidium in Water or a laboratory certified for Cryptosporidium analysis by the Department.

(d) Monitoring of purchasing water systems:

(A) When a public water system obtains its water, in whole or in part, from another public water system, the monitoring requirements imposed by these rules on the purchasing water system may be modified by the Department to the extent that the system supplying the water is in compliance with its source monitoring requirements. When a public water system supplies water to one or more other public water systems, the Department may modify monitoring requirements imposed by this rule to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(B) Any modified monitoring shall be conducted pursuant to a schedule specified by the Department and concurred in by the Administrator of the US Environmental Protection Agency.

(e) Water suppliers shall monitor each water source individually for contaminants listed in OAR 333-061-0030 (Maximum Contaminant Levels), except for coliform bacteria, TTHMs and corrosion by-products, at the entry point to the distribution system except as described below. Any such modified monitoring shall be conducted pursuant to a schedule prescribed by the Department.

(A) If the system draws water from more than one source and sources are combined before distribution, the system may be allowed to sample at an entry point to the distribution system during normal operating conditions, where justified, taking into account operational considerations, geologic and hydrologic conditions, and other factors.

(B) If a system draws water from multiple ground water sources which are not combined before distribution, the system may be allowed to sample at a representative source or sources, where justified, taking into account geologic and hydrogeologic conditions, land uses, well construction, and other factors.

(f) Compliance with MCLs shall be based on each sampling point as described in this section. If any point is determined to be out of compliance, the system shall be deemed out of compliance. If an entirely separated portion of a water system is out of compliance, then only that portion of the system shall be deemed out of compliance.

(g) The Department may require additional sampling and analysis for the contaminants included in OAR 333-061-0030 (Maximum Contaminant Levels) when necessary to determine whether an unreasonable risk to health exists. The Department may also require sampling and analysis for additional contaminants not included in OAR 333-061-0030 (Maximum Contaminant Levels) when necessary for public health protection.

(h) Water suppliers and their appointed representatives shall collect water samples from representative locations in the water system as prescribed in this rule and shall employ proper sampling procedures and techniques. Samples submitted to laboratories for analysis shall be clearly identified and shall include the name of the water system, public water system identification number, sampling date, and time, sample location identifying the sample tap, the name of the person collecting the sample and be labeled as follows:

(A) Routine: These are samples collected from established sampling locations within a water system at specified frequencies to satisfy monitoring requirements as prescribed in this rule. These samples are used to calculate compliance with maximum contaminant levels prescribed in OAR 333-061-0030(4);

(B) Repeat: These are samples collected as a follow-up to a routine sample that has exceeded a maximum contaminant level as prescribed in OAR 333-061-0030. Repeat samples are also used to calculate compliance with maximum contaminant levels prescribed in OAR 333-061-0030(4);

(C) Special: These are samples collected to supplement routine monitoring samples and are not required to be reported to the Department. Samples of this type are not considered representative of the water system and are outside the scope of normal quality assurance and control procedures and/or the established compliance monitoring program. Special samples include, but are not limited to, samples taken for special studies, user complaints, post construction/repair disinfection, sources not in service and raw water prior to treatment, except as required by this rule.

(2) Inorganic chemicals:

(a) Antimony, Arsenic, Barium, Beryllium, Cadmium, Chromium, Cyanide, Fluoride, Mercury, Nickel, Selenium and Thallium.

(A) Sampling of water systems for regulated Inorganic Chemicals shall be conducted as follows:

(i) Community and Non-Transient Non-Community Water systems using surface water sources or groundwater sources under the direct influence of surface water solely or a combination of surface and ground water sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system after any application of treatment. Surface water systems shall collect samples annually at each sampling point beginning in the initial compliance period according to the schedule in subsection (2)(k) of this rule. The water system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(ii) Community and Non-Transient Non-Community Water systems using ground water sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system representative of each source after any application of treatment. Ground water systems shall collect samples once every three years at each sampling point beginning in the initial compliance period according to the schedule in subsection (2)(k) of this rule. The water system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(iii) All new Transient Non-Community and State Regulated water systems or existing Transient Non-Community, and State Regulated water systems with new sources shall sample once for arsenic. Samples are to be collected at the entry points to the distribution system representative of each source after any application of treatment.

(iv) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all the sources being used.

(B) The Department may allow compositing of samples from a maximum of 5 sampling points, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples is to be done in the laboratory. Composite samples must be analyzed within 14 days of collection. If the concentration in the composite sample is equal to or greater than one-fifth of the MCL of any inorganic chemical listed in section (2) of this rule, then a follow-up sample must be taken for the contaminants which exceeded one-fifth of the MCL within 14 days at each sampling point included in the composite. If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicates must be analyzed and the results reported to the Department within 14 days of collection. If the population served by the water system is >3,300 persons, then compositing can only be allowed within the system. In systems serving £ 3,300 persons, compositing is allowed among multiple systems provided the 5 sample limit is maintained.

(C) Water systems may apply to the Department for a waiver from the monitoring frequencies specified in paragraph (2)(a)(A) of this rule on the condition that the system shall take a minimum of one sample while the waiver is effective and the effective period for the waiver shall not exceed one nine-year compliance cycle.

(i) The Department may grant a waiver provided surface water systems have monitored annually for at least three years and groundwater systems have conducted a minimum of three rounds of monitoring (at least one sample shall have been taken since January 1, 1990), and all analytical results are less than the maximum contaminant levels prescribed in OAR 333-061-0030 for inorganic chemicals. Systems that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed.

(ii) Waivers granted by the Department shall be in writing and shall set forth the basis for the determination. The Department shall review and revise, where appropriate, its determination of the appropriate monitoring frequency when the system submits new monitoring data or where other data relevant to the system's appropriate monitoring frequency become available. In determining the appropriate reduced monitoring frequency, the Department shall consider the reported concentrations from all previous monitoring; the degree of variation in reported concentrations; and other factors which may affect concentrations such as changes in groundwater pumping rates, changes in the system's configuration, changes in the system's operating procedures, or changes in stream flows or characteristics.

(D) Systems which exceed the maximum contaminant levels as calculated in subsection (2)(j) of this rule shall monitor quarterly beginning in the next quarter after the violation occurred. The Department may decrease the quarterly monitoring requirement to the frequencies prescribed in paragraph (2)(a)(A) of this rule when it is determined that the system is reliably and consistently below the maximum contaminant level. Before such a decrease is permitted a groundwater system must collect at least two quarterly samples and a surface water system must collect a minimum of four quarterly samples.

(E) All new systems or systems that use a new source of water must demonstrate compliance with the MCL within a period of time specified by the Department. The system must also comply with the initial sampling frequencies specified by the Department to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in this section.

(b) Sulfate:

(A) Samples of water which is delivered to users shall be analyzed for sulfate as follows:

(i) Community and Non-Transient Non-Community water systems using surface or ground sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system after any application of treatment. Community and Non-Transient Non-Community water systems shall collect one sample at each sampling point beginning in the initial compliance period according to the schedule in subsection (2)(k) of this rule. The water systems must take each sample from the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(ii) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all the sources being used.

(B) Each Community and Non-Transient Non-Community water system may apply to the Department for a waiver from the requirements of paragraph (2)(b)(A) of this rule. The Department may grant a waiver if previous analytical results indicate contamination would not occur, provided this data was collected after January 1, 1990.

(C) The Department may require confirmation samples for positive or negative results.

(D) The Department may allow compositing of samples to reduce the number of samples to be analyzed by the system. Composite samples from a maximum of five sampling points are allowed. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collections. For systems with a population greater than 3,300, the Department may allow compositing at sampling points only within a single system. For systems with a population £ 3,300 the Department may allow compositing among different systems.

(c) Asbestos:

(A) Community and Non-Transient Non-Community water systems regardless of source, shall sample for Asbestos at least once during the initial three-year compliance period of each nine-year compliance cycle starting January 1, 1993 according to the schedule under subsection (2)(k) of this rule unless a water system applies for a waiver and the waiver is granted by the Department.

(B) As reviewed by the Department, if the water system is determined not to be vulnerable to either asbestos contamination in its source water or due to corrosion of asbestos-cement pipe, or both, a waiver may be granted. If granted, the water system will not be required to monitor while the waiver remains in effect. A waiver remains in effect until the completion of the three year compliance period.

(C) A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one sample at a tap served by the asbestos-cement pipe under conditions where asbestos contamination is most likely to occur.

(D) A system vulnerable to asbestos contamination due solely to source water shall monitor for asbestos once every nine years.

(E) A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(F) A System which exceeds the maximum contaminant levels for asbestos as prescribed in subsection (2)(j) of this rule shall monitor quarterly beginning in the next quarter after the violation occurred. If the Department determines that the system is reliably and consistently below the maximum contaminant level based on a minimum of two quarterly samples for groundwater systems or a minimum of four quarterly samples for surface water systems or combined surface water/groundwater systems, the system may return to the sampling frequency prescribed in paragraph (2)(c)(A) of this rule.

(G) If monitoring data collected after January 1, 1990 are generally consistent with subsection (2)(c) of this rule, then the Health Department may allow the system to use these data to satisfy monitoring requirements for the three-year compliance period beginning January 1, 1993.

(d) Lead and Copper:

(A) Community and Non-Transient, Non-Community water systems shall monitor for lead and copper in tap water as follows: Sample site location:

(i) Each water system shall complete a materials evaluation of its distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this paragraph, and which is sufficiently large to ensure that the water system can collect the number of lead and copper tap samples required in paragraph 2(d)(C) of this rule. All sites from which first draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(ii) In addition to any information that may have been gathered under the special corrosivity monitoring requirements, the water system shall review the sources of information listed below in order to identify a sufficient number of sampling sites:

(I) All plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system; and

(II) All existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(iii) The sampling sites selected for a Community water system's sampling pool ("tier 1 sampling sites") shall consist of single family structures that contain copper pipes with lead solder installed from January 1, 1983 through June 30, 1985 or contain lead pipes. When multiple-family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures in its sampling pool.

(iv) Any Community water system with insufficient tier 1 sampling sites shall complete its sampling pool with "tier 2 sampling sites", consisting of buildings, including multiple-family residences that contain copper pipes with lead solder installed from January 1, 1983 through June 30, 1985 or contain lead pipes.

(v) Any Community water system with insufficient tier 1 and tier 2 sampling sites shall complete its sampling pool with "tier 3 sampling sites", consisting of single family structures that contain copper pipes with lead solder installed before 1983. A community water system with insufficient tier 1, tier 2 and tier 3 sampling sites shall complete its sampling pool with representative sites throughout the distribution system. A representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the system.

(vi) The sampling sites selected for a Non-Transient Non-Community water system ("tier 1 sampling sites") shall consist of buildings that contain copper pipes with lead solder installed from January 1, 1983 through June 30, 1985 or contain lead pipes.

(vii) A Non-Transient Non-Community water system with insufficient tier 1 sites that meet the targeting criteria in paragraph (2)(d)(A)(vi) of this rule shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983. If additional sites are needed, the system shall use representative sites throughout the distribution system. A representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

(viii) Any water system whose sampling pool does not consist exclusively of tier 1 sites shall demonstrate in a letter submitted to the Department under OAR 333-061-0040(1)(f)(A)(i) why a review of the information listed in paragraph (2)(d)(A)(ii) of this rule was inadequate to locate a sufficient number of tier 1 sites. Any Community water system which includes tier 3 sampling sites in its sampling pool shall demonstrate in such a letter why it was unable to locate a sufficient number of tier 1 and tier 2 sampling sites.

(B) Monitoring requirements for lead and copper in tap water. Sample collection methods:

(i) All tap samples for lead and copper collected in accordance with this paragraph shall be first draw samples.

(ii) Each first-draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First-draw samples from residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap. First-draw samples from a non-residential building shall be one liter in volume and shall be collected at an interior tap from which water is typically drawn for consumption. First-draw samples may be collected by the system or the system may allow residents to collect first-draw samples after instructing the residents of the sampling procedures specified in this paragraph. To avoid problems of residents handling nitric acid, acid fixation of first draw samples may be done up to 14 days after the sample is collected. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(iii) A water system shall collect each first-draw tap sample from the same sampling site from which it collected a previous sample. If, for any reason, the water system cannot gain entry to a sampling site in order to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

(C) Monitoring requirements for lead and copper in tap water. Number of samples: Water systems shall collect at least one sample during each monitoring period specified in paragraph (2)(d)(D) of this rule from the number of sites listed in the first column below ("standard monitoring"). A system conducting reduced monitoring under paragraph (2)(d)(D)(iv) of this rule shall collect at least one sample from the number of sites specified in the second column below during each monitoring period specified in paragraph (2)(d)(D)(iv) of this rule. Such reduced monitoring sites shall be representative of the sites required for standard monitoring. A system that has fewer than five drinking water taps, that can be used for human consumption meeting the sample site criteria of (2)(d)(A) of this rule to reach the required number of sample sites, must collect at least one sample from each tap and then must collect additional samples from those taps on different days during the monitoring period to meet the required number of sites. Alternatively the Department may allow these public water systems to collect a number of samples less than the number of sites specified below provided that 100 percent of all taps that can be used for human consumption are sampled. The Department must approve this reduction of the minimum number of samples in writing based on a request from the system or onsite verification by the Department. The Department may specify sampling locations when a system is conducting reduced monitoring. [Table not included. See ED. NOTE.]

(D) Monitoring requirements for lead and copper in tap water. Timing of monitoring:

(i) Initial tap monitoring requirements:

(I) All large systems shall monitor during two consecutive six-month periods.

(II) All small and medium-size systems shall monitor during each six-month monitoring period until the system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements specified in OAR 333-061-0034(2), in which case the system shall continue monitoring in accordance with paragraph (2)(d)(D)(ii) of this rule, or the system meets the lead and copper action levels during two consecutive six-month monitoring periods, in which case the system may reduce monitoring in accordance with paragraph (2)(d)(D)(iv) of this rule.

(ii) Monitoring after installation of corrosion control and source water treatment.

(I) Any large system which installs optimal corrosion control treatment pursuant to OAR 333-061-0034(2)(a)(D) shall monitor during two consecutive six-month monitoring periods by the date specified in 333-061-0034(2)(a)(E).

(II) Any small or medium-size system which installs optimal corrosion control treatment pursuant to OAR 333-061-0034(2)(b)(E) shall monitor during two consecutive six-month monitoring periods by the date specified in 333-061-0034(2)(b)(F).

(III) Any system which installs source water treatment pursuant to OAR 333-061-0034(4)(a)(C) shall monitor during two consecutive six-month monitoring periods by the date specified in 333-061-0034(4)(a)(D).

(iii) Monitoring after the Department specifies water quality parameter values for optimal corrosion control. After the Department specifies the values for water quality control parameters under OAR 333-061-0034(3)(l), the system shall monitor during each subsequent six-month monitoring period, with the first monitoring period to begin on the date the Department specifies the optimal values.

(iv) Reduced monitoring

(I) A small or medium-size water system that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with paragraph (2)(d)(C) of this rule, and reduce the frequency of sampling to once per year. A small or medium water system collecting fewer than five samples as specified in (2)(d)(C) of this rule that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the frequency of sampling to once per year. In no case can the system reduce the number of samples required below the minimum of one sample per available tap. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period.

(II) Any water system that meets the lead action level and maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the Department during each of two consecutive six-month monitoring periods may reduce the frequency of monitoring to once per year and reduce the number of lead and copper samples in accordance with paragraph (2)(d)(C) of this rule if it receives written approval from the Department. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period. The Department shall review monitoring, treatment, and other relevant information submitted by the water system, and shall notify the system in writing when it determines the system is eligible

to commence reduced monitoring. The Department shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(III) A small or medium-size water system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any water system that meets the lead action level and maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the Department during three consecutive years of monitoring may reduce the frequency of monitoring from annually to once every three years if it receives written approval from the Department. Samples collected once every three years shall be collected no later than every third calendar year. The Department shall review monitoring, treatment, and other relevant information submitted by the water system and shall notify the system in writing when it determines the system is eligible to reduce the frequency of monitoring to once every three years. The Department shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(IV) A water system that reduces the number and frequency of sampling shall collect these samples from representative sites included in the pool of targeted sampling sites identified in paragraph (2)(d)(A) of this rule. Systems sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or September. The Department may approve a different period for conducting the lead and copper tap sampling for systems collecting a reduced number of samples. Such a period shall be no longer than four consecutive months and must represent a time of normal operation where the highest levels of lead are most likely to occur. For a Non-transient Non-community water system that does not operate during the months of June through September, and for which the period of normal operation where the highest levels of lead are most likely to occur is not known, the Department shall designate a period that represents a time of normal operation for the system. This sampling shall begin during the period approved or designated by the Department in the calendar year immediately following the end of the second consecutive six-month monitoring period for systems initiating annual monitoring and during the three-year period following the end of the third consecutive calendar year of annual monitoring for systems initiating triennial monitoring. Community and Non-transient Non- community water systems monitoring annually or triennially that have been collecting samples during the months of June through December and that receive Department approval to alter their sample collection period must collect their next round of samples during a time period that ends no later than 21 months or 45 months, respectively, after the previous round of sampling. Subsequent rounds of sampling must be collected annually or triennially as required in this subsection.

(V) A small or medium-size water system subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling in accordance with paragraph (2)(d)(D)(iii) of this rule and collect the number of samples specified for standard lead and copper monitoring in paragraph (2)(d)(C) of this rule and shall also conduct water quality parameter monitoring in accordance with paragraphs (2)(d)(F)(iii), (iv) or (v) of this rule, as appropriate, during the period in which the lead or copper action level was exceeded. Any such system may resume annual monitoring for lead and copper at the tap at the reduced number of sites after it has completed two subsequent consecutive six-month rounds of monitoring that meet the requirement of paragraph (2)(d)(D)(iv)(I) of this rule. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period. Any such system may resume triennial monitoring for lead and copper at the reduced number of sites after it demonstrates through subsequent rounds of monitoring that it meets the criteria prescribed in paragraphs (2)(d)(D)(iv)(III) or (VI) of this rule. Any water system subject to reduced monitoring frequency that fails to meet the lead action level during any four-month monitoring period or that fails to operate at or above the minimum value or within the range of values for the water quality control parameters specified by the Department for more than nine days in any six-month period specified in paragraph (2)(d)(F)(v) of this rule shall conduct tap water sampling for lead and copper at the frequency specified in paragraph (2)(d)(D)(iii) of this rule, collect the number of samples specified for standard monitoring, and shall resume monitoring for water quality parameters within the distribution system in accordance with paragraph (2)(d)(F)(v) of this rule. This standard tap water sampling shall begin no later than the six-month monitoring period beginning January 1 of the calendar year following the lead action level exceedance or water quality parameter excursion. Such a system may resume reduced monitoring for lead and copper at the tap and for water quality parameters within the distribution system under the following conditions Such a system may, with written Department approval, resume reduced annual monitoring for lead and copper at the tap after it has completed two subsequent six-month rounds of tap lead and copper monitoring that meet the criteria specified in paragraph (2)(d)(D)(iv)(II) of this rule. This sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period. Such a system, with written Department approval, may resume reduced triennial monitoring for lead and copper at the tap if it meets the criteria specified in paragraphs (2)(d)(D)(iv)(III) and (VI) of this rule. Such a system may reduce the number and frequency of water quality parameter distribution tap samples required in accordance with paragraph (2)(d)(F)(vi)(I) and (II) of this rule. Such a system may not resume triennial monitoring for water quality parameters distribution tap samples until it demonstrates that it has re-qualified for triennial monitoring.

(VI) Any water system that demonstrates for two consecutive 6-month monitoring periods that the 90th percentile lead level is less than or equal to 0.005 mg/l and the 90th percentile copper level is less than or equal to 0.65 mg/l may reduce the number of samples in accordance with paragraph (2)(d)(C) of this rule and reduce the frequency of sampling to once every three calendar years.

(VII) Any water system subject to a reduced monitoring frequency under (2)(d)(D)(iv) of this rule shall notify the Department in writing of any upcoming long-term change in treatment or addition of a new source. The Department must review and approve the addition of a new source or long-term change in water treatment before it is implemented by the water system. The Department may require the system to resume standard monitoring or take other appropriate steps such as increased water quality parameter monitoring or re-evaluation of its corrosion control treatment given the potentially different water quality considerations.

(E) Monitoring requirements for lead and copper in tap water. Additional monitoring by systems: The results of any monitoring conducted in addition to the minimum requirements of subsection (d) of this rule shall be considered by the system and the Department in making any determinations (i.e., calculating the 90th percentile lead or copper level). The Department may invalidate lead and copper tap water samples as follows:

(i) The Department may invalidate a lead or copper tap sample if at least one of the following conditions is met. The decision and the rationale for the decision must be documented in writing by the Department. A sample invalidated by the Department does not count toward determining lead or copper 90th percentile levels or toward meeting the minimum monitoring requirements:

(I) The laboratory establishes that improper sample analysis caused erroneous results; or

(II) A site that did not meet the site selection criteria; or

(III) The sample container was damaged in transit; or

(IV) There is substantial reason to believe that the sample was subject to tampering.

(ii) The system must report the results of all samples to the Department and all supporting documentation for samples the system believes should be invalidated.

(iii) The Department may not invalidate a sample solely on the grounds that a follow-up sample result is higher or lower than that of the original sample.

(iv) The water system must collect replacement samples for any samples invalidated if, after the invalidation of one or more samples, the system has too few samples to meet the minimum requirements. Any such replacement samples must be taken as soon as possible, but no later than 20 days after the date the Department invalidates the sample. The replacement samples shall be taken at the same locations as the invalidated samples or, if that is not possible, at locations other than those already used for sampling during the monitoring period.

(F) Monitoring requirements for water quality parameters. All large water systems and all medium and small water systems that exceed the lead or copper action levels shall monitor water quality parameters in addition to lead and copper as follows:

(i) General Requirements. Sample collection methods:

(I) Tap samples shall be representative of water quality throughout the distribution system taking into account the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Water quality parameter sampling is not required to be conducted at taps targeted for lead and copper sampling, however, established coliform sampling sites may be used to satisfy these requirements.

(II) Samples collected at the entry point(s) to the distribution system shall be from locations representative of each source after treatment. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the

distribution system during periods of normal operating conditions when water is representative of all sources being used.

(ii) General requirements. Number of samples:

(I) Systems shall collect two tap samples for applicable water quality parameters during each monitoring period specified under paragraphs (2)(d)(F)(iii) through (vi) of this rule from the following number of sites. [Table not included. See ED. NOTE.]

(II) Except as provided in paragraph (2)(d)(F)(iv)(III) of this rule, systems shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in paragraph (2)(d)(F)(iii) of this rule. During each monitoring period specified in paragraphs (2)(d)(F)(iv) through (vi) of this rule, systems shall collect one sample for each applicable water quality parameter at each entry point to the distribution system.

(iii) Initial Sampling. All large water systems shall measure the applicable water quality parameters as specified below at taps and at each entry point to the distribution system during each six-month monitoring period specified in paragraph (2)(d)(D)(i) of this rule. All small and medium-size systems shall measure the applicable water quality parameters at the locations specified below during each six-month monitoring period specified in paragraph (2)(d)(D)(i) of this rule during which the system exceeds the lead or copper action level:

(I) At taps: pH, alkalinity, orthophosphate (when an inhibitor containing a phosphate compound is used), silica (when an inhibitor containing a silicate compound is used), calcium, conductivity, and water temperature.

(II) At each entry point to the distribution system: all of the applicable parameters listed in paragraph (2)(d)(F)(iii)(I) of this rule.

(iv) Monitoring after installation of corrosion control. Any large system which installs optimal corrosion control treatment pursuant to OAR 333-061-0034(2)(a)(D) shall measure the water quality parameters at the locations and frequencies specified below during each six-month monitoring period specified in paragraph (2)(d)(D)(ii)(I) of this rule. Any small or medium-size system which installs optimal corrosion control treatment shall conduct such monitoring during each six-month monitoring period specified in paragraph (2)(d)(D)(ii)(II) of this rule in which the system exceeds the lead or copper action level.

(I) At taps, two samples for: pH, alkalinity(when adjusting for alkalinity), orthophosphate (when an inhibitor containing a phosphate compound is used), silica (when an inhibitor containing a silicate compound is used), calcium (when calcium carbonate stabilization is used as part of corrosion control).

(II) Except as provided in paragraph (2)(d)(D)(iv)(III) of this rule, at each entry point to the distribution system, at least one sample, no less frequently than every two weeks (bi-weekly) for: pH; when alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and when a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable).

(III) Any ground water system can limit entry point sampling to those entry points that are representative of water quality and treatment conditions throughout the system. If water from untreated ground water sources mixes with water from treated ground water sources, the system must monitor for water quality parameters both at representative entry points receiving treatment and no treatment. Prior to the start of any monitoring, the system shall provide to the Department written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(v) Monitoring after Department specifies water quality parameter values for optimal corrosion control. After the Department specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under OAR 333-061-0034(3)(l), all large systems shall measure the applicable water quality parameters in accordance with paragraph (2)(d)(F)(iv) of this rule and determine compliance every six months with the first six-month period to begin on either January 1 or July 1, whichever comes first, after the Department specifies optimal water quality parameter values. Any small or medium-size system shall conduct such monitoring during each monitoring period specified in this paragraph in which the system exceeds the lead or copper action level. For any such small and medium-size system that is subject to a reduced monitoring frequency pursuant to paragraph (2)(d)(D)(iv) of this rule at the time of the action level exceedance, the start of the applicable six-month monitoring period shall coincide with the start of the applicable monitoring period under (2)(d)(D) of this rule. Compliance with Department-designated optimal water quality parameter values shall be determined as specified under 333-061-0034(3)(m).

(vi) Reduced monitoring:

(I) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under paragraph (2)(d)(D) of this rule shall continue monitoring at the entry point(s) to the distribution system as specified in paragraph (2)(d)(F)(iv)(II) of this rule. Such system may collect two tap samples for applicable water quality parameters from the following reduced number of sites during each six-month monitoring period. [Table not included. See ED. NOTE.]

(II) Any water system that maintains the minimum values or maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Department under OAR 333-061-0034(3)(l) during three consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in paragraph (2)(d)(F)(vi)(I) of this rule from every six months to annually. This sampling begins during the calendar year immediately following the end of the monitoring period in which the third consecutive year of six-month monitoring occurs. Any water system that maintains the minimum values or maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Department under 333-061-0034(3)(l) during three consecutive years of annual monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters from annually to every three years. This sampling begins no later than the third calendar year following the end of the monitoring period in which the third consecutive year of monitoring occurs.

(III) A water system may reduce the frequency with which it collects tap samples for applicable water quality parameters to every three years if it demonstrates during two consecutive monitoring periods that its tap water lead level at the 90th percentile is less than or equal to 0.005 mg/l, that its tap water copper level at the 90th percentile is less than or equal to 0.65 mg/l, and that it also has maintained the range of values for water quality parameters reflecting optimal corrosion control treatment specified by the Department. Monitoring conducted every three years shall be done no later than every third calendar year.

(IV) A water system that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

(V) Any water system subject to reduced monitoring frequency that fails to operate at or above the minimum value or within the range of values for the water quality parameters specified by the Department under OAR 333-061-0034(3)(l) for more than nine days in any six-month period shall resume distribution system tap water sampling in accordance with the number and frequency requirements in paragraph (2)(d)(F)(v) of this rule. Such a system may resume annual monitoring for water quality parameters at the tap at the reduced number of sites after it has completed two subsequent consecutive six-month rounds of monitoring that meet the criteria specified in paragraph (2)(d)(F)(v) of this rule and/or may resume triennial monitoring at the reduced number of sites after it demonstrates through subsequent annual rounds that it meets the criteria of paragraphs (2)(d)(F)(vi)(I) and (II) of this rule.

(vii) Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of subsection (2)(d) of this rule shall be considered by the system and the Department in making any determinations.

(G) Monitoring requirements for lead and copper in source water. Sample location, collection methods, and number of samples:

(i) A water system that fails to meet the lead or copper action level on the basis of tap samples collected in accordance with paragraphs (2)(d)(A) through (E) of this rule shall collect lead and copper source water samples in accordance with the following requirements regarding sample location, number of samples, and collection methods:

(I) Ground water systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant;

(II) Surface water systems shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source, after treatment. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant; Surface water systems include systems with a combination of surface and ground sources; and

(III) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods when water is representative of all sources being used.

(ii) Where the results of sampling indicate an exceedance of maximum permissible source water levels established under OAR 333-061-0034(4)(b)(D) the Department may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a Department-required confirmation sample is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged in determining compliance with the Department-specified maximum permissible levels. Any sample value below the detection limit shall be considered to be zero. For lead any value above the detection limit but below the Practical Quantitation Level (PQL) (0.005 mg/l) shall either be considered as the measured value or be considered one-half the PQL (0.0025 mg/l). For copper any value above the detection limit but below the PQL (0.050 mg/l) shall either be considered as the measured value or be considered one-half the PQL (0.025 mg/l).

(H) Monitoring requirements for lead and copper in source water. Monitoring frequency after system exceeds tap water action level. Any system which exceeds the lead or copper action level at the tap, shall collect one source water sample from each entry point to the distribution system no later than six months after the end of the monitoring period during which the lead or copper action level was exceeded. For monitoring periods that are annual or less frequent, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the Department has established an alternate monitoring period, the last day of that period.

(i) Monitoring frequency after installation of source water treatment. Any system which installs source water treatment pursuant to OAR 333-061-0034(4)(a)(C) shall collect an additional source water sample from each entry point to the distribution system during two consecutive six-month monitoring periods by the deadline specified in 333-061-0034(4)(a)(D).

(ii) Monitoring frequency after Department specifies maximum permissible source water levels or determines that source water treatment is not needed.

(I) A system shall monitor at the frequency specified below in cases where the Department specifies maximum permissible source water levels under OAR 333-061-0034(4)(b)(D) or determines that the system is not required to install source water treatment under 333-061-0034(4)(b)(B). A water system using only groundwater shall collect samples once during the three-year compliance period in effect when the applicable Department determination is made. Such systems shall collect samples once during each subsequent compliance period. Triennial samples shall be collected every third calendar year. A water system using surface water (or a combination of surface and groundwater) shall collect samples once during each calendar year, the first annual monitoring period to begin during the year in which the applicable Department determination is made.

(II) A system is not required to conduct source water sampling for lead and/or copper if the system meets the action level for the specific contaminant in tap water samples during the entire source water sampling period applicable to the system under paragraph (2)(d)(H)(ii)(I) of this rule.

(iii) Reduced monitoring frequency:

(I) A water system using only groundwater may reduce the monitoring frequency for lead and copper in source water to once during each nine-year compliance cycle provided that the samples are collected no later than every ninth calendar year and it demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the Department in OAR 333-061-0034(4)(b)(D) during at least three consecutive compliance periods under paragraph (2)(d)(H)(ii)(I) of this rule or the Department has determined that source water treatment is not needed and the system demonstrates during at least three consecutive compliance periods under paragraph (2)(d)(H)(ii)(I) of this rule that the concentration of lead in source water was less than or equal to 0.005 mg/l and the concentration of copper in source water was less than or equal to 0.65 mg/l.

(II) A water system using surface water (or a combination of surface and ground waters) may reduce the monitoring frequency for lead and copper in source water to once during each nine-year compliance cycle provided that the samples are collected no later than every ninth calendar year and it demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the Department in OAR 333-061-0034(4)(b)(D) for at least three consecutive years or the Department has determined that source water treatment is not needed and the system demonstrates that during at least three consecutive years the concentration of lead in source water was less than or equal to 0.005 mg/l and the concentration of copper in source water was less than or equal to 0.65 mg/l.

(III) A water system that uses a new source of water is not eligible for reduced monitoring for lead and/or copper until concentrations in samples collected from the new source during three consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified by the Department in OAR 333-061-0034(4)(a)(E).

(e) Nitrate:

(A) Community and Non-Transient Non-Community water systems using surface water sources or groundwater sources under the direct influence of surface water shall monitor for Nitrate quarterly beginning January 1,1993. The Department may allow a surface water system to reduce the sampling frequency to annually provided that all analytical results from four consecutive quarters are less than 50% of the MCL. A surface water system shall return to quarterly monitoring if any one sample is 50% of the MCL.

(B) Community and Non-Transient Non-Community water systems using groundwater sources shall monitor for Nitrate annually beginning January 1, 1993. The Department shall require quarterly monitoring for a least one year following any one sample in which the concentration is 50% of the MCL. The system may return to annual monitoring after four consecutive quarterly samples are found to be reliably and consistently below the MCL.

(C) Transient Non-Community and State Regulated water systems shall monitor for Nitrate annually beginning January 1, 1993.

(D) After the initial round of quarterly sampling is completed, each Community and Non-Transient Non-Community water system which is monitoring annually shall take subsequent samples during the quarter(s) which previously resulted in the highest analytical result.

(f) Nitrite:

(A) Community and Non-Transient Non-Community water systems shall collect one sample at each sampling point for Nitrite during the compliance period beginning January 1, 1993. The Department shall require quarterly monitoring for at least one year following any one sample in which the concentration is 50% of the MCL. The system may return to annual monitoring after four consecutive quarterly samples are found to be reliably and consistently below the MCL.

(B) After the initial sample, all systems where analytical results for Nitrite are <50% of the MCL, shall monitor once during each subsequent compliance cycle.

(C) Systems which are monitoring annually shall take each subsequent sample during the quarter(s) which previously resulted in the highest analytical result.

(g) Sodium

(A) Samples of water which is delivered to users shall be analyzed for Sodium as follows:

(i) Community and Non-Transient Non-Community water systems, surface water sources, once per year for each source;

(ii) Community and Non-Transient Non-Community water systems, ground water sources, once every three years for each source.

(B) The water supplier shall report to the Department the results of the analyses for Sodium as prescribed in rule 333-061-0040. The Department shall notify local health officials of the test results.

(h) Confirmation Samples:

(A) Where the results of sampling for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium exceed the MCL prescribed in OAR 333-061-0030 for inorganic chemicals, the Department may require one additional sample to be taken as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point.

(B) Where the results of sampling for nitrate or nitrite exceed the MCL prescribed in OAR 333-061-0030 for inorganic chemicals, the system is required to collect one additional sample within 24 hours of notification of the results of the initial sample at the same sampling point. Systems unable to comply with the 24-hr sampling requirement must initiate consultation with the Department as soon as practical, but no later than 24 hours after the system learns of the violation and must immediately notify their users as prescribed in 333-061-0042(2)(a)(B), and collect one additional sample within two weeks of notification of the results of the initial sample.

(C) If a confirmation sample required by the Department is taken for any contaminant then the results of the initial and confirmation sample shall be averaged. The resultant average shall be used to determine the system's compliance as prescribed in subsection (2)(j) of this rule.

(i) The Department may require more frequent monitoring than specified in subsections (2)(a) through (g) of this rule or may require confirmation samples for positive and negative results. Systems may apply to the Department to conduct more frequent monitoring than is required in this section.

(j) Compliance with the inorganic MCLs as listed in 333-061-0030(1) (Table 1) shall be determined based on the analytical result(s) obtained at each sampling point as follows: [Table not included. See ED. NOTE.]

(A) For systems which are conducting monitoring at a frequency greater than annual, compliance with the MCLs for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium is determined by a running annual average at any sampling point. If the average at any sampling point rounded to the same number of significant figures as the MCL for the substance in question is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample with results below the detection limit specified for the approved EPA analytical method shall be calculated at zero for the purpose of determining the annual average. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

(B) Systems monitoring annually or less frequently for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium must determine compliance with the MCL by running annual average at any sampling point. If the level of a contaminant at any sampling point is greater than the MCL listed in OAR 333-061-0030(1), the water system must begin quarterly sampling. The water system will not be considered in violation of the MCL until it has completed one year of quarterly monitoring. If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

(C) Compliance with MCLs for nitrate and nitrite is determined based on one sample if the levels of these contaminants are below the MCLs. If the levels of nitrate and/or nitrite exceed the MCLs in the initial sample, a confirmation sample is required in accordance with paragraph (2)(h)(B) of this rule and compliance shall be determined based on the average of the initial and confirmation samples.

(D) If the results of an analysis as prescribed in this rule indicate the level of any contaminant exceeds the maximum contaminant level, the water supplier shall report the analysis results to the Department within 48 hours as prescribed in OAR 333-061-0040 and initiate the public notice procedures as prescribed by OAR 333-061-0042.

(k) All Community and Non-Transient Non-Community water systems shall monitor according to the following schedule:

Population/Begin Initial Monitoring / Complete Initial Monitoring By
300 or More/January 1, 1993/December 31, 1993
100-299/January 1, 1994 / December 31, 1994
Less than 100/January 1, 1995/December 31, 1995

(3) Organic chemicals:

(a) Synthetic Organic Chemicals: Alachlor, Atrazine, Benzo(a)pyrene, Carbofuran, Chlordane, Dalapon, Dibromochloropropane, Dinoseb, Dioxin(2,3,7,8-TCDD), Diquat, Di(2-ethylhexyl)adipate, Di(2-ethylhexyl)phthalate, Endothall, Endrin, Ethylene dibromide, Glyphosate, Heptachlor, Heptachlor epoxide, Hexachlorobenzene, Hexachlorocyclopentadiene, Lindane(BHC-g), Methoxychlor, Oxamyl(Vydate), Picloram, Polychlorinated biphenyls, Pentachlorophenol, Simazine, Toxaphene, 2,4-D and 2,4,5-TP Silvex.

(A) Samples of water which is delivered to users shall be analyzed for regulated synthetic organic chemicals (SOC) as follows:

(i) Community and Non-Transient Non-Community water systems using surface, ground water under the direct influence of surface water or ground sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system after any application of treatment. Community and Non-Transient Non-Community water systems shall collect four consecutive quarterly samples at each sampling point beginning with the initial compliance period starting January 1, 1993. The water systems must take each sample from the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. New wells in an existing wellfield, within an existing drinking water protection area, or within an area well characterized by area-wide source water assessments and/or past monitoring results as determined by the Department, may be eligible for a reduction in initial monitoring from four consecutive quarterly samples to one sample if no detections occur and if, based on the system's source assessment, the Department determines that the new well is producing from the same and only the same aquifer or does not significantly modify the existing drinking water protection area.

(ii) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all the sources being used.

(iii) If the initial analysis does not detect any contaminant listed in subsection (3)(a) of this rule, then monitoring at each sampling point may be reduced to:

(I) Two consecutive quarterly samples in one year during each repeat compliance period for systems serving more than 3300 population; or

(II) One sample in each repeat compliance period for systems serving less than or equal to 3300 population; or

(III) Once every 6 years for all SOCs, if the system has a state certified Drinking Water Protection Plan or for those SOCs determined to be "used" and for which that portion of the aquifer identified by the drinking water protection area delineation has been determined to be of "moderate" susceptibility according to the Department's Use and Susceptibility Protocol. Information from the system's Source Water Assessment can be used in this determination; or

(IV) Once every 9 years for those SOCs in an analytical method group determined to be "not used" in the delineated drinking water protection area, or for those SOCs determined to be "used" if that portion of the aquifer identified by the drinking water protection area delineation has been determined to be of "low susceptibility" according to the Department's Use and Susceptibility Waiver Document. Information from the system's Source Water Assessment can be used in this determination.

(iv) If a water system has two or more wells that have been determined by the Department to constitute a "wellfield" as specified in OAR 333-061-0058, the system must sample at the entry point(s) designated by the Department.

(B) Each Community and Non-Transient Non-Community water system may apply to the Department for a waiver from the requirements of paragraph (3)(a)(A) of this rule. Each water system can receive specific guidance in obtaining a waiver from the Use and Susceptibility Waiver Guidance Document developed by the Department. A waiver must be in place prior to the year in which the monitoring is to be accomplished, and the water system must reapply for a waiver for Organics monitoring each compliance period.

(i) The water system shall use the drinking water protection area as delineated during the Source Water Assessment according to procedures described in the Use and Susceptibility Waiver Guidance Document.

(ii) The Use Waiver criteria as described in the Use and Susceptibility Waiver Guidance Document shall take into consideration but is not limited to the use, storage, distribution, transport and disposal of the contaminant within the delineated recharge or watershed area.

(iii) The Susceptibility Waiver criteria as described in the Use and Susceptibility Waiver Guidance Document shall address only those contaminants that remain after the use waiver process has been completed. The Susceptibility Waiver criteria shall take into consideration but is not limited to the history of bacteria and/or nitrate contamination, well construction, agricultural management practices, infiltration potential, and contaminant mobility and persistence.

(iv) Water systems which qualify for use and susceptibility waivers shall follow the monitoring requirements as directed in the Use and Susceptibility Waiver Guidance Document.

(v) The Use and Susceptibility Waiver Guidance Document is made a part of this rule and shall take into consideration the Wellhead Protection Program and shall be updated with new methods and procedures as they become available.

(vi) The Department may establish area-wide waivers based on historical monitoring data, land use activity, and the results of "Source Water Assessments" and/or "Use and Susceptibility Waiver Documents".

(C) If a water system detects in any sample a contaminant listed in subsection (3)(a) of this rule equal to or greater than the minimum detection limit listed in Table 15, then the water system shall monitor quarterly at each sampling point where a detection occurred. [Table not included. See ED. NOTE.]

(i) Based on a minimum of two quarterly samples for ground water sources and four quarterly samples for surface water sources, the Department may reduce the monitoring frequency required in paragraph (3)(a)(C) of this rule to annually provided the system is reliably and consistently below the MCL. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(ii) Systems which have three consecutive annual samples with no detection of a contaminant may apply to the Department for a waiver as specified in paragraph (3)(a)(B) of this rule.

(iii) If any monitoring required in paragraph (3)(a)(A) of this rule results in the detection of either Heptachlor or Heptachlor epoxide, then subsequent monitoring shall analyze for both contaminants.

(D) If the results of an analysis prescribed in paragraph (3)(a)(A) of this rule indicate that the level of any contaminant exceeds a maximum contaminant level, then the system must monitor quarterly. After a minimum of four quarterly samples show the system to be reliably and consistently below the MCL and in compliance with paragraph (3)(a)(G) of this rule, then the system may monitor annually.

(E) The Department may require confirmation samples for positive or negative results. If a confirmation sample is required by the Department, the result must be averaged with the original sample result (unless the previous sample has been invalidated by the Department) and the average used to determine compliance.

(F) The Department may allow compositing of samples to reduce the number of samples to be analyzed by the system. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collections. If the concentration in the composite sample detects one or more contaminants listed in subsection (3)(a) of this rule, then a follow-up sample must be taken and analyzed within 14 days at each sampling point included in the composite, and be analyzed for that contaminant. Duplicates taken on the original composite samples may be used instead of resampling provided the duplicates are analyzed and the results reported to the Department within 14 days of collection. For systems with a population greater than 3,300, the Department may allow compositing at sampling points only within a single system. For systems with a population £ 3,300, the Department may allow compositing among different systems, provided the 5-sample limit is maintained.

(G) Compliance with contaminants listed in OAR 333-061-0030(2)(a) shall be determined based on the analytical results obtained at each sampling point. If one sampling point is in violation of an MCL, the system is in violation of the MCL. For systems which monitor more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. Systems which monitor annually or less whose sample result exceeds the regulatory detection limit prescribed in paragraph (3)(a)(C) of this rule (Table 15) must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly monitoring. If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately. If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected. If a sample result is less than the detection limit, zero will be used to calculate the annual average. If the system is out of compliance, the system shall follow the reporting and public notification procedures as prescribed in OAR 333-061-0040 and 333-061-0042(2)(b)(A). [Table not included. See ED. NOTE.]

(H) If monitoring data collected after January 1, 1990 are consistent with the requirements of subsection (3)(a) of this rule, the Department may allow systems to use that data to satisfy the monitoring requirements for the initial compliance periods beginning January 1, 1993 and January 1, 1996.

(I) All Community and Non-Transient Non-Community water systems shall monitor according to the following schedule:

Population / Begin Initial Monitoring / Complete Initial Monitoring By
300 or More / January 1, 1993 / December 31. 1993
100-299 / January 1, 1994 / December 31, 1994
Less than 100 / January 1, 1995 / December 31, 1995

(J) All new systems or systems that use a new source of water must demonstrate compliance with the MCL within a period of time specified by the Department. The system must also comply with the initial sampling frequencies specified by the Department to ensure a system can demonstrate compliance with the MCL. (b) Volatile Organic Chemicals: Benzene, Carbon tetrachloride, Cis-1,2-Dichloroethylene, Dichloromethane, Ethylbenzene, Monochlorobenzene, O-Dichlorobenzene, P-Dichlorobenzene, Styrene, Tetrachloroethylene(PCE), Toluene, Trans-1,2-Dichloroethylene, Trichloroethylene(TCE), Vinyl chloride, Xylenes(total), 1,1-Dichloroethylene, 1,1,1-Trichloroethane, 1,1,2-Trichloroethane, 1,2-Dichloroethane, 1,2-Dichloropropane, and 1,2,4-Trichlorobenzene.

(A) Samples of water which is delivered to users shall be analyzed for regulated volatile organic chemicals (VOC) as follows:

(i) Community and Non-Transient Non-Community water systems using surface, ground water under the direct influence of surface water or ground water sources shall sample at each point in the distribution system representative of each source after treatment or at entry points to the distribution system after any application of treatment. Community and Non-Transient Non-Community water systems shall collect four consecutive quarterly samples from each sampling point during each compliance period beginning in the initial compliance period starting January 1, 1993. The water system shall take each sample from the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. New wells in an existing wellfield, within an existing drinking water protection area, or within an area well characterized by area-wide source water assessments and/or past monitoring results as determined by the Department, may be eligible for a reduction in initial monitoring from four consecutive quarterly samples to one sample if no detections occur and if, based on the system's Source Water Assessment, the Department determines that the new well is producing from the same and only the same aquifer or does not significantly modify the existing drinking water protection area.

(ii) If warranted, the Department may designate additional sampling points within the distribution system or at the consumer's tap which more accurately determines consumer exposure.

(iii) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all sources being used.

(iv) If a water system has two or more wells that have been determined by the Department to constitute a "wellfield" as specified in OAR 333-061-0058, the system must sample at the entry point(s) designated by the Department.

(B) For the purpose of subsection (3)(c) of this rule, a detectable level for VOCs is 0.0005 mg/l.

(C) If the initial analyses do not detect any contaminant listed in subsection (3)(c) of this rule, then monitoring for all of the VOCs may be reduced to:

(i) Annual per entry point for surface and ground water systems;

(ii) Once every three years per entry point for ground water systems after a minimum of three years of annual monitoring and no history of detections;

(iii) Once every 6 years if the system has a state certified Drinking Water Protection Plan or if that portion of the aquifer identified by the drinking water protection area delineation has been determined to be of "moderate" susceptibility to the VOCs according to the Department's Use and Susceptibility Protocol. Information from the system's Source Water Assessment can be used in this determination; or

(iv) Once every 9 years if that portion of the aquifer identified by the drinking water protection area delineation has been determined to be of "low susceptibility" to the VOCs according to the Use and Susceptibility Waiver Document. Information from the system's Source Water Assessment can be used in this determination.

(v) The Department may establish area-wide waivers based on historical monitoring data, land use activity, and the results of "Source Water Assessments" and/or "Use and Susceptibility Waiver Documents".

(D) Each Community and Non-Transient Non-Community water system which does not detect any contaminant listed in subsection (3)(c) of this rule after the initial monitoring period may apply to the Department for a waiver from the requirements prescribed in paragraphs (3)(c)(A) and (C) of this rule according to procedures described in paragraph (3)(a)(B) of this rule and the Use and Susceptibility Waiver Guidance Document developed by the Department. A waiver must be in place prior to the year in which the monitoring is to be accomplished, and the water system must reapply for a waiver for Volatile Organic Chemicals monitoring every two compliance periods (6 years).

(E) As a condition of a waiver groundwater systems must take one sample at each sampling point during the time the waiver is in effect and update its vulnerability assessment addressing those factors listed in paragraph (3)(a)(B)(ii) and (iii) of this rule. The Department must confirm that a system is not vulnerable within three years of the original determination or the waiver is invalidated and the system is required to sample annually as specified in paragraph (3)(c)(C) of this rule.

(F) Surface water systems which do not detect any contaminant listed in subsection (3)(c) of this rule after completing the initial monitoring and have been determined to be not vulnerable to VOC contamination by the Department shall monitor at the discretion of the Department. The Department shall reevaluate the vulnerability of such systems during each compliance period.

(G) If a water system detects any contaminant listed in subsection (3)(c) of this rule (except vinyl chloride) in any sample greater than the minimum detection limit of 0.0005 mg/l, then the water system shall monitor quarterly at each sampling point where a detection occurred.

(i) Based on a minimum of two quarterly samples for ground water sources and four quarterly samples for surface water sources, the Department may reduce the monitoring frequency required in paragraph (3)(c)(G) of this rule to annually provided the system is reliably and consistently below the MCL. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(ii) Systems which have three consecutive annual samples with no detection of a contaminant may apply to the Department for a waiver as specified in paragraph (3)(c)(D) of this rule.

(iii) Groundwater systems which have detected one or more of the following two-carbon organic compounds: trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one or more of the two-carbon organic compounds was

detected. If the results of the first analysis do not detect vinyl chloride, the Department may reduce the quarterly monitoring frequency of vinyl chloride monitoring to one sample during each compliance period. Surface water systems are required to monitor for vinyl chloride at the discretion of the Department.

(H) If the results of an analysis prescribed in paragraph (3)(c)(A) of this rule indicate that the level of any contaminant exceeds a maximum contaminant level, then the system shall monitor quarterly. After a minimum of four consecutive quarterly samples show the system to be reliably and consistently below the MCL and in compliance with paragraph (3)(c)(K) of this rule, then the system may monitor annually during the quarter which previously yielded the highest analytical result.

(I) The Department may require confirmation samples for positive or negative results. If a confirmation sample is required by the Department, the result must be averaged with the original sample result and the average used to determine compliance.

(J) The Department may allow compositing of samples to reduce the number of samples to be analyzed by the system. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collections. If the concentration in the composite sample is 0.0005 mg/l for any contaminant listed in subsection (3)(c) of this rule, then a follow-up sample must be taken and analyzed within 14 days at each sampling point included in the composite, and be analyzed for that contaminant. Duplicates taken on the original composite samples may be used instead of resampling provided the duplicates have not been held for longer than 14 days. For systems with a population greater than 3,300, the Department may allow compositing at sampling points only within a single system. For systems with a population £ 3,300, the Department may allow compositing among different systems provided the 5-sample limit is maintained.

(K) Compliance with contaminants listed in OAR 333-061-0030(2)(c) shall be determined based on the analytical results obtained at each sampling point. If one sampling point is in violation of an MCL, the system is in violation of the MCL. For systems which monitor more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. Systems which monitor annually or less whose sample result exceeds the MCL must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling. If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately. If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected. If a sample result is less than the detection limit, zero will be used to calculate the annual average. If the water system is out of compliance, the system shall follow the reporting and public notification procedures as prescribed in 333-061-0040 and 333-061-0042(2)(b)(A).

(L) If monitoring data collected after January 1, 1988 are consistent with the requirements of subsection (3)(c) of this rule, the Department may allow systems to use that data (i.e. a single sample rather than four quarterly samples) to satisfy the monitoring requirements prescribed in paragraph (3)(c)(A) of this rule for the initial compliance period. Systems which use grandparented samples and did not detect any contaminant listed in subsection (3)(c) of this rule shall begin monitoring annually in accordance with paragraph (3)(c)(C) of this rule beginning with the initial compliance period.

(M) All Community and Non-Transient Non-Community water systems shall monitor according to the following schedule:

Population	Begin initial monitoring	Complete initial monitoring by
300 or More	January 1, 1993	December 31. 1993
100-299	January 1, 1994	December 31, 1994
Less than 100	January 1, 1995	December 31, 1995

(N) All new systems or systems that use a new source of water must demonstrate compliance with the MCL within a period of time specified by the Department. The system must also comply with the initial sampling frequencies specified by the Department to ensure a system can demonstrate compliance with the MCL.

(4) Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors:

(a) General sampling and analytical requirements. The requirements of this section apply to all Community and Non-transient Non-community water systems that add a disinfectant (oxidant) to the water supply at any point in the treatment process or deliver water in which a disinfectant (oxidant) has been added to the water supply.

(A) Water systems must take all samples during normal operating conditions.

(B) Water systems may consider multiple wells where a disinfectant is added, drawing water from a single aquifer, as one treatment plant for determining the minimum number of total trihalomethanes (TTHM) and haloacetic acids(five)(HAA5) samples required, with approval from the Department.

(C) Failure to monitor in accordance with the monitoring plan as specified in paragraphs (4)(c)(C) or (4)(d)(D) of this rule is a monitoring violation.

(D) Failure to monitor will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average (RAA) of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MCLs or MRDLs.

(E) Systems must use only data collected under the provisions of this rule to qualify for reduced monitoring.

(b) Initial Distribution System Evaluation (IDSE) Requirements. This subsection establishes monitoring and other requirements for identifying monitoring locations which, in conjunction with the requirements of subsections (4)(d) and (4)(f) of this rule, determine compliance with the MCLs for TTHM and HAA5 as specified in OAR 333-061-0030. Non-transient Non-community water systems serving 10,000 people or less are exempt from the requirements of this subsection.

(A) IDSE Submittal Schedule: Water systems must comply with the requirements specified in Table 16 of this paragraph. Water systems that begin adding a disinfectant to the water supply after the dates specified in Table 16 must consult with the Department to identify compliance monitoring locations and any IDSE compliance requirements. Water systems that were granted a waiver by the EPA exempting them from completing an IDSE, must begin monitoring in accordance with subsection (4)(d) of this rule no later than the date set forth in Table 22 in subsection (4)(d) of this rule. [Table not included. See ED. NOTE.]

(i) The Department may determine, in regards to the dates specified in Table 16, that a combined distribution system does not include certain wholesale or purchasing water systems based on factors such as delivering or receiving water only on an emergency basis, or delivering or receiving only a small percentage and volume of water. [Table not included. See ED. NOTE.](ii) IDSE results will not be used for the purpose of determining compliance with MCLs as prescribed by OAR 333-061-0030(2)(b).

(B) Standard monitoring plans. Standard monitoring plans must comply with the requirements of paragraphs (4)(b)(B)(i) through(iv) of this rule.

(i) The standard monitoring plan must include a schematic of the distribution system (including distribution system water sources, entry points, and storage facilities), with notes indicating the locations and dates of all projected standard monitoring and projected monitoring as prescribed by subsections (4)(c) and (4)(e) of this rule.

(ii) The standard monitoring plan must include an explanation of standard monitoring location selection, and a summary of data relied on to justify the selection.

(iii) The standard monitoring plan must identify the population served and source water classification for the water system.

(iv) Standard monitoring. Water systems must monitor as indicated in Table 17 below. Water systems must collect dual sample sets at each monitoring location, and at least one round of monitoring must be during the peak historical month for TTHM or HAA5 levels, or during the month of warmest water temperature. Water systems must review available compliance, study, or operational data to determine the peak historical month for TTHM or HAA5 levels or the month of warmest water temperature. [Table not included. See ED. NOTE.]

(v) Samples must be collected at locations other than those specified by the monitoring plan as prescribed by subsection (4)(c) of this rule. Sampling locations must be spread throughout the distribution system.

(vi) If the number of entry points to the distribution system is fewer than the number of entry point monitoring locations specified in Table 17, excess entry point samples must be replaced equally by samples collected at locations where you would expect to find high TTHM and HAA5 concentration. If there is an odd number of excess sampling locations, the additional sample must be collected at a location where you would expect to find high TTHM concentration. If the number of entry points to the distribution system is greater than the number of entry point monitoring locations specified in Table 17, the samples must be collected at entry points having the highest annual water flows. [Table not included. See ED. NOTE.]

(vii) Monitoring in accordance with Table 17 may not be reduced according to the provisions of subsection (1)(d) of this rule. [Table not included. See ED. NOTE.]

(viii) IDSE report. The IDSE report must include the following elements:

(I) The IDSE report must include all TTHM and HAA5 analytical results collected in accordance with subsection (4)(c) or (4)(e) of this rule,

and all standard monitoring conducted during the period of the IDSE as individual analytical results and a locational running annual average (LRAA) presented in a format acceptable to the Department. If changed from the standard monitoring plan prescribed by paragraph (4)(b)(B) of this rule, the report must also include a schematic of the distribution system, the population served, and the source water type.

(II) The IDSE report must include an explanation of any deviations from the approved standard monitoring plan.

(III) Water systems must recommend timing and locations for compliance monitoring prescribed in subsections (4)(d) and (4)(f) of this rule, based on the protocol prescribed by paragraph (4)(b)(d)(iii) of this rule, including an explanation for why the locations were selected.

(C) System Specific Study Plans. A system specific study plan may be based on either existing monitoring results or modeling as prescribed by paragraphs (4)(b)(C)(i) or (4)(b)(C)(ii) of this rule. System specific study plans must be completed according to Table 16 as prescribed in paragraph (4)(b)(A) of this rule. [Table not included. See ED. NOTE.]

(i) Existing Monitoring Results. Water systems must submit monitoring results collected prior to the date prescribed by paragraph (4)(b)(A) of this rule. The monitoring results and analysis must meet the following criteria:

(I) TTHM and HAA5 samples must have been collected no earlier than five years prior to the study plan submission date. Sample collection and analysis must be conducted in accordance with subsection (1)(a) of this rule;

(II) The monitoring locations and monitoring frequency must meet the conditions specified in Table 18. Each sampling location must be sampled once during the peak historical month for TTHM or HAA5 levels or the month of warmest water temperature, for every 12 months of data submitted for that sampling location. Monitoring results must include all monitoring results collected in accordance with subsection (4)(c) or (4)(e) of this rule, and any additional monitoring results necessary to meet the minimum sample requirements;[Table not included. See ED. NOTE.]

(III) The water system must report previously collected monitoring results, and certify that the reported monitoring results include all results generated during the time period beginning with the first reported result and ending with the most recent monitoring result collected in accordance with subsection (4)(c) or (4)(e) of this rule;

(IV) The water system must certify that the samples are representative of the entire distribution system, and that neither treatment nor the distribution system has changed significantly since the samples were collected;

(V) The study plan must include a schematic of the distribution system (including distribution system water sources, entry points, and storage facilities), with notes indicating the locations and dates of all completed or planned system specific study monitoring;

(VI) The system specific study plan must include the population served and source water classification; and

(VII) If a water system submits previously collected monitoring results that meets the number of samples required by Table 18, and the Department rejects some of the monitoring results, the water system must either conduct additional monitoring to replace the rejected results on a Department-approved schedule or conduct standard monitoring as prescribed by paragraph (4)(b)(B) of this rule. [Table not included. See ED. NOTE.]

(ii) Modeling. Water systems must conduct analysis of an extended period simulation hydraulic model. The hydraulic model and analysis must meet the following criteria:

(I) The model must simulate a 24-hour variation in demand and show a consistently repeating 24-hour pattern of residence time;

(II) The model must represent the following criteria: (1) 75% of pipe volume; (2) 50% of pipe length; (3) all pressure zones; (4) all 12-inch diameter and larger pipes; (5) all 8-inch and larger pipes that connect pressure zones, influence zones from different sources, storage facilities, major demand areas, pumps, and control valves, or are known or expected to be significant conveyors of water; (6) all 6-inch and larger pipes that connect remote areas of a distribution system to the main portion of the system; (7) all storage facilities with standard operations represented in the model; and (8) all active pump stations with controls represented in the model; and (9) all active control valves; and

(III) The model must be calibrated, or have calibration plans for the current configuration of the distribution system during the period of highest TTHM formation potential. All storage facilities must be evaluated as part of the calibration process. Calibration must be completed no later than 12-months after submission of the system specific study plan.

(IV) Reporting modeling. The system specific study plan must include (1) tabular or spreadsheet data demonstrating that the model meets requirements in paragraph (C)(ii)(II) of this section; (2) a description of all calibration activities undertaken, and if calibration is complete, a graph of predicted tank levels versus measured tank levels for the storage facility with the highest residence time in each pressure zone, and a time series graph of the residence time at the longest residence time storage facility in the distribution system showing the predictions for the entire simulation period (i.e., from time zero until the time it takes to for the model to reach a consistently repeating pattern of residence time); (3) model output showing preliminary 24 hour average residence time predictions throughout the distribution system; (4) timing and number of samples representative of the distribution system planned for at least one monitoring period of TTHM and HAA5 dual sample monitoring at a number of locations no less than would be required for the system under standard monitoring in paragraph (4)(b)(B) of this rule during the historical month of high TTHM. These samples must be taken at locations other than existing compliance monitoring locations determined in accordance with subsection (4)(c) of this rule (5) description of how all requirements will be completed no later than 12 months after system submits the system specific study plan; (6) schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating the locations and dates of all completed system specific study monitoring (if calibration is complete) and all compliance monitoring conducted in accordance with subsection (4)(c) of this rule; and (7) population served and system type (surface water, groundwater under the direct influence of surface water, or groundwater).

(V) If a model is submitted that does not meet the requirements of paragraph (4)(b)(C)(ii) of this rule, the system must correct the deficiencies and respond to Department inquiries concerning the model. Failure to correct deficiencies or respond to inquiries by the Department will result in the system having to conduct standard monitoring as prescribed by paragraph (4)(b)(B) of this rule.

(iii) IDSE report. Water systems must submit the IDSE report according to the schedule prescribed in Table 16, and the report must include the following elements: [Table not included. See ED. NOTE.](I) The IDSE report must include all TTHM and HAA5 monitoring results collected in accordance with subsections (4)(c) and (4)(e) of this rule, and all system specific study monitoring results collected during the period of the system specific study submitted in a tabular or spreadsheet format acceptable to the Department. If changed from the system specific study plan submitted under paragraph (4)(b)(C) of this rule, the IDSE report must also include a schematic of the distribution system, the population served, and source water classification;

(II) If using the modeling provision prescribed by paragraph (4)(b)(C)(ii) of this rule, the system must include final information for the elements described in paragraphs (4)(b)(C)(ii)(IV) and (V) of this rule, and a 24-hour time series graph of residence time for each location selected for monitoring in accordance with subsections (4)(d) and (4)(f) of this rule;

(III) The water system must recommend monitoring locations selected for monitoring in accordance with subsections (4)(d) and (4)(f) of this rule based on the protocol in paragraph (4)(b)(D) of this rule.

(IV) The IDSE report must include an explanation of any deviations from the approved system specific study plan.

(V) The IDSE report must include justification for the recommending the monitoring locations selected for monitoring in accordance with subsections (4)(d) and (4)(f) of this rule.

(VI) Water systems may submit the IDSE report in lieu of the system specific study plan according to the schedule identified in Table 16 if the water system believes that it has the necessary information by the time that the system specific study plan is due. If water systems choose this approach, the IDSE report must also include all information required under paragraph (4)(b)(C) of this rule. [Table not included. See ED. NOTE.]

(D) Monitoring location recommendations.

(i) The IDSE report must include recommendations and explanation for where and during what month(s) TTHM and HAA5 monitoring in accordance with subsections (4)(d) and (4)(f) of this rule should be conducted. Recommendations must be based on the criteria in paragraphs (4)(b)(D)(ii) through (v) of this rule.

(ii) Water systems must collect samples as prescribed by Table 20 below. The number of samples and recommended locations must be used for monitoring in accordance with subsections (4)(d) and (4)(f) of this rule, unless the Department requires different or additional locations. Monitoring locations should be dispersed throughout the distribution system to the maximum extent possible. [Table not included. See ED. NOTE.]

(iii) Water systems must recommend locations for monitoring in accordance with subsections (4)(d) and (4)(f) of this rule based on standard monitoring results, system specific study results, or monitoring results collected in accordance with subsections (4)(c) and (4)(e) of this rule. Water systems must comply with the protocol specified in paragraphs (4)(b)(D)(iii)(I) through (VIII) of this rule. If a water system is required to monitor at more than eight locations, the protocol must be repeated as

necessary. If a water system does not have sufficient monitoring results collected in accordance with subsections (4)(c) and (4)(e) of this rule, the system must repeat the protocol, ignoring the provisions of paragraphs (4)(b)(D)(iii)(III) and (VII) as necessary, until the required total number of monitoring locations have been identified. Water systems must select the:

(I) Location with the highest TTHM LRAA not previously selected through this protocol;

(II) Location with the highest HAA5 LRAA not previously selected through this protocol;

(III) Location with the highest HAA5 RAA based on sampling in accordance with subsections (4)(c) and (4)(e) of this rule, and with average residence time (or maximum residence time for groundwater systems) not previously selected through this protocol;

(IV) Location with the highest TTHM LRAA not previously selected through this protocol;

(V) Location with the highest TTHM LRAA not previously selected through this protocol;

(VI) Location with the highest HAA5 LRAA not previously selected through this protocol;

(VII) Location with the highest TTHM LRAA based on sampling in accordance with subsections (4)(c) and (4)(e) of this rule, and with average residence time (or maximum residence time for groundwater systems) not previously selected through this protocol; and

(VIII) Location with the highest HAA5 LRAA not previously selected through this protocol.

(iv) A water system may recommend locations other than those determined through paragraph(4)(b)(D)(iii) of this rule, if the system includes a rationale for selecting other locations. If the Department approves the alternate locations, the water system must monitor at these locations to determine compliance with subsections (4)(d) and (4)(f) of this rule.

(v) The water system's recommended monitoring schedule must include the month of historically highest TTHM and HAA5 concentration, unless the Department approves another month. Once the highest historical month has been identified, and if quarterly or more frequent routine monitoring is required, water systems must schedule monitoring at a regular frequency of at least every 90 days.

(c) Routine monitoring requirements for TTHMs and HAA5.

(A) Water systems required to conduct monitoring for TTHM and HAA5 must monitor at the frequency specified in Table 21 until the date set forth in Table 22, after which water systems must comply with the requirements of subsections (4)(d) or (4)(f) of this rule.

[Table not included. See ED. NOTE.]

(B) Systems on increased monitoring may return to routine monitoring if, after at least one year of monitoring, the TTHM annual average is less than or equal to 0.060 mg/L and the HAA5 annual average is less than or equal to 0.045 mg/L.

(C) Monitoring plans. Each water system required to monitor under subsection (4)(c) of this rule must develop and implement a monitoring plan. The system must maintain the plan and make it available for inspection by the Department and the general public no later than 30 days following the applicable compliance dates as specified in OAR 333-061-0032(10)(b). All water systems using surface water or groundwater under the direct influence of surface water serving more than 3300 people must submit a copy of the monitoring plan to the Department no later than the date of the first report required by OAR 333-061-0040(k). The Department may also require the plan to be submitted by any other system. After review, the Department may require changes in any plan elements. The plan must include at least the following elements:

(i) Specific locations and schedules for collecting samples for any parameters included in subsection (4)(c) and (4)(e) of this rule;

(ii) How the water system will calculate compliance with MCLs, MRDLs, and treatment techniques; and

(iii)If approved for monitoring as a purchasing water system, or if providing water to a purchasing water system, the sampling plan must reflect the entire distribution system.

(d) Revised monitoring requirements for TTHM and HAA5. This subsection establishes monitoring and other requirements for achieving compliance with the MCL based on a LRAA for TTHM and HAA5, and for achieving compliance with maximum residual disinfectant residuals for chlorine and chloramine for certain purchasing water systems.

(A) Water systems must meet the requirements of this subsection beginning on the date specified by the schedule in Table 22: [Table not included. See ED. NOTE.]

(i) Water systems required to conduct quarterly monitoring must begin monitoring in the calendar quarter that includes the compliance date specified in the Table 22. [Table not included. See ED. NOTE.](ii) Water systems required to conduct monitoring at a frequency less than quarterly must begin monitoring in the month recommended in the IDSE report prepared as prescribed in paragraphs (4)(b)(B) or (4)(b)(C) of this rule, or the month identified in the monitoring plan developed as prescribed in paragraph (4)(d)(D) of this rule, within 12 months of the date specified in Table 22. [Table not included. See ED. NOTE.]

(B) Compliance calculations and determinations. Water systems required to conduct quarterly monitoring must make compliance calculations at the end of the fourth quarter following the compliance date specified in Table 22, and at the end of each subsequent quarter. The LRAA must be calculated prior to the fourth quarter if fewer than four quarters of data would cause the MCL to be exceeded, regardless of the monitoring results in subsequent quarters. Water systems required to conduct monitoring at a frequency less than quarterly must make compliance calculations beginning with the first sample collected after the date specified in Table 22. [Table not included. See ED. NOTE.]

(i) Water systems required to monitor quarterly. Water systems must calculate the LRAA for TTHM and HAA5 using monitoring results collected under this subsection to comply with the MCL listed in OAR 333-061-0030(2)(b). Water systems that fail to complete four consecutive quarters of monitoring must calculate the LRAA based on the available data from the most recent four quarters. Water systems that take more than one sample per quarter at a specific monitoring location must average all samples taken in the quarter for that location to determine a quarterly average to be used in the LRAA calculation.

(ii) Water systems required to monitor yearly or less frequently. Water systems must determine that each sample collected is less than the MCL listed in OAR 333-061-0030(2)(b). If any sample exceeds the MCL, the water system must comply with the requirements of subsection (4)(h) of this rule. If no sample exceeds the MCL, the sample result for each monitoring location is considered the LRAA for that monitoring location.

(iii) A water system required to monitor quarterly is in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA if the system fails to monitor.

(C) Routine Monitoring Frequency. Water systems that submitted an IDSE report must begin monitoring at the locations and during the months recommended in the IDSE report as prescribed by paragraph (4)(b)(D) of this rule, following the schedule as prescribed by Table 22, unless the Department requires other or additional locations after its review. Non-transient Non-community water systems serving less than 10,000 people, and water systems that were granted a waiver by the EPA exempting them from completing an IDSE must begin monitoring at the location(s) and dates identified in the monitoring plan developed as prescribed in subsection (4)(c)(C) of this rule, and updated as required by paragraph (4)(d)(D) of this rule. [Table not included. See ED. NOTE.]

(i) Systems must monitor at no fewer than the number of locations identified in Table 23: [Table not included. See ED. NOTE.]

(ii) Water systems that begin adding a disinfectant to the water supply after the dates specified in Table 16 must consult the Department to identify compliance monitoring locations. Systems must then develop a monitoring plan as prescribed in paragraph (4)(d)(D) of this rule that includes those monitoring locations. [Table not included. See ED. NOTE.]

(D) Monitoring Plan. Water systems must develop and implement a monitoring plan. The monitoring plan must be completed no later than the date the system begins monitoring in accordance subsections (4)(d) and (4)(f) of this rule, and must be maintained and made available for inspection by the Department and the general public.

(i) The monitoring plan must include the following elements:

(I) Monitoring locations;

(II) Monitoring dates; and

(III) Compliance calculation procedures.

(ii) Water systems not required to submit an IDSE report as prescribed in paragraphs (4)(b)(B) or (4)(b)(C) of this rule, and that have either insufficient or too many monitoring locations from monitoring in accordance with subsections (4)(c) and (4)(e) of this rule, must identify the required number of monitoring locations for monitoring in accordance with subsections (4)(d) and (4)(f) of this rule. Water systems must identify the locations by alternating the selection of locations representing high TTHM levels and high HAA5 levels until the required number of monitoring locations have been identified. Water systems must also provide a rationale for identifying the locations as having high levels of TTHM or HAA5.

(iii) Surface water or GWUDI systems serving more than 3,300 people must submit a copy of their monitoring plan to the Department prior to the date the system conducts initial monitoring under this rule, unless the IDSE report submitted as prescribed in subsection (4)(b) of this rule contains all the information required in paragraph (4)(b)(D) of this rule.

(iv) Revisions to monitoring plans. Systems may revise monitoring plans to reflect changes in treatment, distribution system operations, layout (including new service areas), or other factors that may affect TTHM or HAA5 formation, including Department-approved reasons, after consulta-

tion with the Department regarding the need and justification for the revision. If monitoring locations are changed, then water systems must replace existing monitoring locations with the lowest LRAA with new locations that reflect current distribution system locations expected to have high TTHM or HAA5 levels. The Department may require modifications in monitoring plans. Surface water or groundwater under the direct influence of surface water systems serving > 3,300 people must submit a copy of their modified monitoring plan to the Department prior to the date required to comply with the revised monitoring plan.

(e) Reduced monitoring. Until the date set forth in Table 22, water systems may reduce monitoring as specified in Table 24, except as otherwise provided. [Table not included. See ED. NOTE.]

(A) Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems which must monitor quarterly) or the result of the sample (for systems which must monitor no more frequently than annually) is no more than 0.060 mg/L or 0.045 mg/L for TTHMs and HAA5, respectively. Systems that do not meet these levels must resume monitoring at the frequency identified in paragraph (4)(c)(A) of this rule (minimum monitoring frequency column) in the quarter immediately following the monitoring period in which the system exceeds 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. For systems using only groundwater not under the direct influence of surface water and serving less than 10,000 persons, if either the TTHM annual average is greater than 0.080 mg/L or the HAA5 annual average is greater than 0.060 mg/L, the water system must go to increased monitoring as specified in paragraph (4)(c)(A) of this rule (sample location column) in the quarter immediately following the monitoring period in which the system exceeds 0.080 mg/L or 0.060 mg/L for TTHMs or HAA5, respectively.

(B) Systems may remain on reduced monitoring after the dates identified in Table 22 of paragraph (4)(d)(A) of this rule for compliance with this rule only if the water system was granted a waiver by the EPA exempting them from completing an IDSE and the system, plus meets the reduced monitoring criteria specified in paragraph (4)(f)(A) of this rule, and does not change or add monitoring locations from those used for compliance monitoring in accordance with subsection (4)(c) of this rule.. If monitoring locations under subsection (4)(d) of this rule differ from monitoring locations under subsection (4)(c) of this rule, then systems may not remain on reduced monitoring after the dates identified in paragraph (4)(d)(A) of this rule, for compliance with this rule.

(C) Monitoring requirements for source water TOC. Surface water or GWUDI systems must collect monthly TOC samples at a location prior to any treatment in order to qualify for reduced and HAA5 monitoring as prescribed by subsection (4)(n) of this rule, unless the water system is monitoring as prescribed by subsection (4)(n) of this rule. To remain on reduced monitoring, and in addition to meeting other criteria for reduced monitoring, the source water TOC running annual average must be ≤4.0.mg/L. based on the most recent four quarters of monitoring, on a continuing basis at a location prior to any treatment. Once qualified for reduced monitoring as prescribed by this subsection, a water system may reduce source water TOC monitoring to quarterly TOC samples collected every 90 days at a location prior to any treatment.

(D) The Department may return a system to routine monitoring at its discretion.

(f) Revised reduced monitoring. Beginning on the dates set forth in Table 22, systems may reduce monitoring to the level specified in Table 25 any time the LRAA is ≤0.040 mg/L for TTHM and ≤0.030 mg/L for HAA5 at all monitoring locations. [Table not included. See ED. NOTE.]

(A) Systems may only use data collected under the provisions of subsections (4)(c) through (4)(f) of this rule to qualify for reduced monitoring. In addition, the annual source water average TOC level, before any treatment, must be less than or equal to 4.0 mg/L at each plant treating surface water or groundwater under the direct influence of surface water, based on monitoring conducted as prescribed in paragraph (4)(f)(D) and subsection (4)(n) of this rule.

(B) Water Systems may remain on reduced monitoring so long as:

(i) The LRAA for water systems conducting quarterly monitoring is less than or equal to 0.040 mg/L for TTHM and less than or equal to 0.030 mg/L for HAA5 LRAA at each monitoring location; or

(ii) Samples collected by water systems conducting annual or less frequent monitoring are less than or equal to 0.060 mg/L for TTHM and less than or equal to 0.045 mg/L for HAA5.

(C) Water systems must resume routine monitoring as prescribed in subsection (4)(d) of this rule, or begin increased monitoring as prescribed in subsection (4)(h) of this rule if:

(i) The LRAA based on quarterly monitoring exceeds 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 at any monitoring location; or

(ii) A sample collected at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5 when the monitoring frequency is annual or less frequent; or

(iii) The average annual source water TOC level, before any treatment, is greater than 4.0 mg/L at any treatment plant treating surface water or groundwater under the direct influence of surface water.

(D) Monitoring requirements for source water TOC. Surface water or GWUDI systems must collect monthly TOC samples at a location prior to any treatment in order to qualify for reduced TTHM and HAA5 monitoring as prescribed by this subsection, unless the water system is monitoring as prescribed by subsection (4)(n) of this rule. To remain on reduced monitoring, and in addition to meeting other criteria for reduced monitoring, the source water TOC running annual average must be ≤4.0 mg/L, based on the most recent four quarters of monitoring, on a continuing basis at a location prior to any treatment. Once qualified for reduced monitoring as prescribed by this subsection, a water system may reduce source water TOC monitoring to quarterly TOC samples collected every 90 days at a location prior to any treatment.

(E) A water system may be returned to routine monitoring at the Department's discretion.

(g) Disinfection Profiling. Any community, non-transient non-community, or transient non-community water system utilizing surface water or groundwater under direct influence of surface water that desires to make a significant change to its disinfection treatment process as defined by OAR 333-061-0060(1)(e)(A) through (1)(e)(D), or any community or non-transient non-community utilizing surface water or groundwater under direct influence of surface water and having a running annual average greater than or equal to 0.064 mg/l for TTHM or 0.048 mg/l for HAA5, must conduct disinfection profiling as determined by the Department.

(A) Water systems must monitor the following parameters to determine total log inactivation:

(i) The temperature of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow;

(ii) The pH of the disinfected water at each residual disinfectant concentration sampling point during peak hourly flow for systems using chlorine;

(iii) The disinfectant contact time(s) ("T") during peak hourly flow; and

(iv) The residual disinfectant concentration(s) ("C") of the water before or at the first customer and prior to each additional point of disinfection during peak hourly flow.

(B) Water systems serving at least 10,000 people must conduct the disinfection profiling in accordance with the USEPA Disinfection Profiling and Benchmarking Guidance Manual. The profile must be based on daily inactivation rate calculations over a period of 12 consecutive months. If the water system uses chloramines, ozone, or chlorine dioxide as a primary disinfectant, the log inactivation for viruses must be calculated and an additional disinfection profile must be developed using a method approved by the Department.

(C) Water systems serving less than 10,000 people must conduct the disinfection profiling in accordance with or the USEPA LT1-ESWTR Disinfection Profiling and Benchmarking Technical Guidance Manual. The profile must be based on weekly inactivation rate calculations collected on the same calendar day over a period of 12 consecutive months.

(D) Water systems must calculate the total inactivation ratio for Giardia lamblia as specified in this paragraph.

(i) Water systems using only one point of disinfectant application must determine the total inactivation ratio for the disinfection segment based on the methods specified in this paragraph. Water systems with more than one point of disinfectant application must determine the total inactivation ratio for each disinfection segment.

(I) Water systems must determine one inactivation ratio (CTcalc/CT99.9)before or at the first customer during peak hourly flow; or

(II) Must determine successive (CTcalc/CT99.9)values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Water systems must calculate the total inactivation ratio by determining (CTcalc/CT99.9) for each sequence and then adding the (CTcalc/CT99.9)values together to determine water sources under the direct influence of surface water shall monitor for Nitrate quarterly beginning January 1,1993. The Department may allow a surface water system to reduce the sampling frequency to annually provided that all analytical results from four consecutive quarters are less than 50% of the MCL. A surface water system shall return to quarterly monitoring if any one sample is 50% of the MCL.

(B) Community and Non-Transient Non-Community water systems using groundwater sources shall monitor for Nitrate annually beginning January 1, 1993. The Department shall require quarterly monitoring for a

least one year following any one sample in which the concentration is 50% of the MCL. The system may return to annual monitoring after four consecutive quarterly samples are found to be reliably and consistently below the MCL.

(C) Transient Non-Community and State Regulated water systems shall monitor for Nitrate annually beginning January 1, 1993.

(D) After the initial round of quarterly sampling is completed, each Community and Non-Transient Non-Community water system which is monitoring annually shall take subsequent samples during the quarter(s) which previously resulted in the highest analytical result.

(f) Nitrite:

(A) Community and Non-Transient Non-Community water systems shall collect one sample at each sampling point for Nitrite during the compliance period beginning January 1, 1993. The Department shall require quarterly monitoriy treatment practice nor changed sources since the profile was developed. Water systems that have not developed a virus profile as prescribed by paragraph (F) of this subsection must develop a virus profile using the same monitoring data on which the Giardia lamblia profile is based.

(F) Water systems must calculate the log of inactivation for viruses using a similar protocol as described in paragraph (4)(g)(D) of this rule, using a CT99.99 and a multiplication factor of 4.0.

(G) Water systems must use the procedures specified in (i) and (ii) of this paragraph to calculate a disinfection benchmark.

(i) For each year of profiling data collected and calculated as prescribed by paragraphs (4)(g)(A) through (F) of this rule, systems must determine the lowest mean monthly level of both Giardia lamblia and virus inactivation. Water systems must determine the mean Giardia lamblia and virus inactivation for each calendar month for each year of profiling data by dividing the sum of daily of weekly Giardia lamblia and virus log inactivation by the number of values calculated for that month.

(ii) The disinfection benchmark is the lowest monthly mean value (for water systems with one year of profiling data) or the mean of the lowest monthly mean values (for water systems with more than one year of profiling data) of Giardia lamblia and virus log inactivation in each year of profiling data.

(H) Water systems must retain the disinfection profile data in graphic form, such as a spreadsheet, which must be available for review by the Department as part of a sanitary survey or other field visit contact.

(h) Conditions requiring increased monitoring.

(A) Water systems required to monitor annually or less frequently as prescribed by subsections (4)(d) or (4)(f) of this rule must increase monitoring to dual sample sets collected every 90 days at all locations, if a TTHM or HAA5 sample exceeds the MCL at any location.

(B) Water systems conducting increased monitoring must collect samples at the monitoring locations specified in the monitoring plan developed in accordance with paragraph (4)(d)(D) of this rule.

(C) Water systems may return to routine monitoring if at least four consecutive quarters of increased monitoring has been conducted, and the LRAA for every monitoring location is less than or equal to 0.060 mg/L for TTHM and 0.045 mg/L for HAA5.

(i) Operational evaluation levels

(A) Water systems have exceeded the operational evaluation level for TTHM or HAA5 at a monitoring location when the sum of the two previous quarters' sample results plus twice the current quarter's sample result, divided by 4, exceeds the MCL.

(B) Operational evaluation and report.

(i) Systems that exceed the operational evaluation level for either TTHM or HAA5 must conduct an operational evaluation and submit a written report of the evaluation to the Department no later than 90 days after being notified of the analytical result that causes the system to exceed the operational evaluation level. The written report must be made available to the public upon request.

(ii) Operational evaluations must include an examination of the water system's treatment and distribution practices, including but not limited to: storage tank operations, excess storage capacity, distribution system flushing, changes in sources or source water quality, and treatment changes or problems that may contribute to TTHM and HAA5 formation. The examination must also include what steps could be considered to minimize future exceedances.

(I) The Department may allow water systems to limit the scope of the evaluation if the water system is able to identify the cause of the operational evaluation level exceedance.

(II) The request to limit the scope of the evaluation does not extend the schedule specified in paragraph (4)(i)(B)(i) of this rule for submitting the written report. The Department must approve this limited scope of evaluation in writing, and the water system must keep that approval with the completed report.

(j) Additional requirements for purchasing water systems. Purchasing water systems that do not add a disinfectant, but deliver water where a disinfectant (oxidant) has been added to the water supply at any point in the treatment process must comply with analytical and monitoring requirements for chlorine and chloramines as prescribed in paragraph (4)(m)(A) of this rule and in subsection (4)(t) of this rule.

(k) Chlorite. Community and Non-transient Non-community water systems using chlorine dioxide, for disinfection or oxidation, must conduct monitoring for chlorite.

(A) Routine monitoring.

(i) Daily monitoring. Water systems must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the system must take additional samples in the distribution system the following day at the locations required by paragraph (4)(k)(B) of this rule, in addition to the sample required at the entrance to the distribution system.

(ii) Monthly monitoring. Systems must take a three sample set each month in the distribution system. The system must take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling must be conducted in the same manner (as three sample sets, at the specified locations). The system may use the results of additional monitoring conducted under paragraph (4)(k)(B) of this rule to meet the requirement for monitoring in this paragraph.

(B) Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system is required to take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(C) Reduced monitoring.

(i) Chlorite monitoring at the entrance to the distribution system required by paragraph (4)(k)(A)(i) of this rule may not be reduced.

(ii) Chlorite monitoring in the distribution system required by paragraph (4)(k)(A)(ii) of this rule may be reduced to one three sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system under paragraph (4)(k)(A)(ii) of this rule has exceeded the chlorite MCL and the system has not been required to conduct monitoring under paragraph (4)(k)(B) of this rule. The system may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system under paragraph (4)(k)(A)(ii) of this rule exceeds the chlorite MCL or the system is required to conduct monitoring under paragraph (4)(k)(B) of this rule, at which time the system must revert to routine monitoring.

(l) Bromate

(A) Routine monitoring. Community and Non-transient Non-community water systems using ozone, for disinfection or oxidation, must take one sample per month for each treatment plant in the system using ozone. Water systems must take samples monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(B) Reduced monitoring. Water systems required to analyze for bromate may reduce monitoring from monthly to quarterly, if the system's running annual average bromate concentration is less than or equal to 0.0025 mg/L based on monthly bromate measurements for the most recent four quarters. Water systems may remain on reduced monitoring as long as the running annual average of quarterly bromate samples is less than or equal to 0.0025 mg/L. If the running annual average bromate concentration is >0.0025 mg/L, the system must resume routine monitoring as required by paragraph (4)(l)(A) of this rule.

(m) Monitoring requirements for disinfectant residuals.

(A) Chlorine and chloramines

(i) Routine monitoring. Community and Non-transient Non-community water systems that use chlorine or chloramines must measure the residual disinfectant level at the same points in the distribution system and at the same time when total coliforms are sampled, as specified in OAR 333-061-0036(6). Water systems using surface water or groundwater under the direct influence of surface water may use the results of residual disinfectant concentration sampling conducted as required by OAR 333-061-0036(5)(a)(F) for unfiltered systems or OAR 333-061-0036(5)(b)(E) for systems which filter, in lieu of taking separate samples. Compliance with this rule is achieved when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. Operators may increase residual disinfectant levels of chlorine or chloramine (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health in order to address specif-

ic microbiological contaminant problems resulting from events in the source water or in the distribution system.

(ii) Reduced monitoring from paragraph (4)(m)(A)(i) of this rule is not allowed.

(B) Chlorine dioxide

(i) Routine monitoring. Community, Non-transient Non-community, and Transient Non-community water systems that use chlorine dioxide for disinfection or oxidation must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the water system must take samples in the distribution system the following day at the locations required by paragraph (4)(m)(B)(ii) of this rule, in addition to the sample required at the entrance to the distribution system. Compliance with this rule is achieved when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL.

(ii) Additional monitoring. On each day following a routine sample monitoring result that exceeds the MRDL, the system is required to take three chlorine dioxide distribution system samples. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system (i.e., no booster chlorination), the system must take three samples as close to the first customer as possible, at intervals of at least six hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system (i.e., booster chlorination), the system must take one sample at each of the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(iii) Chlorine dioxide monitoring may not be reduced from paragraph (4)(m)(B)(ii) of this rule.

(n) Monitoring requirements for disinfection byproduct precursors (DBPP)

(A) Routine monitoring. Water systems using surface water or groundwater under the direct influence of surface water which use conventional filtration treatment must monitor each treatment plant for TOC no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. All systems required to monitor under paragraph (4)(q)(A) of this rule must also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time as the source water sample is taken, all systems must monitor for alkalinity in the source water prior to any treatment. Systems must take one paired sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(B) Reduced monitoring. Water systems using surface water or groundwater under the direct influence of surface water with an average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may reduce monitoring for both TOC and alkalinity to one paired sample and one source water alkalinity sample per plant per quarter. The water system must revert to routine monitoring in the month following the quarter when the annual average treated water TOC is greater than or equal to 2.0 mg/L.

(o) Bromide. Water systems required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly measurements for one year. The system must continue bromide monitoring to remain on reduced bromate monitoring.

(p) General compliance requirements.

(A) Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system fails to monitor for TTHM, HAA5, or bromate, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average. Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

(B) All samples taken and analyzed under the provisions of section (4) of this rule must be included in determining compliance, even if that number is greater than the minimum required.

(C) If, during the first year of monitoring as required by section (4) of this rule, any individual quarter's average will cause the running annual average of that system to exceed the MCL for TTHM, HAA5, or bromate, or the MRDL for chlorine or chloramine, the system is out of compliance at the end of that quarter.

(q) Compliance requirements for TTHMs and HAA5.

(A) For systems monitoring quarterly, and in accordance with subsections (4)(c) or (4)(e) of this rule, compliance with MCLs as required by OAR 333-061-0030(2)(b) must be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the system as required by paragraph (4)(c) of this rule.

(B) For water systems monitoring less frequently than quarterly, and in accordance with subsections (4)(c) or (4)(e) of this rule, compliance must be based on an average of samples taken that year as required by paragraph (4)(c)(A) of this rule. If the average of these samples exceeds the MCL, the water system must increase monitoring to once per quarter per treatment plant and the system is not considered in violation of the MCL until it has completed one year of quarterly monitoring, unless the result of fewer than four quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. Water systems required to increase monitoring frequency to quarterly monitoring must calculate compliance by including the sample which triggered the increased monitoring plus the following three quarters of monitoring.

(C) If the running annual arithmetic average of quarterly averages covering any consecutive four quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public as required by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040.

(D) If a water system fails to complete four consecutive quarters' monitoring, compliance with the MCL for the last four quarter compliance period must be based on an average of the available data.

(E) A water system monitoring for TTHM or HAA5 in accordance with subsections (4)(d), (4)(f) or (4)(h) of this rule is in violation of the MCL specified in OAR 333-061-0030(2)(b) when the LRAA calculation exceeds the MCL based on four consecutive quarters of monitoring (or fewer than four quarters of monitoring if the MCL would be exceeded regardless of monitoring results in subsequent quarters). A water system is in violation of the monitoring requirements every quarter that a monitoring result would be used in calculating an LRAA if the system fails to monitor.

(r) Compliance requirements for Bromate. Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly samples (or, for months in which the system takes more than one sample, the average of all samples taken during the month) collected by the system as required by paragraph (4)(l) of this rule. If the average of samples covering any consecutive four quarter period exceeds the MCL, the water system is in violation of the MCL and must notify the public as required by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040. If a water system fails to complete 12 consecutive months monitoring, compliance with the MCL for the last four quarter compliance period must be based on an average of the available data.

(s) Compliance requirements for Chlorite. Compliance must be based on an arithmetic average of each three sample set taken in the distribution system as required by paragraph (4)(k)(A)(ii) of this rule and paragraph (4)(k)(B) of this rule. If the arithmetic average of any three sample set exceeds the MCL, the water system is in violation of the MCL and must notify the public as required by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040.

(t) Compliance requirements for chlorine and chloramines.

(A) Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system as required by paragraph (4)(m)(A) of this rule. If the average covering any consecutive four quarter period exceeds the MRDL, the system is in violation of the MRDL and must notify the public as required by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040.

(B) In cases where water systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance must be determined by including together all monitoring results of both chlorine and chloramines in calculating compliance. Reports submitted as required by OAR 333-061-0040(1) must clearly indicate which residual disinfectant was analyzed for each sample.

(u) Compliance requirement for Chlorine dioxide.

(A) Acute violations. Compliance must be based on consecutive daily samples collected by the water system as required by paragraph (4)(m)(B) of this rule. If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (or more) of the three samples taken in the distribution system exceed the MRDL, the water system is in violation of the MRDL and must take immediate corrective action to lower the level of chlorine dioxide below the MRDL and must notify the public pursuant to the procedures for acute health risks as required by OAR

333-061-0042(2)(a)(C) in addition to reporting to the Department as required by OAR 333-061-0040. Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system will also be considered an MRDL violation and the water system must notify the public of the violation in accordance with the provisions for acute violations as required by OAR 333-061-0042(2)(a)(C) in addition to reporting to the Department as required by OAR 333-061-0040.

(B) Non-acute violations. Compliance must be based on consecutive daily samples collected by the system as required by paragraph (4)(m)(B) of this rule. If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the water system is in violation of the MRDL and must take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and will notify the public pursuant to the procedures for non-acute health risks specified by OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department as required by OAR 333-061-0040. Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation and the water system must notify the public of the violation in accordance with the provisions for non-acute violations specified by OAR 333-061-0042(2)(b)(A) in addition to reporting to the Department as required by OAR 333-061-0040.

(v) Compliance requirements for Disinfection byproduct precursors (DBPP). Compliance must be determined as specified by OAR 333-061-0032(10)(f). Water systems may begin monitoring to determine whether Step 1 TOC removals can be met 12 months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any water system that does not monitor during this period, and then determines in the first 12 months after the compliance date that it is not able to meet the Step 1 requirements as specified in OAR 333-061-0032(10)(e)(B) and must therefore apply for alternate minimum TOC removal (Step 2)requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2)requirements as allowed by OAR 333-061-0032(10)(e)(C) and is in violation. Water systems may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date. For systems required to meet step 1 TOC removals, if the value calculated under OAR 333-061-0032(10)(f)(A)(iv) is less than 1.00, the system is in violation of the treatment technique requirements and must notify the public pursuant to OAR 333-061-0042(2)(b)(A), in addition to reporting to the Department pursuant to OAR 333-061-0040.

(5) Surface Water Treatment.

(a) A public water system that uses a surface water source or a groundwater source under the direct influence of surface water that does not provide filtration treatment must monitor water quality as specified in this subsection beginning January 1, 1991 for systems using a surface water source and January 1, 1991 or 6 months after the Department has identified a source as being under the direct influence of surface water for groundwater sources, whichever is later.

(A) Fecal coliform or total coliform density measurements as required by OAR 333-061-0032(2)(b)(A) must be performed on representative source water samples immediately prior to the first or only point of disinfectant application. The system must sample for fecal or total coliforms at the minimum frequency shown in Table 26 each week the system serves water to the public. These samples must be collected on separate days. Also one fecal or total coliform density measurement must be made every day the system serves water to the public when the turbidity of the source water exceeds 1 NTU (these samples count towards the weekly coliform sampling requirement) unless the Department determines that the system, for logistical reasons outside of its control, cannot have the sample analyzed within 30 hours of collection. [Table not included. See ED. NOTE.]

(B) Turbidity measurements as required by OAR 333-061-0032(2)(b)(B) must be performed on representative grab samples of source water immediately prior to the first or only point of disinfectant application every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the Department. Systems using continuous turbidity monitoring must report the turbidity data to the Department in the same manner that grab sample results are reported. The Department will furnish report forms upon request.

(C) The total inactivation ratio for each day that the system is in operation must be determined based on the CT99.9 values in Tables 27 through 33. The parameters necessary to determine the total inactivation ratio must be monitored as follows: [Table not included. See ED. NOTE.]

(i) The temperature of the disinfected water must be measured at least once per day at each residual disinfectant concentration sampling point.

(ii) If the system uses chlorine, the pH of the disinfected water must be measured at least once per day at each chlorine residual disinfectant concentration sampling point.

(iii) The disinfectant contact time(s) ("T") in minutes must be determined for each day during peak hourly flow.

(iv) The residual disinfectant concentration(s) ("C") in mg/l before or at the first customer must be measured each day during peak hourly flow.

(v) If a system uses a disinfectant other than chlorine or UV, the system may demonstrate to the Department, through the use of protocol approved by the Department for on-site disinfection challenge studies or other information satisfactory to the Department, that CT99.9 values other than those specified in the Tables 33 and 34 or other operational parameters are adequate to demonstrate that the system is achieving the minimum inactivation rates required by OAR 333-061-0032(3)(a). [Table not included. See ED. NOTE.]

(D) The total inactivation ratio must be calculated as follows:

(i) If the system uses only one point of disinfectant application, the system may determine the total inactivation ratio based on either of the following two methods:

(I) One inactivation ratio (CTcalc/CTrequired) is determined before or at the first customer during peak hourly flow and if the CTcalc/CTrequired is greater than or equal to 1.0, the Giardia lamblia inactivation requirement has been achieved; or

(II) Successive CTcalc/CTrequired values representing sequential inactivation ratios, are determined between the point of disinfection application and a point before or at the first customer during peak hourly flow. Under this alternative, the following method must be used to calculate the total inactivation ratio:

Step 1: Determine CTcalc/CTrequired for each sequence
Step 2: Add the CTcalc/CTrequired values together
Step 3:If (CTcalc/CTrequired) is greater than or equal to 1.0, the Giardia lamblia inactivation requirement has been achieved.

(ii) If the system uses more than one point of disinfectant application before or at the first customer, the system must determine the CT value of each disinfection sequence immediately prior to the next point of disinfectant application during peak hourly flow. The CTcalc/CTrequired value of each sequence and CTcalc/CTrequired must be calculated using the methods in paragraph (4)(a)(D)(i)(II) of this rule to determine if the system is in compliance with OAR 333-061-032 (3)(a) or (5)(a).

(E) The residual disinfectant concentration of the water entering the distribution system must be monitored continuously, and the lowest value must be recorded each day. If there is a failure in the continuous monitoring equipment, grab sampling every 4 hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment, and systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies prescribed in Table 35 . The day's samples cannot be taken at the same time. The sampling intervals are subject to Department review and approval. If at any time the residual disinfectant concentration falls below 0.2 mg/l in a system using grab sampling in lieu of continuous monitoring, the system must take a grab sample every 4 hours until the residual disinfectant concentration is $0.2 mg/l. [Table not included. See ED. NOTE.]

(F) The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in section (5) of this rule, except that the Department may allow a public water system which uses both a surface water source or a groundwater source under the direct influence of surface water, and a groundwater source, to take disinfectant residual samples at points other than the total coliform sampling points if the Department determines that such points are more representative of treated (disinfected) water quality within the distribution system.

(b) A public water system that uses a surface water source or a groundwater source under the direct influence of surface water that does provide filtration treatment must monitor water quality as specified in this subsection when filtration treatment is installed.

(A) Turbidity measurements as required by section OAR 333-061-0032(4) must be performed on representative samples of the system's filtered water, measured prior to any storage, every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the Department. Calibration of all turbidimeters must be performed according to manufacturer's specifications, but no less frequently than quarterly. For any systems using slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the Department may reduce the sampling

frequency to once per day if it determines that less frequent monitoring is sufficient to indicate effective filtration performance. Systems using lime softening may acidify representative samples prior to analysis using a method approved by the Department.

(B) The actual CT value achieved must be calculated each day the treatment plant is in operation. The parameters necessary to determine the actual CT value must be monitored as follows:

(i) The temperature of the disinfected water must be measured at least once per day at each residual disinfectant concentration sampling point as prescribed in (5)(b)(B)(iv) of this rule.

(ii) If the system uses chlorine, the pH of the disinfected water must be measured at least once per day at each chlorine residual disinfectant concentration sampling point.

(iii) The disinfectant contact time(s) ("T") in minutes must be determined for each day during peak hourly flow, based on results of a tracer study conducted according to OAR 333-061-0050(6)(a)(R), or other method approved by the Department.

(iv) The residual disinfectant concentration(s) ("C") in mg/l before or at the first customer must be measured each day during peak hourly flow.

(v) If a system uses a disinfectant other than chlorine, the system may demonstrate to the Department, through the use of protocol approved by the Department for on-site disinfection challenge studies or other information satisfactory to the Department, or other operational parameters are adequate to demonstrate that the system is achieving the minimum inactivation rates required by OAR 333-061-0032(5)(a).

(C) The inactivation ratio calculations as prescribed in paragraph (5)(a)(D) of this rule.

(D) Monitoring for the residual disinfectant concentration entering the distribution system shall be performed as prescribed in paragraph (5)(a)(E) of this rule.

(E) Monitoring for the residual disinfectant concentration in the distribution system shall be performed as prescribed in paragraph (5)(a)(F) of this rule.

(F) Water systems using membrane filtration must perform direct integrity testing on each filter canister at least daily, per OAR 333-061-0050(4)(c)(J).

(c) Inactivation credit for water systems using a disinfectant other than chlorine for pathogen inactivation.

(A) Calculation of CT values. CT is the product of the disinfectant concentration (C, in milligrams per liter) and actual disinfectant contact time (T, in minutes). Systems with treatment credit for chlorine dioxide or ozone as prescribed by paragraphs (5)(c)(B) or (C) of this rule must calculate CT at least once per day, with both C and T measured during peak hourly flow as specified in (5)(b)(B) of this rule.

(i) Systems with several disinfection segments in sequence must calculate CT for each segment where treatment credit is sought, where a disinfection segment is defined as a treatment unit process with a measurable disinfectant residual level and a liquid volume. If using this approach, water systems must add the Cryptosporidium CT values in each segment to determine the total CT for the treatment plant.

(B) CT values for chlorine dioxide and ozone.

(i) Systems receive the Cryptosporidium treatment credit listed in Table 36 by meeting the corresponding chlorine dioxide CT value for the applicable water temperature, as described in paragraph (5)(b)(A) of this rule. [Table not included. See ED. NOTE.]

(ii) Systems receive the Cryptosporidium treatment credit listed in Table 37 by meeting the corresponding ozone CT values for the applicable water temperature, as described in paragraph (5)(b)(A) of this rule. [Table not included. See ED. NOTE.]

(C) Site-specific study. The Department may approve alternative chlorine dioxide or ozone CT values to those listed in Table 36 or Table 37 on a site-specific basis. The Department must base this approval on a site-specific study conducted by a water system that follows a Department-approved protocol. [Table not included. See ED. NOTE.]

(D) Ultraviolet light. Systems receive Cryptosporidium, Giardia lamblia, and virus treatment credits for ultraviolet light reactors (UV) by achieving the corresponding UV dose values shown in paragraph (5)(c)(D)(i) of this rule. Systems must validate and monitor UV reactors as described in OAR 333-061-0050(5)(k) and paragraphs (5)(c)(D)(ii) and (iii) of this rule to demonstrate that they are achieving a particular UV dose value for treatment credit.

(i) UV dose table. The treatment credits listed in this table are for UV light at a wavelength of 254 nm as produced by a low pressure mercury vapor lamp. To receive treatment credit for other lamp types, systems must demonstrate an equivalent germicidal dose through reactor validation testing as specified in OAR 333-061-0050(5)(k). The UV dose values in this table are applicable only to post-filter applications of UV in filtered water systems and not to unfiltered systems.

(ii) Reactor monitoring. Systems must monitor their UV reactors to determine if the reactors are operating within validated conditions, as prescribed by OAR 333-061-0050(5)(k). This monitoring must include UV intensity as measured by a UV sensor, flow rate, lamp status, and other parameters the Department designates based on UV reactor operation. Water systems must verify the calibration of UV sensors and must recalibrate sensors in accordance with the EPA UV Disinfection Guidance Manual.

(iii) Water systems must monitor the percentage of water delivered to the public that was treated within validated conditions for the required UV dose. If less than 95% of water delivered was within validated conditions, Tier 2 public notice must be issued as prescribed by OAR 333-061-0042(3)(b).

(d) In addition to subsection (5)(b) of this rule, water systems using surface water or groundwater under the direct influence of surface water where treatment includes conventional filtration treatment or direct filtration treatment must conduct continuous turbidity monitoring for each individual filter and must calibrate turbidimeters using the procedure specified by the manufacturer. Individual filter monitoring results must be recorded every 15 minutes. If there is a failure in the continuous turbidity monitoring equipment, the water system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is repaired and back on-line. The water system serving at least 10,000 people has a maximum of five working days after failure to repair the equipment or the water system is in violation. The water system serving less than 10,000 people has a maximum of 14 days to resume continuous monitoring before a violation is incurred. If the water system's conventional or direct filtration treatment plant consists of two or fewer filters, continuous monitoring of the combined filter effluent turbidity may be substituted for continuous monitoring of individual filter effluent turbidity. For systems serving less than 10,000 people, the recording and calibration requirements that apply to individual filters also apply when continuous monitoring of the combined filter effluent turbidity is substituted for the continuous monitoring of individual filter effluent turbidity;

(e) Source water monitoring. Wholesale water systems, as defined in OAR 333-061-0020(204), must comply with the requirements of this rule based on the population of the largest water system in the combined distribution system. Water systems required to provide filtration treatment must comply with the requirements of this rule whether or not the water system is currently operating filtration treatment. The requirements of this rule for unfiltered water systems only apply to those water systems that met and continue to meet the requirements of OAR 333-061-0032(2) and (3).

(A) Initial round. Water systems must conduct monitoring as prescribed by this paragraph, and following the schedule specified in paragraph (5)(e)(C) of this rule, unless the system meets the monitoring exemption criteria specified in paragraph (5)(e)(D) of this rule.

(i) Filtered water systems serving at least 10,000 people must sample their source water for Cryptosporidium, E. coli, and turbidity at least monthly for 24 months.

(ii) Unfiltered water systems serving at least 10,000 people must sample their source water for Cryptosporidium at least monthly for 24 months.

(iii) Filtered water systems serving less than 10,000 people must sample their source water for E. coli at least once every two weeks for 12 months.

(I) Filtered water systems serving fewer than 10,000 people may avoid E. coli monitoring if the system monitors for Cryptosporidium as prescribed in paragraph (5)(e)(A)(iv) of this rule. The water system must notify the Department no later than 3 months prior to the date the system is otherwise required to start E. coli monitoring under paragraph (5)(e)(C) of this rule.

(iv) Filtered water systems serving fewer than 10,000 people must sample their source water for Cryptosporidium at least twice per month for 12 months or at least monthly for 24 months if they meet one of the following, based on monitoring conducted in accordance with paragraph (5)(e)(A)(iii) of this rule:

(I) For systems using lake/reservoir sources, the annual mean E. coli concentration is greater than 10 E. coli/100 mL;

(II) For systems using flowing stream sources, the annual mean E. coli concentration is greater than 50 E. coli/100 mL;

(III) The water system does not conduct E. coli monitoring as described in paragraph (5)(e)(A)(iii) of this rule; or

(IV) Water systems using groundwater under the direct influence of surface water must comply with the requirements of this paragraph based on the E. coli level that applies to the nearest surface water body. If no surface water body is nearby, the system must comply based on the requirements that apply to water systems using lake/reservoir sources.

(v) Unfiltered water systems serving fewer than 10,000 people must sample their source water for Cryptosporidium at least twice per month for 12 months or at least monthly for 24 months.

(vi) Water systems may sample more frequently than required under this section if the sampling frequency is evenly spaced throughout the monitoring period.

(B) Water systems must conduct a second round of source water monitoring that meets the requirements for monitoring parameters, frequency, and duration described in paragraph (5)(e)(A) of this rule, and according to the schedule in paragraph (5)(e)(C) of this rule, unless they meet the monitoring exemption criteria specified in paragraph (5)(e)(D) of this rule.

(C)Monitoring schedule. Systems must begin monitoring as required in paragraphs (5)(e)(A) and (B) of this rule no later than the month beginning with the date listed in Table 39. [Table not included. See ED. NOTE.]

(D) Monitoring avoidance.

(i) Filtered water systems are not required to conduct source water monitoring as prescribed by this subsection if the system will provide a total of at least 5.5-log of treatment for Cryptosporidium, equivalent to meeting the treatment requirements of Bin 4 in OAR 333-061-0032(4)(g) and 333-061-0032(13) through (18).

(ii) Unfiltered water systems are not required to conduct source water monitoring as prescribed by this subsection if the system will provide a total of at least 3-log Cryptosporidium inactivation, equivalent to meeting the treatment requirements for unfiltered systems with a mean Cryptosporidium concentration of greater than 0.01 oocysts/L in OAR 333-061-0032(3)(e).

(iii) If a water system chooses to provide the level of treatment specified in paragraph (5)(e)(D)(i) or (ii) of this rule, rather than conducting source water monitoring, the water system must notify the Department in writing no later than the date the system is otherwise required to submit a sampling schedule for monitoring as prescribed by OAR 333-061-0036(5)(f)(A). A water system may choose to cease source water monitoring at any point after it has initiated monitoring if it notifies the Department in writing that it will provide this level of treatment. Water systems must install and operate technologies to provide this level of treatment by the applicable treatment compliance date in 333-061-0032(1)(a)(F).

(E) Seasonal plants. Systems with surface water or GWUDI treatment plants that operate for only part of the year must conduct source water monitoring in accordance with this subsection, but with the following modifications:

(i) Water systems must sample their source water only during the months that the plant is in use unless the Department specifies another monitoring period based on plant operating practices.

(ii) Water systems with treatment plants that operate less than six months per year, and that monitor for Cryptosporidium, must collect at least six Cryptosporidium samples per year for two years of monitoring. Samples must be evenly spaced throughout the period the plant operates.

(F) New sources. A water system that begins using a new source of surface water or GWUDI after the system is required to begin monitoring as prescribed in paragraph (5)(e)(C) of this rule must monitor the new source on a schedule the Department approves. Source water monitoring must meet the requirements of this subsection, and the water system must also meet the bin classification and Cryptosporidium treatment requirements of OAR 333-061-0032 for the new source on a schedule the Department approves.

(i) This applies to water systems using surface water or GWUDI sources that begin operation after the monitoring start date applicable to the system's size specified in Table 39. [Table not included. See ED. NOTE.]

(ii) The water system must begin a second round of source water monitoring no later than 6 years following determination of the mean Cryptosporidium level or initial bin classification as prescribed by OAR 333-061-0032(2) or (4) respectively, as applicable.

(G) Failure to collect any source water sample in accordance with the sampling requirements, schedule, sampling location, analytical method, approved laboratory, and reporting requirements of this section is a monitoring violation.

(H) Grandfathering monitoring data. Systems may use monitoring data collected prior to the applicable monitoring start date in paragraph (5)(e)(C) of this rule to meet the initial source water monitoring requirements in paragraph (5)(e)(A) of this rule. Grandfathered data may substitute for an equivalent number of months at the end of the monitoring period. All data submitted under this paragraph must meet the requirements in subsection (5)(h) of this rule.

(f) Source water sampling schedules.

(A) Water systems required to conduct source water monitoring as prescribed in subsection (5)(e) of this rule must submit a sampling schedule that specifies the calendar dates when the system will collect each required sample.

(i) Water systems must submit sampling schedules to the Department, no later than 3 months prior to the applicable date listed in paragraph (5)(e)(C) of this rule, for each round of required monitoring.

(ii) If the Department does not respond to a water system regarding its sampling schedule, the system must sample at the reported schedule.

(B) Water systems must collect samples within a five-day period, starting two days before the scheduled sampling date and ending two days after. The five-day period applies to each of the dates indicated in the sampling schedule unless one of the following conditions applies:

(i) An extreme condition or situation exists that may pose danger to the sample collector or that cannot be avoided, and that prevents the water system from sampling in the scheduled five-day period. In this case, the water system must sample as close to the scheduled date as possible unless the Department approves an alternative sampling date. The water system must submit an explanation for the delayed sampling date to the Department concurrent with the submittal of the sample to the laboratory; or

(ii) A water system is unable to report a valid analytical result for the scheduled sampling date due to equipment failure, loss of or damage to the sample, failure to comply with the analytical method requirements (including the quality control requirements), or the failure of an approved laboratory to analyze the sample. In this case the water the system must collect a replacement sample as prescribed in paragraphs (5)(f)(B)(ii)(I) and (II) of this rule.

(I) The system must collect the replacement sample not later than 21 days after receiving information that an analytical result cannot be reported for the scheduled date unless the water system demonstrates that collecting a replacement sample within this time frame is not feasible or the Department approves an alternative re-sampling date. The system must submit an explanation for the delayed sampling date to the Department concurrent with the submittal of the sample to the laboratory.

Water systems that fail to meet the criteria of paragraph (5)(f)(B) of this rule for any required source water sample must revise their sampling schedules to add dates for collecting all missed samples. Water systems must submit the revised sampling schedule to the Department for approval prior to beginning collecting the missed samples.

(g) Source water sampling locations.

(A) Water systems required to conduct source water monitoring as prescribed in subsection (5)(e) of this rule must collect samples for each plant that treats a surface water or GWUDI source. Where multiple plants draw water from the same influent, such as the same pipe or intake, the Department may approve one set of monitoring results to be used to satisfy the requirements for all treatment plants.

(B) Water systems must collect source water samples prior to chemical treatment, such as coagulants, oxidants and disinfectants, unless the system meets the following condition:

(i) The Department may approve a water system to collect a source water sample after chemical treatment if the Department determines that collecting a sample prior to chemical treatment is not feasible for the system and that the chemical treatment is unlikely to have a significant adverse effect on the analysis of the sample.

(C) Water systems that recycle filter backwash water must collect source water samples prior to the point of filter backwash water addition.

(D) Bank filtration.

(i) Water systems that receive Cryptosporidium treatment credit for bank filtration as an alternate filtration technology as specified by OAR 333-061-0032(8) must collect source water samples in the surface water source prior to bank filtration.

(ii) Water systems that use bank filtration as pretreatment to a filtration plant must collect source water samples from the well, after bank filtration. Use of bank filtration during monitoring must be consistent with routine operational practice. Water systems collecting samples after a bank filtration process may not receive treatment credit for the bank filtration prescribed by OAR 333-061-0032(9).

(E) Multiple sources. Water systems with treatment plants that use multiple water sources, including multiple surface water sources and blended surface water and groundwater sources, must collect samples as specified in paragraph (5)(g)(E)(i) or (ii) of this rule. The use of multiple sources during monitoring must be consistent with routine operational practice.

(i) If a sampling tap is available where the sources are combined prior to treatment, water systems must collect samples from this tap.

(ii) If a sampling tap where the sources are combined prior to treatment is not available, systems must collect samples at each source near the intake on the same day and must comply with either paragraph (5)(g)(E)(ii)(I) or (II) below for sample analysis.

(I) Water systems may composite samples from each source into one sample prior to analysis. The volume of sample from each source must be

weighted according to the proportion of the source in the total plant flow at the time the sample is collected.

(II) Water systems may analyze samples from each source separately and calculate a weighted average of the analysis results for each sampling date. The weighted average must be calculated by multiplying the analysis result for each source by the fraction the source contributed to total plant flow at the time the sample was collected and then adding these values.

(F) Additional requirements. Water systems must submit a description of their sampling location(s) to the Department at the same time as the sampling schedule required under subsection (5)(f) of this rule. This description must address the position of the sampling location in relation to the system's water source(s) and treatment processes, including pretreatment, points of chemical treatment, and filter backwash recycle. If the Department does not respond to a water system regarding sampling location(s), the system must sample at the reported location(s).

(h) Grandfathering previously collected data.

(A) Water systems may comply with the initial source water monitoring requirements of paragraph (5)(e)(A) of this rule by grandfathering sample results collected before the system is required to begin. To be grandfathered, the sample results and analysis must meet the criteria in this section and the Department must approve the previously sampled data.

(i) A filtered water system may grandfather Cryptosporidium samples to meet the monitoring requirements of paragraph (5)(e)(A) of this rule when the system does not have corresponding E. coli and turbidity samples. A water system that grandfathers Cryptosporidium samples is not required to collect the E. coli and turbidity samples when the system completes the requirements for Cryptosporidium monitoring under paragraph (5)(e)(A) of this rule.

(B) The analysis of grandfathered E. coli and Cryptosporidium samples must meet the analytical method and approved laboratory requirements of subsections (1)(a) and (1)(c) of this rule.

(C) The sampling location of grandfathered samples must meet the conditions specified in subsection (5)(g) of this rule.

(D) Grandfathered Cryptosporidium samples must have been collected no less frequently than each calendar month on a regular schedule, and no earlier than January 1999. Sample collection intervals may vary for the conditions specified in paragraph (5)(f)(B)(i) through (ii) of this rule if the system provides documentation of the condition when reporting monitoring results.

(i) The Department may approve grandfathering of previously collected data where there are time gaps in the sampling frequency if the water system conducts additional monitoring as specified by the Department to ensure that the data used to comply with the initial source water monitoring requirements of paragraph (5)(e)(A) of this rule are seasonally representative and unbiased.

(ii) Water systems may grandfather previously collected data where the sampling frequency within each month varied. If the Cryptosporidium sampling frequency varied, water systems must follow the monthly averaging procedure in OAR 333-061-0032(2)(d)(B) or (4)(f)(E) as applicable, when calculating the bin classification for filtered water systems or the mean Cryptosporidium concentration for unfiltered water systems.

(F) Reporting monitoring results for grandfathering. Water systems that request to grandfather previously collected monitoring results must report the following information by the applicable dates listed in this paragraph.

(i) Water systems must report that they intend to submit previously collected monitoring. This report must specify the number of previously collected results the system will submit, the dates of the first and last sample, and whether a system will conduct additional source water monitoring to meet the requirements of paragraph (5)(e)(A) of this rule. Water systems must report this information no later than the date the sampling schedule is required as prescribed by subsection (5)(f) of this rule.

(ii) Water systems must report previously collected monitoring results for grandfathering, along with the associated documentation listed in paragraphs (5)(h)(F)(ii)(I) through (IV) of this rule, no later than two months after the applicable date listed in paragraph (5)(e)(C) of this rule.

(I) For each sample result, water systems must report the applicable data elements specified by OAR 333-061-0040(1)(m).

(II) Water systems must certify that the reported monitoring results include all results the system generated during the time period beginning with the first reported result and ending with the final reported result. This applies to samples that were collected from the sampling location specified for source water monitoring under this paragraph and analyzed in accordance with subsection (1)(a) of this rule.

(III) Water systems must certify that the samples were representative of a plant's source water(s) and that the source water(s) have not changed. Water systems must report a description of the sampling location(s), which must address the position of the sampling location in relation to the system's water source(s) and treatment processes, including points of chemical addition and filter backwash recycle.

(IV) For Cryptosporidium samples, the laboratory or laboratories that analyzed the samples must provide a letter certifying that the quality control criteria in accordance with subsection (1)(a) of this rule were met for each sample batch associated with the reported results. Alternatively, the laboratory may provide bench sheets and sample examination report forms for each field, matrix spike, IPR, OPR, and method blank sample associated with the reported results.

(G) If the Department determines that a previously collected data set submitted for grandfathering was generated during source water conditions that were not normal for the system, such as a drought, the Department may disapprove the data. Alternatively, the Department may approve the previously collected data if the water system reports additional source water monitoring data, as determined by the Department, to ensure that the data set used under OAR 333-061-0032(4)(f) or 0032(2)(d) represents average source water conditions for the system.

(H) If a water system submits previously collected data that fully meets the number of samples required for initial source water monitoring required by paragraph (5)(e)(A) of this rule, and some of the data is rejected due to not meeting the requirements of this subsection, systems must conduct additional monitoring to replace rejected data on a schedule the Department approves. Water systems are not required to begin this additional monitoring until two months after notification that data has been rejected and that additional monitoring is necessary.

(i) The results of test data collected to meet the requirements prescribed in OAR 333-061-0036 shall be reported as prescribed in OAR 333-061-0040.

(6) Microbiological contaminants:

(a) Routine sampling for pathogens is not required but may be required by the Department when specific evidence indicates the possible presence of such organisms.

(b) Samples shall be collected and analyzed for the purpose of determining compliance with the maximum contaminant levels for coliform bacteria as follows:

(A) Samples shall be collected from points which are representative of conditions, including impacts of multiple sources, within the distribution system at regular time intervals throughout the reporting period.

(B) The standard sample volume required for total coliform analysis, regardless of analytical method used, is 100 ml.

(C) Community water systems utilizing surface water, groundwater under the direct influence of surface water, or ground water sources must monitor at a frequency no less than set forth in Table 40. [Table not included. See ED. NOTE.]

(D) Non-Transient Non-Community, Transient Non-Community, and State Regulated water systems using surface water, or groundwater under the direct influence of surface water must monitor at a frequency no less than set forth in Table 40. Monitoring must begin at this frequency immediately for systems using surface water sources, or no later than 6 months after the Department has determined that the groundwater source is under the direct influence of surface water when applicable. [Table not included. See ED. NOTE.]

(E) Non-Transient Non-Community and Transient Non-Community water systems utilizing groundwater sources, and serving more than 1000 persons per day, must monitor at a frequency no less than set forth in Table 40. [Table not included. See ED. NOTE.]

(F) For Non-Transient Non-Community and Transient Non-Community water systems utilizing ground water sources and serving 1000 persons or fewer per day, and State Regulated water systems using groundwater sources, the analyses shall be made in each calendar quarter during which water is provided to the public.

(G) Public water systems must collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sampling site plan. The plan must include, at a minimum, a brief narrative of the water system components, a map of the distribution system showing the representative routine and repeat sampling sites, and sampling protocols. These plans must be approved by the Department.

(H) Any public water system that uses surface water or groundwater under the direct influence of surface water and does not provide filtration treatment as defined by these rules must collect at least one sample at the first customer for each day the turbidity level of the source water measured as prescribed in OAR 333-061-0036(5)(a)(B) exceeds 1 NTU. This sample must be analyzed for the presence of total coliforms. When one or more turbidity measurements in any day exceed 1 NTU, the system must collect this coliform sample within 24 hours of the first exceedance or as early as possible the next business day, unless the Department determines that the system cannot have the sample analyzed within 30 hour of collection due to

logistical reasons outside the system's control. Sample results from this coliform monitoring must be included in determining compliance with the microbiological MCL prescribed in 333-061-0030(4).

(c) When a routine sample is total coliform-positive, a set of repeat samples must be collected within 24 hours of being notified of the positive results by the certified laboratory.

(A) Systems which collect more than one routine sample/month must collect at least three repeat samples for each total coliform-positive routine sample found.

(B) Systems which collect one routine sample/month or less must collect at least four repeat samples for each total coliform-positive sample found.

(d) The system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If the original sampling site is at or near the end of the distribution system, the Department may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site. All repeat samples must be collected on the same day.

(e) Systems with a single service connection may be allowed by the Department to collect the required set of repeat samples over a four-day period.

(f) The Department may extend the 24-hour limit in subsection (5)(c) of this rule on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within 24 hours that is beyond its control.

(g) Results of all routine and repeat samples not invalidated by the Department must be included in determining compliance with the MCL for total coliforms required in OAR 333-061-0030(4).

(h) If one or more repeat samples in the set is total-coliform positive, the public water system must collect an additional set of repeat samples in the manner specified in subsections (5)(c),(d) and (e) of this rule. The additional samples must be collected within 24 hours of being notified of the positive result, unless the Department extends the limit as provided in subsection (5)(f) of this rule. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or The Department determines that the MCL for total coliforms in OAR 333-061-0030(4) has been exceeded. After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample(s) as a repeat sample instead of a routine sample.

(i) If a system collecting fewer than five routine samples/month has one or more total coliform-positive samples and the Department does not invalidate the sample(s) under subsection (5)(k) of this rule, the system must collect at least five routine samples during the next month the system provides water to the public. The Department may waive this requirement if:

(A) The Department performs a site visit before the end of the next month the system provides water to the public and determines that additional monitoring and/or corrective action is not needed; or

(B) The Department determines why the sample was total coliform-positive and establishes that the system has corrected the problem before the end of the next month the system serves water to the public. The Department must document in writing this decision, have it approved and signed by the supervisor of the official who recommends such a decision, and make this document available to the public. The written documentation must describe the specific cause of the total coliform-positive sample and what action the system has taken and/or will take to correct this problem. The Department cannot waive this requirement solely on the grounds that all repeat samples are total-coliform negative. Under this paragraph, a system must still take at least one routine sample before the end of the next month it serves water to the public and use it to determine compliance with the MCL for total coliforms required in OAR 333-061-0030(4) unless the Department determines that the system has corrected the contamination problem before the system took the set of repeat samples required in subsection (5)(c)(d) and (e) of this rule, and all repeat samples were total coliform negative.

(j) When the maximum microbiological contaminant level for total coliform is exceeded or when the maximum contaminant level for fecal coliform or fecal and total coliform is exceeded the water supplier shall report to the Department as prescribed in OAR 333-061-0040 and notify the public as prescribed in OAR 333-061-0042(2)(b)(A) for total coliform and 333-061-0042(2)(a)(A) for fecal coliform/E. Coli. If the water system has failed to comply with a coliform monitoring requirement, including the sanitary survey requirement, the system must report to the Department as prescribed in OAR 333-061-0040 and notify the public as prescribed in OAR 333-061-0042;

(k) The Department may invalidate a total coliform-positive samples if:

(A) The laboratory establishes that improper sample analysis caused the total coliform-positive result; or

(B) The Department determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem on the basis of the results of repeat samples collected as required by subsections (5)(c), (d) and (e) of this rule. The Department cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative. (The Department cannot invalidate a total coliform-positive sample on the basis of repeat samples if all the repeat samples are total coliform-negative, or if the public water system has only one service connection); or

(C) The Department has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required by subsections (5)(c) through (h) of this rule and use them to determine compliance with the microbiological MCL prescribed in OAR 333-061-0030(4). To invalidate a total coliform-positive sample under this paragraph, the decision with its rationale must be documented in writing, approved and signed by the supervisor of the Department official who recommended the decision. The Department must make this document available to the public. The written documentation must state the specific cause of the total coliform-positive sample and what action the system has taken, or will take, to correct this problem. The Department may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(l) A certified laboratory must invalidate a total coliform sample (unless total coliforms are detected) if the sample produced a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P-A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a certified laboratory invalidates a sample because of such interference, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system must continue to resample within 24 hours and have the samples analyzed until it obtains a valid result. The Department may waive the 24-hour time limit on a case-by-case basis.

(m) Any total coliform-positive sample invalidated under subsections (5)(k) or (l) of this rule shall not count towards meeting the minimum monitoring requirements as prescribed in subsections (5)(a) through (e) of this rule.

(n) If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture medium to determine if fecal coliforms are present. The system may test for E. coli in lieu of fecal coliforms. If fecal coliforms or E. coli are present, the system must notify the Department by the end of the day when the system is notified of the test result or, if the Department office is closed, by the end of the next business day.

(o) The Department may allow a water system to forgo testing for fecal coliform or E. coli on total coliform-positive samples as prescribed in subsection (5)(n) of this rule if the system assumes that the total coliform-positive sample is fecal coliform-positive or E. coli positive. The system must notify the Department as specified in subsection (5)(n) of this rule and the provisions of OAR 333-061-0030(4) apply.

(p) Public water systems which do not collect five or more routine samples per month must undergo an initial sanitary survey by June 29, 1994 for Community water systems and June 29, 1999 for Non-Transient and Transient Non-Community water systems. Thereafter, systems must undergo another sanitary survey every five years, except that Non-Transient and Transient Non-Community water systems using only protected and disinfected groundwater as defined by the Department, must undergo subsequent sanitary surveys at least every ten years after the initial survey. The Department must review the results of each survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

(q) Beginning on December 1, 2009, groundwater systems must conduct triggered source water monitoring if the conditions identified in paragraphs (6)(q)(A) and (6)(q)(B) of this rule exist.

(A) The groundwater system does not provide at least 4-log treatment of viruses before or at the first customer for each groundwater source; and

(B) The groundwater system is notified that a sample collected as prescribed in subsection (6)(b) of this rule is total coliform-positive and the sample is not invalidated as prescribed in subsection (6)(k) of this rule.

(r) If a groundwater system is notified, after November 30, 2009, that a sample collected in accordance with subsection (6)(b) of this rule is total coliform-positive, the water system must collect at least one source water sample, within 24 hours of the notification, from each groundwater source in use at the time the total coliform-positive sample was collected, except as provided in paragraph (6)(r)(B) of this rule.

(A) The Department may extend the 24-hour time limit on a case-by-case basis if the water system cannot collect the groundwater source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the Department must specify how much time the water system has to collect the sample.

(B) If approved by the Department, water systems with more than one groundwater source may meet the requirements of subsection (6)(r) of this rule by sampling a representative groundwater source(s). If directed by the Department, water systems must submit for the Department's approval a triggered source water monitoring plan that identifies one or more groundwater sources that the system intends to use for representative sampling as prescribed by this subsection, and that are representative of each monitoring site in the water system's coliform sampling plan as prescribed by paragraph (6)(b)(F) of this rule.

(C) A groundwater system serving 1,000 people or less may use a repeat sample collected from a groundwater source to meet the requirements of subsections (6)(c) and (6)(r) of this rule for that groundwater source. If the repeat sample collected from the groundwater source is E. coli positive, the system must comply with subsection (6)(s) of this rule.

(D) Any groundwater source sample required by this subsection must be collected at a location prior to any treatment of the groundwater source, unless the Department approves an alternative sampling location. If the water system's configuration does not allow for sampling at the groundwater source, the water system must collect a sample at a Department-approved location representative of source water quality.

(s) Beginning on December 1, 2009, if the Department does not require corrective action as prescribed by OAR 333-061-0032(6)(b) for an E. coli -positive source water sample collected in accordance with subsection (6)(r) of this rule and not invalidated as prescribed by subsection (6)(x) of this rule, the water system must collect five additional source water samples from the same groundwater source within 24 hours of being notified of the E. coli -positive sample.

(t) In addition to the other requirements of this rule, and beginning on December 1, 2009, a purchasing water system that has a total coliform-positive sample collected in accordance with subsection (6)(b) of this rule must notify the wholesale groundwater system(s)within 24 hours of being notified of the total coliform-positive sample.

(u) In addition to the other requirements of this rule, and beginning on December 1, 2009, a wholesale groundwater system must comply with this subsection.

(A) If a wholesale groundwater system receives notice from a purchasing water system it serves that a sample collected in accordance with subsection (6)(b) of this rule is total coliform-positive, it must collect a sample from its groundwater source(s) as prescribed in subsection (6)(r) of this rule and analyze it for the E. coli within 24 hours of being notified.

(B) If a sample collected in accordance with paragraph (A) of this subsection is E. coli-positive, the wholesale groundwater system must notify all purchasing water systems served by that groundwater source of the E. coli-positive source water sample within 24 hours of being notified of the positive sample result, and must also meet the requirements of subsection(6)(s) of this rule.

(v) A groundwater system is not required to comply with the source water monitoring requirements of subsections (6)(r) though (6)(u) of this rule if either of the following conditions exists:

(A) The Department determines, and documents in writing, that the total coliform-positive sample collected in accordance with subsection (6)(b) of this rule is caused by a distribution system deficiency; or

(B) The total coliform-positive sample is collected at a location that meets Department criteria for distribution system conditions that will cause total coliform-positive samples.

(w) Beginning on December 1, 2009, groundwater systems that use chlorine, ultraviolet light, or another oxidant for disinfection, but do not achieve 4-log inactivation of viruses, must conduct assessment monitoring of the groundwater source to determine the potential for viral contamination.

(A) Water systems monitoring in accordance with this subsection must:

(i) Collect at least 1 annual groundwater source sample; and

(ii) Collect samples from each groundwater source unless the water system obtains written approval from the Department to conduct monitoring at one or more representative groundwater sources within the system that draw water from the same hydrogeologic setting.

(B) A groundwater system conducting source water assessment monitoring may use a sample collected in accordance with subsection (6)(r) of this rule or a sample collected for determination of Groundwater Under the Direct Influence of Surface Water in accordance with OAR 333-061-0032(8), to meet the requirements of this subsection.

(C) Additional Source Water Assessment Monitoring

(i) Water Systems must conduct additional source water assessment monitoring if at least one of the following conditions occur. These conditions include, but are not limited to:

(I) At least 1 total coliform-positive sample in the groundwater source water;

(II) A groundwater source having been determined by the Department to be susceptible to fecal contamination through a Source Water Assessment (or equivalent hydrogeologic assessment wherein susceptibility is defined as a result of a highly sensitive source due to aquifer characteristics, vadose zone characteristics, monitoring history, or well construction) and the presence of a fecal contaminant source within the 2-year time-of-travel zone, outreach area, and/or zone 1 area;

(III) A source that draws water from an aquifer that the department has identified as being fecally contaminated; or

(IV) A determination by the source water assessment or equivalent hydrogeologic analysis that the groundwater source is highly sensitive, and that the source is located within an area that has a high density of Underground Injection Control Wells.

(ii) Additional source water assessment monitoring must comply with the following:

(I) Collection of 12 consecutive monthly groundwater source samples for water systems that operate year-round, or monthly samples that represent each month the water system provides groundwater to the public for water systems that operate seasonally;

(II) Collection of a standard sample volume of at least 100 mL for E. coli analysis regardless of the analytical method used;

(III) Analysis of all groundwater source samples, for the presence of E. coli, using an analytical method as prescribed by section (1) of this rule;

(IV) Collection of groundwater source samples at a location prior to any treatment unless the Department approves a sampling location after treatment; and

(V) Collection of samples at the groundwater source, unless the water system's configuration does not allow for raw water sampling and the Department approves an alternate sampling location that is representative of the water quality of that groundwater source.

(D) The Department may require a groundwater source to be re-evaluated as prescribed by this subsection if geologic conditions, source pumping conditions, or fecal contaminant source conditions change over time.

(x) A groundwater system may obtain Department invalidation of a E. coli -positive groundwater source sample collected in accordance with subsection (6)(r) of this rule only under the following conditions:

(A) The water system provides the Department with written notice from the laboratory that improper sample analysis occurred; or

(B) The Department determines and documents in writing that there is substantial evidence that an E. coli -positive groundwater source sample is not related to source water quality.

(y) If the Department invalidates an E. coli positive groundwater source sample, the groundwater system must collect another source water sample as prescribed by subsection (6)(r) of this rule within 24 hours of being notified of the invalidation. The Department may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the source water sample within 24 hours due to circumstances beyond its control. In the case of an extension, the Department must specify how much time the system has to collect the sample.

(z) The Department may direct any groundwater system placing a new groundwater source into service after November 30, 2009 to conduct source water assessment monitoring as prescribed by subsection (6)(w) of this rule. Source water assessment monitoring, as prescribed by this subsection, must begin before the groundwater source is used to provide water to the public.

(7) Radionuclides:

(a) Gross alpha particle activity, Radium 226, Radium 228, and Uranium:

(A) Initial Monitoring. Community Water Systems without acceptable historical data, as defined below, must conduct initial monitoring to determine compliance with OAR 333-061-0030(5) by December 31, 2007.

(i) Samples must be collected from each entry point to the distribution system during 4 consecutive quarters before December 31, 2007 according to the following schedule:

Population	Begin initial monitoring	Complete initial monitoring by
300 or More	First quarter 2005	Fourth quarter 2005
100-299	First quarter 2006	Fourth quarter 2006
Less than 100	First quarter 2007	Fourth quarter 2007

(ii) New systems or systems using a new source must conduct initial monitoring beginning the first quarter of operation, followed by three consecutive quarterly samples.

(iii) The Department may waive the final two quarters of the initial monitoring at an entry point if the results of the samples from the first two quarters are below the method detection limit.

(iv) Grandparenting of historical data. A system may use monitoring data from each source or entry point collected between June 2000 and December 8, 2003 to satisfy the initial monitoring requirements.

(v) If the average of the initial monitoring results for a sampling point is above the MCL, the system must collect and analyze quarterly samples at the entry point until the system has results from four consecutive quarters that are at or below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the Department.

(B) Reduced Monitoring. Radionuclide monitoring may be reduced to once every three years, once every six years, or once every nine years based on the following criteria:

(i) If the average of the initial monitoring result for each contaminant (gross alpha particle activity, radium-226, radium-228, and uranium) at a given entry point is below the detection limit, sampling for that contaminant may be reduced to once every nine years.

(ii) For gross alpha particle activity, combined radium 226 and radium 228, and uranium, if the average of the initial monitoring results is at or above the detection limit but at or below 1/2the MCL, sampling for that contaminant may be reduced to once every six years.

(iii) For gross alpha particle activity, combined radium 226 and radium 228, and uranium, if the average of the initial monitoring results is above 1/2 the MCL but at or below the MCL, the system must collect one sample at that sampling point at least once every three years.

(iv) Systems must use the samples collected during the reduced monitoring period to determine the monitoring frequency for subsequent monitoring periods.

(v) If a system has a monitoring result that exceeds the MCL while on reduced monitoring, the system must collect and analyze quarterly samples at that entry point until the system has results from four consecutive quarters that are below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the Department.

(C) Compositing of samples. A system may composite up to four consecutive quarterly samples from a single entry point if the analysis is done within a year of the first sample. If the analytical result from the composited sample is greater than 1/2 the MCL, the Department may direct the system to take additional quarterly samples before allowing the system to sample under a reduced monitoring schedule.

(D) Substitution of results.

(i) A gross alpha particle activity measurement may be substituted for the required radium-226 measurement if the gross alpha particle activity does not exceed 5 pCi/L.

(ii) A gross alpha particle activity measurement may be substituted for the required uranium measurement if the gross alpha particle activity does not exceed 15 pCi/L.

(iii) The gross alpha measurement shall have a confidence interval of 95% (1.65 where 1/2 is the standard deviation of the net counting rate of the sample) for radium-226 and uranium.

(iv) When a system uses a gross alpha particle activity measurement in lieu of a radium-226 and/or uranium measurement, the gross alpha particle activity analytical result will be used to determine the future monitoring frequency for radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, _ the method detection limit will be used to determine compliance and the future monitoring frequency.

(b) Beta particle and photon radioactivity:

(A) Community water systems designated by the Department as "vulnerable" must sample for beta particle and photon radioactivity as follows. No waivers shall be granted:

(i) Initial samples must be collected by December 31, 2007.

(ii) Quarterly samples for beta emitters and annual samples for tritium and strontium-90 must be taken at each entry point to the distribution system. Systems already designated by the state must continue to sample until the state removes the designation.

(iii) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sample point has a running annual average less than or equal to 50 pCi/l , sampling for contaminants prescribed in paragraph (6)(b)(A)(i) of this rule maybe reduced to once every three years.

(B) Community water systems designated by the Department as "contaminated" by effluents from nuclear facilities and must sample for beta particle and photon radioactivity as follows. No waivers shall be granted.

(i) Systems must collect quarterly samples for beta emitters as detailed below and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system. Sampling must continue until the Department removes the designation.

(ii) Quarterly monitoring for gross beta particle activity is based on the analysis of monthly samples or the analysis of a composite of three monthly samples.

(iii) For iodine-131, a composite of five consecutive daily samples shall be analyzed once each quarter. More frequent monitoring may be required if iodine-131 is detected.

(iv) Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples.

(v) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at an entry point has a running annual average less than or equal to 15 pCi/l, the Department may reduce the frequency of monitoring for contaminants prescribed in paragraph (6)(b)(B)(i) of this rule at that entry point to every three years.

(C) For systems in the vicinity of a nuclear facility, the Department may allow the substitution of appropriate environmental surveillance data taken in conjunction with operation of a nuclear facility for direct monitoring of man-made radioactivity by the water supplier where such data is applicable to a particular Community water system. In the event of a release, monitoring must be done at the water system's entry points.

(D) Systems may analyze for naturally occurring potassium-40 beta particle activity from the same or equivalent sample used for the gross beta particle activity analysis. Systems are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/l) by a factor of 0.82.

(E) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with OAR 333-061-0030(5). Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

(F) Systems must monitor monthly at the entry point(s) which exceed the MCL listed in OAR 333-061-0030(5) beginning the month after the exceedance occurs. Systems must continue monthly monitoring until the system has established, by a rolling average of three monthly samples, that the MCL is being met. Systems who establish that the MCL is being met must return to quarterly monitoring until they meet the requirements set forth in (6)(b)(A)(ii)or (6)(b)(B)(v) of this rule.

(c) General monitoring and compliance requirements for radionuclides.

(A) The Department may require more frequent monitoring than specified in subsections (6)(a) and (b) of this rule, or may require confirmation samples at its discretion. The results of the initial and confirmation samples will be averaged for use in compliance determinations.

(B) Each system shall monitor at the time designated by the Department during each compliance period. To determine compliance with 333-061-0030(5), averages of data shall be used and shall be rounded to the same number of significant figures as the MCL of the contaminant in question.

(C) Compliance.

(i) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. If the average of any sampling point is greater than the MCL, then the system is out of compliance with the MCL.

(ii) For systems monitoring more than once per year, if any sample result will cause the running average to exceed the MCL at any entry point, the system is out of compliance with the MCL immediately.

(iii) Systems must include all samples taken and analyzed under the provisions of this section in determining compliance, even if that number is greater than the minimum required.

(iv) If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

(v) If a sample is less than the detection limit, zero will be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium-226 and/or uranium. In that case, if the gross alpha

particle activity result is less than detection, 1/2 the detection limit will be used to calculate the annual average.

(D) The Department has the discretion to delete results of obvious sampling or analytical errors.

(E) When the average annual maximum contaminant level for radionuclides as specified in Table 6 is exceeded, the water supplier shall, within 48 hours, report the analysis results to the Department as prescribed in OAR 333-061-0040 and initiate the public notification procedures prescribed in 333-061-0042(2)(b)(A). [Table not included. See ED. NOTE.]

(8) Secondary contaminants:

(a) The levels listed in Table 7 of OAR 333-061-0030 represent reasonable goals for drinking water quality, but routine sampling for these secondary contaminants is not required. [Table not included. See ED. NOTE.]

(b) The Department may however, require sampling and analysis under the following circumstances:

(A) User complaints of taste, odor or staining of plumbing fixtures.

(B) Where treatment of the water is proposed and the levels of secondary contaminants are needed to determine the method and degree of treatment.

(C) Where levels of secondary contaminants are determined by the Department to present an unreasonable risk to health.

(c) If the results of the analyses do not exceed levels for secondary contaminants, listed in Table 7 of OAR 333-061-0030, subsequent sampling and analysis shall be at the discretion of the Department. [Table not included. See ED. NOTE.]

(d) If the results of the analyses indicate that the levels for secondary contaminants, listed in Table 7 of OAR 333-061-0030 are exceeded, the Department shall determine whether the contaminant levels pose an unreasonable risk to health or interfere with the ability of a water treatment facility to produce a quality of water complying with the Maximum Contaminant Levels of these rules and specify follow-up actions to be taken. [Table not included. See ED. NOTE.]

(e) During the period while any measures called for in subsection (7)(d) of this rule are being implemented, the water supplier shall follow the procedures relating to variances and permits which are prescribed in OAR 333-061-0045.

(9) Monitoring of disinfectant residuals:

(a) Public water systems that practice continuous disinfection or disinfectant residual maintenance, as well as purchasing water systems that receive water from a public water system that practices continuous disinfection or disinfectant residual maintenance must maintain a detectable residual disinfectant throughout the distribution system and shall measure and record the residual:

(A) At least twice per week;

(B) At one or more representative points; and

(C) At a frequency that is sufficient to detect variations in chlorine demand and changes in water flow.

(b) Public water systems that add chlorine for other purposes, such as oxidation of metals or taste and odor control, when the source(s) is known to be free of contamination must ensure that the chlorine residual entering the distribution system after treatment is less than 4.0 mg/l.(c) Where chlorine is used as the disinfectant, the measurement of residual chlorine shall be by the DPD or other EPA-approved method in accordance with Standard Methods for the Examination of Water and Waste-water, and shall measure the free chlorine residual or total chlorine residual as applicable;

(d) The water supplier shall maintain a summary report of the residual disinfectant measurements and shall retain this summary report at a convenient location within or near the area served by the water system.

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

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

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150 & 448.273

Hist.: HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 23-26-90, cert. ef. 12-29-90; HD 7-1992, f. & cert. ef. 6-9-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 11-1994, f. & cert. ef. 4-11-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 2-2008, f. & cert. ef. 2-15-08; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0040
Reporting and Record Keeping

(1) Reporting requirements:

(a) Any person who has reasonable cause to believe that his or her actions have led to contamination of a public water system shall report that fact immediately to the water supplier and the Department.

(b) Results of analyses required by OAR 333-061-0036 and performed by an approved laboratory shall be reported to the Department by the water supplier, unless direct laboratory reporting is authorized by the water supplier, within 10 days after the end of the month, or within 10 days after the end of the required monitoring period. Laboratories that issue final test reports shall report the validated results of any analysis directly to the Department and to the water supplier if the analysis shows that a sample contains contaminant levels in excess of any maximum contaminant level specified in the water quality standards within (24) hours of obtaining the results. Subcontracted laboratories shall report such results to their client laboratory within (24) hours.

(c) If the water system fails to conduct monitoring as required in 333-061-0036 the water system must notify the public as prescribed in 333-061-0042.

(d) The water supplier shall report to the Department within (24) hours the reports on any substance or pathogenic organisms found in the water that has caused or is likely to cause physical suffering or illness.

(e) The water supplier using a surface water source or a groundwater source under direct influence of surface water which provides filtration treatment shall report monthly beginning June 29, 1993 or when filtration is installed, whichever is later, to the Department the results of any test, measurement or analysis required by 333-061-0036(5)(b) of these rules within 10 days after the end of the month.

(A) All systems using surface water or groundwater under the direct influence of surface water shall consult with the Department within twenty-four (24) hours, after learning:

(i) That the turbidity exceeded 5 NTU;

(ii) Of a waterborne disease outbreak potentially attributable to that water system;

(iii) That the disinfectant residual concentration in the water entering the distribution system fell below 0.2 mg/l and whether or not the residual was restored to at least 0.2 mg/l within four hours.

(B) In addition to the reporting and recordkeeping requirements in paragraph (1)(e)(A) of this rule, a public water system which provides conventional filtration treatment or direct filtration serving at least 10,000 people must report monthly to the Department the information specified in paragraphs (1)(e)(B)(i) and (ii) of this rule. Public water systems which provide filtration treatment other than conventional filtration treatment, direct filtration, slow sand filtration, and diatomaceous earth filtration, regardless of population served, must also meet the requirements of paragraph (1)(e)(A) of this rule and must report monthly to the Department the information specified in paragraph (1)(e)(B)(i) of this rule.

(i) Turbidity measurements as required by OAR 333-061-0030(3) must be reported within 10 days after the end of each month the system serves water to the public. Information that must be reported includes:

(I) The total number of filtered water turbidity measurements taken during the month;

(II) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified by OAR 333-061-0030(3)(b)(A) through (D);

(III) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the Department specified in OAR 333-061-0030(3)(b)(D).

(IV) The date and value of any turbidity measurements taken during the month which exceed 5 NTU for systems using slow sand filtration or diatomaceous earth filtration.

(ii) Water systems must maintain the results of individual filter monitoring for at least three years. Water systems must report that they have conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Water systems must also report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (1)(e)(B)(ii)(I) through (IV) of this rule. Water systems that use lime softening may apply to the Department for alternative exceedance levels for the levels specified in paragraphs (1)(e)(B)(ii)(I) through (IV) of this rule if the water system can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(I) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the water system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the water system must either produce a filter profile for the filter within seven days of the exceedance (if the water system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(II) For any individual filter that has a measured turbidity level of greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first four hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the system must

report the filter number, the turbidity, and the date(s) on which the exceedance occurred. In addition, the system must either produce a filter profile for the filter within seven days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(III) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of three consecutive months, the water system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the water system must conduct a self-assessment of the filter within 14 days of the exceedance and report that the self-assessment was conducted. The self assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

(IV) For any individual filter that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of two consecutive months, the water system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the water system must arrange to have a comprehensive performance evaluation by the Department or a third party approved by the Department conducted no later than 30 days following the exceedance and have the evaluation completed and submitted to the Department no later than 90 days following the exceedance.

(iii) If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system must inform the Department as soon as possible, but no later than the end of the next business day.

(iv) If at any time the turbidity in representative samples of filtered water exceed the maximum level set by the Department as specified in OAR 333-061-0030(3)(b)(D) for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the water system must inform the Department as soon as possible, but no later than the end of the next business day.

(C) In addition to the reporting and recordkeeping requirements in paragraph (1)(e)(A) of this rule, a public water system which provides conventional filtration treatment or direct filtration treatment serving less than 10,000 people must report monthly to the Department the information specified in paragraphs (1)(e)(B)(i) of this rule and beginning January 1, 2005 the information specified in paragraph(1)(e)(C)(i) of this rule. Public water systems which provide filtration treatment other than conventional filtration treatment, direct filtration, slow sand filtration, and diatomaceous earth filtration regardless of population served must also meet the requirements of paragraph(1)(e)(A) of this rule and must report monthly to the Department the information specified in paragraph (1)(e)(B)(i) of this rule.

(i) Water systems must maintain the results of individual filter monitoring for at least three years. Water systems must report that they have conducted individual filter turbidity monitoring within 10 days after the end of each month the system serves water to the public. Water systems must also report individual filter turbidity measurement results within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (1)(e)(C)(i)(I) through (III) of this rule. Water systems that use lime softening may apply to the Department for alternative exceedance levels for the levels specified in paragraphs (1)(e)(C)(i)(I) through (III) of this rule if the water system can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(I) If the turbidity of an individual filter (or the turbidity of the combined filter effluent (CFE) for systems with two or less filters that monitor CFE in lieu of individual filter monitoring) is greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the water system must report to the Department by the 10th day of the following month the filter number(s), the turbidity value(s) that exceeded 1.0 NTU, the corresponding date(s) of occurrence, and the cause (if known) for the elevated turbidity values. The Department may request the water system produce a turbidity profile for the filter(s) in question.

(II) If the turbidity of an individual filter (or the turbidity of the combined filter effluent (CFE) for systems with two or less filters that monitor CFE in lieu of individual filter monitoring) is greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart for three consecutive months, the water system must conduct a filter self-assessment within 14 days of the date the turbidity exceeded 1.0 NTU during the third month, unless a CPE is performed in lieu of a filter self-assessment. Systems with two filters monitoring the CFE must conduct a filter self-assessment for both filters. The self-assessment must consist of the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report. When a self-assessment is required, the water system must report the date the self-assessment was triggered, the date the self-assessment was completed, and the conclusion(s) of the self-assessment by the 10th of the following month or 14 days after the self-assessment was triggered only if the self-assessment was triggered during the last four days of the month.

(III) If the turbidity of an individual filter (or the turbidity of the combined filter effluent (CFE) for systems with two or less filters that monitor CFE in lieu of individual filter monitoring) is greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart for two consecutive months, the water system must report these turbidity results to the Department by the 10th of the following month and arrange to have a comprehensive performance evaluation (CPE) by the Department or a third party approved by the Department conducted within 60 days of the date the turbidity exceeded 2.0 NTU during the second month. The CPE report must be submitted to the Department no later than 120 days following the date the turbidity exceeded 2.0 NTU during the second month. A CPE is not needed if the Department or approved third party has conducted a CPE within the last 12 months or the Department and the water system are jointly participating in an on-going Comprehensive Technical Assistance (CTA) project as part of the Composite Correction Program with the water system. When a CPE is required, the water system must report that a CPE is required and the date that the CPE was triggered by the 10th day of the following month.

(f) The water supplier using a surface water source or a groundwater source under direct influence of a surface source which does not provide filtration treatment shall report according to subsection (1)(e) of this rule in addition to the requirements of this subsection. Monthly reporting to the Department will begin January 1, 1991 for systems using surface water sources and January 1, 1991 or six months after the Department determines surface influence for systems using groundwater under the direct influence of surface water.

(A) Report to the Department within 10 days after the end of each month, the results or analysis of:

(i) Fecal coliform and/or total coliform bacteria test results on raw (untreated) source water.

(ii) Daily disinfection "CT" values including parameters such as pH measurements, temperature, and disinfectant residuals at the first customer used to compute the "CT" values.

(iii) Daily determinations using the "CT" values of the adequacy of disinfectant available for inactivation of Giardia lamblia or viruses as specified in OAR 333-061-0032(1)(a).

(B) Report to the Department within 10 days after the end of each Federal Fiscal year (September 30), the results of:

(i) The watershed control program requirements as specified in OAR 333-061-0032(2)(c)(B).

(ii) The on-site inspection summary requirements as specified in OAR 333-061-0032(2)(c)(C).

(g) Special reporting requirements for groundwater systems.

(A) Groundwater systems conducting compliance monitoring in accordance with OAR 333-061-0032(7)(b) must notify the Department any time the water system fails to meet any Department-specified operating requirements if operation in accordance with the specified criteria is not restored within four hours. The groundwater system must notify the Department as soon as possible, but in no case later than the end of the next business day.

(B) A groundwater system must notify the Department within 30 days of completing any corrective action as prescribed by OAR 333-061-0032(6).

(C) A groundwater system subject to the requirements of OAR 333-061-0036(6)(v)(B) must provide documentation to the Department within 30 days of a total coliform positive sample that it met Department criteria for exceptions to triggered source water monitoring requirements because the total coliform-positive sample was attributed to distribution system conditions.

(D) A groundwater system conducting compliance monitoring as prescribed by OAR 333-061-0032(7)(b) must report the results of daily residual disinfectant concentration measurements at the entry point within 10 days after the end of each month.

(h) All Community and Non-Transient Non-Community public water systems shall report all of the following information pertaining to lead and copper to the Department in accordance with the requirements of this subsection.

(A) Except as provided in paragraph (1)(g)(A)(vii) of this rule, a public water system shall report the information below for all tap water samples and for all water quality parameter samples within 10 days following

the end of each applicable monitoring period. For monitoring periods with a duration less than six-months, the end of the monitoring period is the last date samples can be collected during that period.

(i) The results of all tap samples for lead and copper including the location of each site and the criteria under which the site was selected for the system's sampling pool. With the exception of initial tap sampling, the system shall designate any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed. By the applicable date specified in OAR 333-061-0036(2)(d)(D)(i) for commencement of initial monitoring, each Community Water System which does not complete its targeted sampling pool meeting the criteria for tier 1 sampling sites shall send a letter to the Department justifying its selection of tier 2 and/or tier 3 sampling sites. By the applicable date specified in 333-061-0036(2)(d)(D)(i) for commencement of initial monitoring, each Non-Transient Non-Community water system which does not complete its sampling pool meeting the criteria for tier 1 sampling sites shall send a letter to the Department justifying its selection of sampling sites.

(ii) A certification that each first draw sample collected by the water system is one-liter in volume and, to the best of their knowledge, has stood motionless in the service line, or in the interior plumbing of a sampling site, for at least six hours. Where residents collected samples, a certification that each tap sample collected by the residents was taken after the water system informed them of proper sampling procedures according to OAR 333-061-0036(2)(d)(B)(ii).

(iii) The results of all tap samples for pH, and where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica, and the results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters according to OAR 333-061-0036(2)(d)(F)(iii) through (vi).

(iv) Each water system that requests that the Department reduce the number and frequency of sampling shall provide the information required in OAR 333-061-0036(2)(d)(D)(iv).

(v) Documentation for each tap water lead and copper sample for which the water system requests invalidation.

(vi) The 90th percentile lead and copper tap water samples collected during each monitoring period.

(vii) A water system shall report the results of all water quality parameter samples collected for follow-up tap monitoring prescribed in OAR 333-061-0036(2)(d)(F)(iv) through (vii) during each six-month monitoring period within 10 days following the end of the monitoring period unless the Department specifies a more frequent monitoring requirement.

(B) A water system shall report the sampling results for all source water samples collected for lead and copper within the first 10 days following the end of each source water monitoring period according to OAR 333-061-0036(2)(d)(G).

(i) With the exception of the first round of source water sampling, the system shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the sampling point has changed.

(C) Corrosion control treatment reporting requirements. By the applicable dates according to OAR 333-061-0034(2)(a) through (e), systems shall report the following information: for systems demonstrating that they have already optimized corrosion control, the information required in 333-061-0034(2)(d)(B) or (C); for systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment according to 333-061-0034(3)(a); for systems required to evaluate the effectiveness of corrosion control treatments, the information required in 333-061-0034(3)(c) of these rules; for systems required to install optimal corrosion control designated by the Department according to 333-061-0034(3)(i), a letter certifying that the system has completed the installation.

(D) Source water treatment reporting requirements. By the applicable dates according to OAR 333-061-0034(4)(a), systems shall report the following information to the Department: the system's recommendation regarding source water treatment if required according to 333-061-0034(4)(b)(A); for systems required to install source water treatment according to 333-061-0034(4)(b)(B), a letter certifying that the system has completed the installation of the treatment designated by the Department within 24 months after the Department designated the treatment.

(E) Public education program reporting requirements.

(i) Any water system that is subject to the public education requirements in OAR 333-061-0034(5) shall, within ten days after the end of each period in which the system is required to perform public education tasks in accordance with 333-061-0034(5)(c), send written documentation to the Department that contains:

(I) A demonstration that the system has delivered the public education materials that meet the content and delivery requirements specified in OAR 333-061-0034(5)(a) through (c); and

(II) A list of all the newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public education materials during the period in which the system was required to perform public education tasks.

(ii) Unless required by the Department, a system that previously has submitted the information in paragraph (1)(g)(E)(i)(II) of this rule need not resubmit the information, as long as there have been no changes in the distribution list and the system certifies that the public education materials were distributed to the same list submitted previously.

(iii) No later than 3 months following the end of the monitoring period, each system must mail a sample copy of the consumer notification of tap results to the Department along with a certification that the notification has been distributed in a manner consistent with the requirements of OAR 333-061-0034(5)(e).

(F) Any system which collects sampling data in addition to that required by this subsection shall report the results to the Department within the first ten days following the end of the applicable monitoring period under OAR 333-061-0036(2)(d)(A) through (H) during which the samples are collected.

(G) At a time specified by the Department prior to the addition of a new source or any long-term change in water treatment, a water system deemed to have optimized corrosion control, or is subject to reduced monitoring, shall submit written documentation to the Department describing the change or addition. The Department must review and approve the addition or change before it is implemented by the water system.

(H) Each ground water system that limits water quality parameter monitoring to a subset of entry points shall provide written correspondence to the Department that identifies the selected entry points and includes information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system. This correspondence must be submitted to the Department prior to commencement of such monitoring.

(i) The water supplier shall report to the Department the results of any test, measurement or analysis required by these rules that is performed on site (e.g. supplemental fluoride) by trained personnel within 10 days after the end of the month, except that reports which indicate that fluoride levels exceed 4.0 mg/l shall be reported within 48 hours:

(j) The water supplier shall submit to the Department within 10 days after completing any public notification action as prescribed in OAR 333-061-0042 a representative copy of each type of notice distributed to the water users or made available to the public and the media along with certification that the system has fully complied with the distribution and public notification requirements.

(k) Water systems required to sample for the contaminants listed in OAR 333-061-0036(4)(c), (4)(e) and (4)(k) through (4)(n) must report the information listed in Tables 41 through 43 to the Department. Water systems monitoring quarterly or more frequently must report to the Department within 10 days after the end of each quarter in which samples were collected. Water systems required to sample less frequently than quarterly must report to the Department within 10 days after the end of each monitoring period in which samples were collected. Beginning on the date set forth in Table 22 in OAR 333-061-0036(4)(d)(A), water systems are required to submit the information listed in Tables 41 through 43, within 10 days of the end of any quarter in which monitoring is required. [Table not included. See ED. NOTE.]

(A) Disinfection byproducts. Water systems must report the information specified in Table 41 as follows: [Table not included. See ED. NOTE.]

(B) Disinfectants. Water systems must report the information specified in Table 42 as follows: [Table not included. See ED. NOTE.]

(C) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Water systems must report the information specified in Table 43 as follows: [Table not included. See ED. NOTE.]

(D) The Department may choose to perform calculations and determine whether the MCL was exceeded or the system is eligible for reduced monitoring in lieu of having the system report that information.

(l) Systems using surface water or GWUDI sources must report to the Department or local county health department within 45 days of receiving a sanitary survey report or comprehensive performance evaluation report. Failure to report to the Department requires a Tier 2 public notice as prescribed in OAR 333-061-0042(2)(b)(E).

(m) Reporting source water monitoring results for Cryptosporidium and E. coli collected in accordance with OAR 333-061-0036(5)(e). Water systems must report results from the source water monitoring no later than 10 days after the end of the first month following the month when the sample is collected as prescribed by this subsection.

(A) Water systems must report the following data elements for each Cryptosporidium analysis: PWS ID, facility ID, sample collection date, sample type (field or matrix spike), sample volume filtered in Liters (to

nearest 250 mL), whether 100% of the filtered volume was examined, and the number of oocysts counted.

(i) For matrix spike samples, water systems must also report the sample volume spiked and estimated number of oocysts spiked. These data are not required for field samples.

(ii) For samples in which less than 10 L is filtered or less than 100% of the sample volume is examined, systems must also report the number of filters used and the packed pellet volume.

(iii) For samples in which less than 100% of sample volume is examined, systems must also report the volume of re-suspended concentrate and volume of this re-suspension processed through immunomagnetic separation.

(B) Water systems must report the following data elements for each E. coli analysis: PWS ID, facility ID, sample collection date, analytical method number, method type, source type (flowing stream, lake/reservoir, or GWUDI), E. coli/100 mL, and turbidity (if required).

(n) Reporting requirements relating to Cryptosporidium protection.

(A) Water systems must report sampling schedules prescribed by OAR 333-061-0036(5)(f) and source water monitoring results in accordance with subsection (1)(m) of this rule unless they notify the Department that they will not conduct source water monitoring due to meeting the criteria of OAR 333-061-0036(5)(e)(D).

(B) Filtered water systems must report their Cryptosporidium bin classification as described in OAR 333-061-0032(4)(f).

(C) Unfiltered water systems must report their mean source water Cryptosporidium level as described in OAR 333-061-0032(2)(d).

(D) Water systems must report disinfection profiles and benchmarks to the Department as prescribed by OAR 333-061-0036(4)(g) and 333-061-0060(1)(e) through (1)(f)(C) prior to making a significant change in disinfection practice.

(E) Water systems must report to the Department any microbial toolbox options as specified in Table 44 used to comply with treatment requirements under OAR 333-061-0032(2)(d), (3)(e) through (g), and (4)(g). Alternatively, the Department may approve a water system to operate within required parameters for treatment credit rather than reporting monthly operational data for toolbox options. [Table not included. See ED. NOTE.]

(o) Water systems must report the use of uncovered finished water storage facilities to the Department as described in 333-061-0032(12).

(2) Record Maintenance by Water Suppliers:

(a)Water suppliers of public water systems shall retain records relating to the quality of the water produced and the condition of the physical components of the system. These records shall be kept at a convenient location within or near the area served by the water system;

(b) Records of microbiological analyses shall be kept for at least five years. Records of chemical analyses, secondary contaminants, turbidity, radioactive substances, and monitoring plans shall be kept for at least 10 years. Data may be transferred to tabular summaries provided the following information is included:

(A) Date, place and time of sampling, and the name of the person who collected the sample;

(B) Identification of the sample as to whether it was a routine finished water sample, repeat sample, raw water sample or special purpose sample;

(C) Date and time of the analysis, the laboratory and person performing the analysis; and,

(D) Analytical method used and results of the analysis.

(c) Records of actions taken to correct items of non-compliance shall be kept for at least three years after the last action taken with respect to the particular violation;

(d) Reports, summaries or communications on sanitary surveys shall be kept for at least 10 years;

(e) Records concerning variances or permits shall be kept for at least five years after the expiration of the variance or permit;

(f) Records of residual disinfectant measurements shall be kept for at least two years.

(g) All public water systems subject to the requirements of subsection (1)(f) of this rule shall retain the original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Department determinations, and any other information required for no fewer than 12 years.

(h) Copies of public notices issued pursuant to OAR 333-061-0042 and certifications made to the Department must be kept for three years after issuance.

(i) Water systems using surface water or groundwater under the direct influence of surface water that uses conventional filtration treatment or direct filtration treatment and that recycles spent filter backwash water, thickener, supernatant, or liquids from dewatering processes must collect and retain on file recycle flow information specified in paragraphs (2)(i)(A) through (F) of this rule for review and evaluation by the Department beginning June 8, 2004:

(A) Copy of the recycle notification and information submitted to the Department as required by OAR 333-061-0032(10)(b);

(B) List of all recycle flows and the frequency with which they are returned;

(C) Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes;

(D) Typical filter run length and a written summary of how filter run length is determined;

(E) The type of treatment provided for the recycle flow;

(F) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.

(j) In addition to the requirements of subsections (2)(a) through (h) of this rule, groundwater systems must maintain the following information in their records:

(A) Documentation of corrective actions for a period of not less than ten years;

(B) Documentation of notice to the public as prescribed by OAR 333-061-0042(8) for a period of not less than three years;

(C) Records of decisions made in accordance with OAR 333-061-0036(6)(v)(B) and records of invalidation of E. coli -positive groundwater source samples in accordance with OAR 333-061-0036(6)(x) for a period of not less than five years;

(D) For purchasing water systems, documentation of notification to the wholesale system(s) of total-coliform positive samples not invalidated in accordance under OAR 333-061-0036(6)(k) for a period of not less than five years; and

(E) For any water system required to perform compliance monitoring in accordance with OAR 333-061-0032(7)(b):

(i) Records of the Department-specified minimum disinfectant residual for a period of not less than ten years;

(ii) Records of the lowest daily residual disinfectant concentration and records of the date and duration of any failure to maintain the Department-prescribed minimum residual disinfectant concentration for a period of more than four hours for a period of not less than five years; and

(iii) Records of Department-specified compliance requirements for membrane filtration, parameters specified by the Department for Department-approved alternative treatment, and records of the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours for a period of not less than five years.

(k) For systems required to compile a disinfection profile, the results of the profile (including raw data and analysis) must be kept indefinitely as well as the disinfection benchmark (including raw data and analysis) determined from the profile.

(l) Recordkeeping requirements pertaining to Cryptosporidium protection. Water systems must keep:

(A) Results from the source water monitoring prescribed by OAR 333-061-0036(5)(e) for 3 years after bin classification in accordance OAR 333-061-0032(4)(f) for filtered systems, or determination of the mean Cryptosporidium level in accordance OAR 333-061-0032(2)(d) for unfiltered systems for the particular round of monitoring.

(B) Any notification to the Department that they will not conduct source water monitoring due to meeting the criteria specified in OAR 333-061-0036(5)(e)(D) for 3 years.

(C) The results of treatment monitoring associated with microbial toolbox options as prescribed by OAR 333-061-0032(13) and with uncovered finished water reservoirs in accordance with OAR 333-061-0032(12)(b), as applicable, for 3 years.

(m) IDSE reports (including Department modifications) must be kept for at least 10 years. IDSE monitoring plans, including system specific study reports, must be retained at least as long as the IDSE report. IDSE reports and any Department modification must be made available for review by the Department or the public.

(3) Records Kept by the Department.

(a) Records of turbidity measurements must be kept for not less than one year. The information retained must be set forth in a form which makes possible comparison with the limits specified by OAR 333-061-0030, 0032, and 0036.

(b) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness in accordance with OAR 333-061-0032(3) or (4), 0036(5)(a)(C) through (F), or 0036(5)(b)(B) through (C) of these rules must be kept for not less than one year. Records

of decisions made on a system-by-system and case-by-case basis must be made in writing and kept by the Department.

(c) Any decisions made in accordance with consultations made with the Department concerning modifications to disinfection practices including the status of the consultation.

(d) Records of decisions that a water system using alternative filtration technologies, as determined by OAR 333-061-0030(3)(b)(D), can consistently achieve a 99.9 percent removal and/or inactivation of Giardia lamblia cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of Cryptosporidium oocysts. The decisions must include enforceable turbidity limits for each water system by the Department. A copy of the decision must be kept until the decision is reversed or revised. The Department must provide a copy of the decision to the water system.

(e) Records of water systems required to do a filter self-assessment, required to conduct a comprehensive performance evaluation as required by subsection (1)(e) of this rule, or required to participate in the Composite Correction Program.

(f) Records of the Department's determinations, including all supporting information and an explanation of the technical basis for the control of disinfectants and disinfection byproducts. These records must also include interim measures toward installation.

(A) Records of water systems that are installing GAC or membrane technology in accordance with OAR 333-061-0030(3)(b)(D). These records must include the date by which the water system is required to have completed installation.

(B) Records of water systems required to meet alternative minimum TOC removal requirements or for whom the Department has determined that the source water is not amenable to enhanced coagulation in accordance with OAR 333-061-0032 (10)(e)(C) and (D), respectively. These records must include the alternative limits and rationale for establishing the alternative limits.

(C) Records of water systems using surface water or groundwater under the direct influence of surface water using conventional treatment meeting any of the alternative compliance criteria specified in OAR 333-061-0032(10)(d)(A).

(D) Any decisions made pursuant to the provisions of OAR 333-061-0036(4)(b) and (4)(d) including:

(i) IDSE monitoring plans, plus any modifications required by the Department, must be kept until replaced by approved IDSE reports;

(ii) IDSE reports and 40/30 certifications, plus any modifications required by the Department, must be kept until replaced or revised in their entirety; and

(iii) Operational evaluations submitted by a system must be kept for 10 years following submission.(g) Monitoring plans for water systems using surface water or groundwater under the direct influence of surface water serving more than 3,300 persons in accordance with OAR 333-061-0036(4)(c)(C) or (4)(d)(D).

(h) Records of decisions made on a water system-by-water system and case-by-case basis under provisions of these rules must be made in writing and kept by the Department

(A) Records of decisions made under this paragraph shall be kept for 40 years (or until one year after the decision is reversed or revised) and a copy of the decision must be provided to the water system:

(i) Any decisions made to approve alternate recycle locations, require modifications to recycle return locations, or require modifications to recycle practices.

(i) Records pertaining to Cryptosporidium protection including:

(A) Results of source water E. coli and Cryptosporidium monitoring;

(B) The bin classification after the initial and second round of source water monitoring for each filtered system, as described in OAR 333-061-0032(4)(f);

(C) Any change in treatment requirements for filtered systems due to watershed assessment during sanitary surveys, as described in 333-061-0032(4)(g)(C)(ii);

(D) The determination of whether the mean Cryptosporidium level is greater than 0.01 oocysts/L after the initial and second round of source water monitoring for each unfiltered system, as described in OAR 333-061-0032(2)(d); and

(E) The treatment processes or control measures that water systems use to meet their Cryptosporidium treatment requirements as prescribed by OAR 333-061-0032(3)(e) or (4)(g).

(j) A list of water systems required to cover or treat the effluent of an uncovered finished water storage facility, as specified in OAR 333-061-0032(12). [ED. NOTE: Tables referenced are available from the agency.]

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

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.175 & 448.273

Hist.: HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0212, HD 2-1983, f. & ef. 2-23-83; HD 21-1983, f. 10-20-83, ef. 11-1-83; HD 11-1985, f. & ef. 7-2-85; HD 30-1985, f. & ef. 12-4-85; HD 3-1987, f. & ef. 2-17-87; HD 3-1988(Temp), f. & cert. ef. 2-12-88; HD 17-1988, f. & cert. ef. 7-27-88; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 2-2008, f. & cert. ef. 2-15-08; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0042

Public Notice

(1) The owner or operator of a public water system must provide public notice to persons served by the water system for all violations and situations established by these rules.

(a) Public water systems that provide drinking water to purchasing water systems are required to give public notice to the owner or operator of the purchasing water system who is responsible for providing public notice to the persons it serves.

(b) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the Department may, in writing, allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance.

(c) A copy of any public notice must be sent to the Department as required in OAR 333-061-0040(1)(j).

(2) Public notice requirements are divided into three tiers to take into account the seriousness of the violation or situation and of any potential adverse health effects that may be involved:

(a) Tier 1: A Tier 1 notice is required for violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure and include the following:

(A) Violation of the MCL for total coliforms when fecal coliforms or E. Coli are present in the water distribution system as specified in OAR 333-061-0030(4)(b) or when the water system fails to test for fecal coliforms or E. coli when any repeat sample tests positive for coliform as specified in OAR 333-061-0036(6)(n);

(B) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, or when the water system fails to take a confirmation sample within 24 hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL;

(C) Violation of the MRDL for chlorine dioxide as prescribed in OAR 333-061-0031(1) when one or more samples taken in the distribution system the day following an exceedance of the MRDL at the entrance of the distribution system exceed the MRDL, or when the water system does not take the required samples in the distribution system;

(D) Violation of the interim operating plan for turbidity for a surface water system that does not meet the exception criteria for avoiding filtration under OAR 333-061-0032 nor has installed filtration treatment as defined by these rules when the Department determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;

(E) Violation of the Surface Water Treatment Rule (SWTR), Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR), or Interim Enhanced Surface Water Treatment Rule (IESWTR) treatment technique requirement as prescribed in OAR 333-061-0032, resulting from a single exceedance of the maximum allowable turbidity limit, where the Department determines after consultation that a Tier 1 notice is required or where consultation does not take place within 24 hours after the system learns of the violation;

(F) Occurrence of a waterborne disease outbreak or other waterborne emergency (such as a failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination;

(G) Detection of E. coli in source water samples as specified in OAR 333-061-0036 (6)(r) and 333-061-0036(6)(w); and

(H) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short term exposure, as determined by the Department.

(b) Tier 2: required for all violations and situations with potential to have serious adverse effects on human health and include: (A) All violations of the MCL, MRDL, and treatment technique requirements, except where a Tier 1 notice is required or where the Department determines that a Tier 1 notice is required.

(B) Violations of the monitoring and testing procedure requirements, where the Department determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation.

(C) Failure to comply with the terms and conditions of any variance or permit in place.

(D) Failure to respond to sanitary survey reports or comprehensive performance evaluation reports prepared by the Department as required in OAR 333-061-0076 and 333-061-0077.

(E) Use of an emergency groundwater source that has been identified as potentially under the direct influence of surface water, but has not been fully evaluated.

(c) Tier 3: required for other violations or situations not included in Tier 1 and 2 and include:

(A) Monitoring violations prescribed in these rules except where a Tier 1 notice is required or where the Department determines that a Tier 2 notice is required;

(B) Failure to comply with a testing procedure established in these rules except where a Tier 1 notice is required or where the Department determines that a Tier 2 notice is required;

(C) Operation under a variance or permit granted by the Department;

(D) Availability of unregulated contaminant monitoring results as required under section (6) of this rule;

(E) Exceedance of the fluoride secondary MCL as required under section (7) of this rule; and

(F) Disinfection profiling and benchmarking monitoring and testing violations.

(d) The Department may require public notice for violations or other situations not listed in this section, or a higher tier of public notice for specific violations and situations listed in this section.(3) All public notices established by these rules shall be distributed in the form, manner and frequency as described in this section:

(a) Tier 1 notices: public water systems required to distribute Tier 1 notices must:

(A) Provide the notice as soon as practical, but no later than 24 hours after learning of the violation or situation;

(B) Initiate consultation with the Department as soon as practical, but no later than 24 hours after learning of the violation or situation;

(C) Comply with any additional notification requirements established as a result of consultation with the Department;

(D) The form and manner used by the public water system are to fit the specific situation, but must be designed to reach residential, transient, and non-transient users of the water system. In order to reach all persons served, one or more of the following forms of delivery must be used:

(i) Appropriate broadcast media such as radio and television;

(ii) Posting of the notice in conspicuous locations throughout the area served by the water system;

(iii) Hand delivery of the notice to persons served by the water system; or

(iv) Another delivery method approved in writing by the Department.

(b) Tier 2 notices: public water systems required to distribute Tier 2 notices must:

(A) Provide the public notice as soon as practical, but no later than 30 days after learning of the violation or situation. The Department may, in writing, extend additional time for the initial notice of up to three months in appropriate circumstances;

(B) If the public notice is posted, leave the notice in place as long as the violation or situation exists, but in no case for less than seven days, even if the violation or situation is resolved;

(C) Repeat the notice every three months as long as the violation or situation persists unless the Department determines in writing that appropriate circumstances warrant a different repeat notice frequency. In no circumstance may the repeat notice be given less frequently than once per year.

(D) For the turbidity violations specified in paragraphs (3)(b)(D)(i) and (ii) of this rule, public water systems must consult with the Department as soon as practical, but no later than 24 hours after learning of the violation to determine whether a Tier 1 public notice is required to protect public health. When consultation with the Department does not take place within the 24 hour period, the water system must distribute a Tier 1 notice of the violation within the next 24 hours as prescribed in subsection (3)(a) of this rule:

(i) Violation of the interim operating plan for turbidity for a surface water system that does not meet the exception criteria for avoiding filtration under OAR 333-061-0032 nor has installed treatment as defined by these rules; or

(ii) Violation of the SWTR, LT1ESWTR, or IESWTR treatment technique requirement as prescribed in OAR 333-061-0032, resulting from a single exceedance of the maximum allowable turbidity limit.

(E) The form and manner used by the public water system for initial and repeat notices must be calculated to reach persons served by the system in the required time period. The form and manner may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(i) Unless directed otherwise by the Department in writing, community water systems must provide notice by:

(I) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(II) Any other method reasonably calculated to reach other persons regularly served by the water system who would not normally be reached by mail or direct delivery. Other methods may include: local newspapers, delivery of multiple copies for distribution, posting, e-mail and community organizations.

(ii) Unless directed otherwise by the Department in writing, non-community water systems must provide notice by:

(I) Posting the notice in conspicuous locations frequented by users throughout the distribution system, or by mail or direct delivery to each customer or connection; and

(II) Any other method reasonably calculated to reach other persons not normally reached by posting, mail or direct delivery. Other methods may include: local newspaper, newsletter, e-mail and multiple copies in central locations.

(c) Tier 3 notices: public water systems required to distribute Tier 3 notices must:

(A) Provide the public notice not later than one year after learning of the violation or situation or begins operating under a variance or permit. Following the initial notice, the system must repeat the notice annually for as long as the violation, variance, permit or other situation persists. If the public notice is posted, the notice must remain in place for as long as the violation, variance, permit, or other situation persists, but in no case less than seven days even if the violation or situation is resolved.

(B) Instead of individual Tier 3 public notices, a community public water system may use its annual Consumer Confidence Report (CCR) for the initial and all repeat notices detailing all violations and situations that occurred during the previous twelve months. This method may be used as long as it is distributed within the one year requirement in paragraph (3)(c)(A) of this rule, follows the public notice content required under section (4) of this rule and is delivered to users as required under paragraph (3)(c)(C) of this rule.

(C) The form and manner used by the public water system for initial and repeat notices must be calculated to reach persons served by the system in the required time period. The form and manner may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(i) Unless directed otherwise by the Department in writing, community water systems must provide notice by:

(I) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(II) Any other method reasonably calculated to reach other persons regularly served by the water system who would not normally be reached by mail or direct delivery. Other methods may include: local newspapers, delivery of multiple copies for distribution, posting, e-mail and community organizations.

(ii) Unless directed otherwise by the Department in writing, non-community water systems must provide notice by:

(I) Posting the notice in conspicuous locations frequented by users throughout the distribution system, or by mail or direct delivery to each customer or connection; and

(II) Any other method reasonably calculated to reach other persons not normally reached by posting, mail or direct delivery. Other methods may include: local newspaper, newsletter, e-mail and delivery of multiple copies in central locations.

(4) Content of Public Notice:

(a) When a public water system has a violation or situation prescribed in these rules requiring a public notice, each public notice must include the following elements:

(A) A description of the violation or situation, including the contaminant(s) of concern, and the contaminant level;

(B) When the violation or situation occurred;

(C) Any potential adverse health effects including the standard language required under paragraphs (4)(d)(A) and (B) of this rule;

(D) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;

(E) Whether alternative water supplies should be used;

(F) What actions consumers should take, including when they should seek medical help, if known;

(G) What the system is doing to correct the violation or situation;

(H) When the water system expects to return to compliance or resolve the situation;

(I) The name, business address, and phone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice; and

(J) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under paragraph (4)(d)(C) of this rule.

(b) Content of public notices for public water systems operating under a variance or permit:

(A) If a public water system has been granted a variance or permit, the public notice must contain:

(i) An explanation of the reasons for the variance or permit;

(ii) The date on which the variance of permit was issued;

(iii) A brief status report on the steps the system is taking to install treatment, find alternative sources of water or otherwise comply with the terms and schedules of the variance or permit; and

(iv) A notice of any opportunity for public input in the review of the variance or permit.

(B) If a public water system violates the conditions of a variance or permit, the public notice must contain the ten elements listed in subsection (4)(a) of this rule.

(c) Public notice presentation:

(A) Each public notice required by these rules must:

(i) Be displayed in a conspicuous way when printed or posted;

(ii) Not contain overly technical language or very small print;

(iii) Not be formatted in a way that defeats the purpose of the notice;

(iv) Not contain language which nullifies the purpose of the notice.

(B) Each public notice required by these rules must comply with multilingual requirements as follows:

(i) For public water systems serving a large proportion of non-English speaking consumers, as determined by the Department, the public notice must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.

(ii) In cases where the Department has not determined what constitutes a large proportion of non-English speaking consumers, the public water system must include in the public notice the same information required in paragraph (4)(c)(B)(i) of this rule where appropriate to reach a large proportion of non-English speaking persons served by the water system.

(d) Standard language: public water systems are required to include the following standard language in their public notice:

(A) Public water systems must include in each public notice the specific health effects language as prescribed in OAR 333-061-0097 for each MCL, MRDL, and treatment technique violation and for each violation of a condition of a variance or permit.

(B) Public water systems must include the following language in their notice, including the language necessary to fill in the blanks, for all monitoring and testing procedure violations:

> We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During {compliance period}, we "did not monitor or test" or "did not complete all monitoring or testing" for {contaminants(s)}, and therefore cannot be sure of the quality of your drinking water during that time.

(C) Public water systems are required where applicable to include the following standard language to encourage the distribution of the public notice to all persons served:

> Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

(5) Notice to new billing units or new customers:

(a) Community water systems must give a copy of the most recent public notice for any continuing violation, the existence of a variance or permit, or other ongoing situations requiring a public notice to all new billing units or new customers prior to or at the time service begins.

(b) Non-community water systems must continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation, variance or permit, or other situations requiring a public notice for as long as the violation, variance, permit, or other situation persists.

(6) Special notice of availability of unregulated contaminant monitoring results:

(a) The owner or operator of a community water system or non-transient, non-community water systems required by EPA to monitor for unregulated contaminants must notify persons served by the system of the availability of the results of such sampling no later than 12 months after the monitoring results are known.

(b) The form and manner of the public notice must follow the requirements for a tier 3 public notice as prescribed in paragraphs (3)(c)(B) and (C) of this rule. The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.

(7) Special notice for exceedance of the SMCL for fluoride:

(a) Community water systems that exceed the fluoride secondary MCL of 2 mg/l, determined by the last single sample taken in accordance with OAR 333-061-0036(2), but do not exceed the MCL of 4 mg/l for fluoride must provide the public notice in subsection (7)(d) of this rule to persons served by the water system. Public notice must be provided as soon as practical but no later than 12 months from the day the water system learns of the exceedance. The public water system must repeat the notice at least annually for as long as the exceedance persists. The Department may require an initial notice sooner than 12 months and repeat notices more frequently than annually on a case-by-case basis;

(b) A copy of the notice must also be sent to all new billing units and new customers at the time service begins and to the Department. If the public notice is posted, the notice must remain in place for as long as the secondary MCL is exceeded, but in no case less than 7 days, even if the exceedance is eliminated;

(c) The form and manner of the public notice, including repeat notices must follow the requirements for tier 3 public notice;

(d) The notice must contain the following language, including the language necessary to fill in the blanks:

> This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than 2 mg/l of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). The drinking water provided by your community water system {name} has a fluoride concentration of {insert value} mg/l.
>
> Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride-containing products. Older children and adults may safely drink the water.
>
> Drinking water containing more than 4 mg/l of fluoride (the U.S. EPA's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than 4 mg/l of fluoride, but we're required to notify you when we discover that the fluoride levels in your drinking water exceed 2 mg/l because of this cosmetic dental problem.
>
> For more information, please call {name of water system contact} of {name of community water system} at {phone number}. Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1-877-8-NSF-HELP.

(8) Special notice to the public for significant deficiencies or source water fecal contamination.

(a) A community water system that uses groundwater and that receives notification from the Department of a significant deficiency or of an E. coli-positive groundwater source sample, that is not invalidated in accordance with OAR 333-061-0036(6)(x), must inform the public served by the water system of the E. coli -positive source sample or the significant deficiency that has not been corrected as prescribed by OAR 333-061-0043(5). The water system must continue to inform the public annually until the significant deficiency is corrected, or the fecal contamination in the groundwater source is determined by the Department to be corrected in accordance with OAR 333-061-0032(6)(e).

(b) A non-community groundwater system that receives notice from the Department of a significant deficiency must inform the public served by the water system in a manner approved by the Department of the significant deficiency if it has not been corrected within 12 months of the notification by the Department. The water system must continue to inform the public annually until the significant deficiency is corrected. The information must include:

(A) The nature of the significant deficiency and the date the significant deficiency was identified by the Department;

(B) The Department-approved plan and schedule for correction of the significant deficiency, including any interim measures, progress to date, and any interim measures completed; and

(C) For water systems with a large proportion of non-English speaking consumers as determined by the Department, information must be distributed in the appropriate language(s) regarding the importance of the notice or a telephone number or address where consumers may contact the system to obtain a translated copy of the notice or assistance in the appropriate language.

(c) If directed by the Department, a non-community water system with significant deficiencies that have been corrected must inform its customers of the significant deficiencies, how the deficiencies were corrected, and the dates of correction under subsection (8)(b) of this rule.

(9) Special notice for repeated failure to conduct monitoring of the source water for Cryptosporidium and for failure to determine bin classification or mean Cryptosporidium level.

(a) Special notice for repeated failure to monitor. The owner or operator of a community or non-community water system that is required to monitor source water in accordance with OAR 333-061-0036(5)(e) must notify persons served by the water system that monitoring has not been completed as required no later than 30 days after the system has failed to collect any 3 months of monitoring as specified in Table 39. The notice must be repeated as specified in subsection (3)(b) of this rule. [Table not included. See ED. NOTE.]

(b) Special notice for failure to determine bin classification or mean Cryptosporidium level. The owner or operator of a community or non-community water system that is required to determine a bin classification in accordance with OAR 333-061-0032(4)(f), or to determine a mean Cryptosporidium level as prescribed by OAR 333-061-0032(2)(d), must notify persons served by the water system that the determination has not been made as required no later than 30 days after the system has failed to report the determination in accordance with OAR 333-061-0032(2)(d)(A) and (D) or 333-061-0032(4)(f)(G) and (H).

(A) The notice must be repeated as specified in subsection (3)(b) of this rule.

(B) The notice is not required if the system is complying with a Department-approved schedule to address the violation.

(c) The form and manner of the special notice must follow the requirements for a Tier 2 public notice as prescribed in subsection (3)(b) of this rule. The special notice must be presented as required by subsection (4)(c) of this rule.

(d) The special notice must contain the following language, including system specific language for the text within the braces.

(A) The special notice for repeated failure to conduct monitoring must contain:

> {Water system name} is required to monitor the source of your drinking water for Cryptosporidium. Results of the monitoring are to be used to determine whether water treatment at the {treatment plant name} is sufficient to adequately remove Cryptosporidium from your drinking water. We are required to complete this monitoring and make this determination by {required bin determination date}. We ``did not monitor or test'' or ``did not complete all monitoring or testing'' on schedule and, therefore, we may not be able to determine by the required date what treatment modifications, if any, must be made to ensure adequate Cryptosporidium removal. Missing this deadline may, in turn, jeopardize our ability to have the required treatment modifications, if any, completed by the deadline required, {date}. For more information, please call {name of water system contact} of { water system name} at {phone number}.

(B) The special notice for failure to determine bin classification or mean Cryptosporidium level must contain the following language:

> {Water system name} is required to monitor the source of your drinking water for Cryptosporidium in order to determine by {date} whether water treatment at the {treatment plant name} is sufficient to adequately remove Cryptosporidium from your drinking water. We have not made this determination by the required date. Our failure to do this may jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of {date}. For more information, please call {name of water system contact} of { water system name} at {phone number}.

(C) Each special notice must also include a description of what the system is doing to correct the violation and when the system expects to return to compliance or resolve the situation.(10) Public notification by the Department. The Department may give notice to the public required by this section on behalf of the owner or operator of the public water system. However, the owner or operator of the public water system remains legally responsible for ensuring that the requirements of this section are met.

Stat. Auth.: ORS 431 & 448
Stats. Implemented: ORS 431.110, 431.150, 448.175 & 448.273
Hist.: HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 11-1994, f. & cert. ef. 4-11-94; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 2-2006, f. & cert. ef. 1-31-06; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0043
Consumer Confidence Reports

This rule establishes the minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner. For the purpose of this rule, customers are defined as billing units or service connections to which water is delivered by a Community Water System.

(1) Delivery deadlines:

(a) Community water systems must deliver their reports by July 1, annually. The report must contain data collected during, or prior to, the previous calendar year;

(b) A new community water system must deliver its first report by July 1 of the year after its first full calendar year in operation and annually thereafter;

(c) A community water system that sells water to another community water system must deliver the applicable information to the buyer system:

(A) No later than April 1, annually; or

(B) On a date mutually agreed upon by the seller and the purchaser, and specifically included in a contract between the parties.

(2) Content of the Reports:

(a) Each community water system must provide to its customers an annual report that contains the information specified in sections (2), (3) (4) and (5) of this rule;

(b) Each report must identify the source(s) of the water delivered by the community water system by providing information on:

(A) The type of water: e.g., surface water, ground water; and

(B) The commonly used name (if any) and location of the body (or bodies) of water.

(c) If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it. In addition, systems are encouraged to highlight in the report significant potential sources of contamination in the drinking water protection area if they have readily available information. Where a system has received a source water assessment from the Department, the report must include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the Department or written by the operator;

(d) Each report must contain the following definitions:

(A) Maximum Contaminant Level Goal or MCLG: The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety;

(B) Maximum Contaminant Level or MCL: The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

(C) Variance: A system operating under a variance as prescribed in OAR 333-061-0045 must include the following definition in its report: Variances: State permission not to meet an MCL or a treatment technique under certain conditions;

(D) Treatment Technique or Action Level: A system which has a detection for a contaminant for which EPA has set a treatment technique or an action level must include one or both of the following definitions as applicable:

(i) Treatment Technique: A required process intended to reduce the level of a contaminant in drinking water;

(ii) Action Level: The concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

(E) Maximum Residual Disinfectant Level Goal or MRDLG: The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(F) Maximum Residual Disinfectant Level or MRDL: The highest level of disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(3) Detected Contaminants:

(a) The following information must be included in each report for contaminants subject to mandatory monitoring (except Cryptosporidium). Detected means at or above the detection level prescribed by each EPA approved analytical method set forth in 40 CFR 141:

(A) Contaminants and disinfection by-products subject to an MCL, action level, MRDL, or treatment technique (regulated contaminants);

(B) Unregulated contaminants for which monitoring is required; and

(b) The data relating to these contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results which a community water system chooses to include in its report must be displayed separately.

(c) The data must be derived from data collected to comply with state monitoring and analytical requirements during the calendar year except that:

(A) Where a system is allowed to monitor for regulated contaminants less often than once a year, the table(s) must include the date and results of the most recent sampling and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulation. No data older than 5 years need be included.

(d) For detected regulated contaminants (listed in Table 45 of this rule), the table(s) in the report must contain: [Table not included. See ED. NOTE.]

(A) The MCL for that contaminant expressed as a number equal to or greater than 1.0 (as provided in Table 45); [Table not included. See ED. NOTE.]

(B) The MCLG for that contaminant expressed in the same units as the MCL;

(B) If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report must include the definitions for treatment technique and/or action level, as appropriate, specified in paragraph (2)(d)(D) of this rule;

(D) For contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with OAR 333-061 and the range of detected levels, as follows:

(i) When compliance with the MCL is determined annually or less frequently: the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL;

(ii) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a monitoring location: the highest average of any of the monitoring location and the range of all monitoring location must be expressed in the same unit of measure as the MCL. For the MCL for TTHM and HAA5 as specified by OAR 333-061-0030(2)(b), water systems must include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same unit of measure as the MCL. If more than one location exceeds the MCL for TTHM or HAA5, the water system must include the locational running annual averages for all locations that exceed the MCL;

(iii) When compliance with the MCL is determined on a system wide basis by calculating a running annual average of all samples at all monitoring locations: the average and range of detections expressed in the same units as the MCL. The water system is required to include individual sample results for an IDSE conducted in accordance with OAR 333-061-0036(4)(b) of this rule when determining the range of TTHM and HAA5 results to be reported in the annual consumer confidence report for the calendar year that the IDSE samples were taken;

(iv) When rounding of results to determine compliance with the MCL is allowed by the regulations, rounding should be done prior to multiplying the results by the factor listed in Table 245 of this rule. [Table not included. See ED. NOTE.]

(e) Turbidity:

(A) When it is reported pursuant to OAR 333-061-0030(3)(a), 333-061-0032(2), and 333-061-0036(5)(a): the highest monthly value. The report should include an explanation of the reasons for measuring turbidity. This includes water systems currently without filtration treatment, but required to install filtration through a Notice of Violation and Remedial Order.

(B) When it is reported pursuant to OAR 333-061-0030(3): The highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 333-061-0030(3) for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity.

(f) Lead and copper: the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level and the lead-specific information as prescribed in (4)(c) of this rule.

(g) Total coliform:

(A) The highest monthly number of positive samples for systems collecting fewer than 40 samples per month; or

(B) The highest monthly percentage of positive samples for systems collecting at least 40 samples per month.

(h) Fecal coliform: the total number of positive samples.

(i) The likely source(s) of detected contaminants to the best of the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the operator. If the operator lacks specific information on the likely source, the report must include one or more of the typical sources for that contaminant listed in Table 46 which are most applicable to the system. [Table not included. See ED. NOTE.]

(j) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table should contain a separate column for each service area and the report should identify each separate distribution system. Alternatively, systems could produce separate reports tailored to include data for each service area.

(k) The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or treatment techniques and the report must contain a clear and readily understandable explanation of the violation, the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language in Table 46 of this rule.

(l) For detected unregulated contaminants for which monitoring is required (except Cryptosporidium), the table(s) must contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants. [Table not included. See ED. NOTE.]

(m) Information on Cryptosporidium, radon, and other contaminants:

(A) If the system has performed any monitoring for Cryptosporidium, which indicates that Cryptosporidium may be present in the source water or the finished water, the report must include:

(i) A summary of the results of the monitoring, and

(ii) An explanation of the significance of the results.

(B) If the system has performed any monitoring for radon which indicates that radon may be present in the finished water, the report must include:

(i) The results of the monitoring; and

(ii) An explanation of the significance of the results.

(C) If the system has performed additional monitoring which indicates the presence of other contaminants in the finished water, the system is strongly encouraged to report any results which may indicate a health concern. To determine if results may indicate a health concern, EPA recommends that systems find out if EPA has proposed a National Primary Drinking Water Regulation or issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline (800-426-4791). EPA considers detects above a proposed MCL or health advisory level to indicate possible health concerns. For such contaminants, EPA recommends that the report include:

(i) The results of the monitoring; and

(ii) An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

(n) Compliance with OAR 333-061: In addition to subsection (3)(k) of this rule, the report must note any violation that occurred during the year covered by the report of a requirement listed below, and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation.

(A) Monitoring and reporting of compliance data;

(B) Filtration and disinfection prescribed by OAR 333-061-0032: For systems which have failed to install adequate filtration or disinfection equipment or processes which constitutes a violation or have an equipment failure constituting a violation, the report must include the following language as part of the explanation of potential adverse health effects: Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches;

(C) Lead and copper control requirements: For systems which fail to take one or more actions prescribed by OAR 333-061-0034 the report must include the applicable language in Table 46 of this rule for lead, copper, or both; [Table not included. See ED. NOTE.]

(D) Treatment techniques for Acrylamide and Epichlorohydrin: For systems which violate the requirements of OAR 333-061-0030(7), the report must include the relevant health effects language in Table 46 of this rule. [Table not included. See ED. NOTE.]

(E) Recordkeeping of compliance data;

(F) Special monitoring requirements prescribed by OAR 333-061-0036(2)(g) and for unregulated contaminants as required by EPA;

(G) Violation of the terms of a variance, administrative order or judicial order.

(o) Variances: If a system is operating under the terms of a variance as prescribed in OAR 333-061-0045, the report must contain:

(A) An explanation of the reasons for the variance;

(B) The date on which the variance was issued;

(C) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance; and

(D) A notice of any opportunity for public input in the review, or renewal, of the variance.

(p) Additional information:

(A) The report must contain a brief explanation regarding contaminants which may reasonably be expected to be found in drinking water including bottled water. This explanation may include the language in paragraphs (3)(p)(A)(i), (ii) and (iii) of this rule, or systems may use their own comparable language. The report also must include the language of paragraph (3)(p)(A)(iv) of this rule.

(i) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity;

(ii) Contaminants that may be present in source water include:

(I) Microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife;

(II) Inorganic contaminants, such as salts and metals, which can be naturally-occurring or result from urban stormwater runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming;

(III) Pesticides and herbicides, which may come from a variety of sources such as agriculture, urban stormwater runoff, and residential uses;

(IV) Organic chemical contaminants, including synthetic and volatile organic chemicals, which are by-products of industrial processes and petroleum production, and can also come from gas stations, urban stormwater runoff, and septic systems;

(V) Radioactive contaminants, which can be naturally-occurring or be the result of oil and gas production and mining activities.

(iii) In order to ensure that tap water is safe to drink, EPA prescribes regulations which limit the amount of certain contaminants in water provided by public water systems. FDA regulations establish limits for contaminants in bottled water which must provide the same protection for public health;

(iv) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (800-426-4791).

(B) The report must include the telephone number of the owner, operator, or designee of the community water system as a source of additional information concerning the report;

(C) In communities with a large proportion of non-English speaking residents the report must contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language;

(D) The report must include information (e.g., time and place of regularly scheduled board meetings) about opportunities for public participation in decisions that may affect the quality of the water;

(E) The systems may include such additional information as they deem necessary for public education consistent with, and not detracting from, the purpose of the report.

(4) Required additional health information:

(a) All reports must prominently display the following language: Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. EPA/CDC guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the Safe Drinking Water Hotline (800-426-4791).

(b) A system which detects nitrate at levels above 5 mg/l, but does not exceed the MCL:

(A) Must include a short informational statement about the impacts of nitrate on children using language such as: Nitrate in drinking water at levels above 10 mg/l is a health risk for infants of less than six months of age. High nitrate levels in drinking water can cause blue baby syndrome. Nitrate levels may rise quickly for short periods of time because of rainfall or agricultural activity. If you are caring for an infant you should ask advice from your health care provider.

(B) May write its own educational statement, but only in consultation with the Department.

(c) Every report must include the following lead-specific information:

(A) A short informational statement about the lead in drinking water and its effects on children. The statement must include the following information: If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. {NAME OF WATER UTILITY} is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline or at http://www.epa.gov/safewater/lead.

(B) The water system may write its own educational statement, but only in consultation with the Department.

(5) Special requirements for groundwater systems:

(a) Any groundwater system that receives notification of a significant deficiency that is not corrected at the time of the next report, or of an E. coli-positive groundwater source sample that was not invalidated in accordance OAR 333-061-0036(6)(x) must inform its customers in the next report. The water system must continue to inform the public annually until the Department determines that the particular significant deficiency is corrected or that the fecal contamination in the groundwater source is addressed in accordance with OAR 333-061-0032(6). Each report must include the following elements:

(A) The nature of the particular significant deficiency or the source of the fecal contamination (if the source is known), and the date the significant deficiency was identified by the Department or the dates of the E. coli -positive groundwater source samples;

(B) If the fecal contamination in the groundwater source has been addressed as prescribed by OAR 333-061-0032(6) and the date of such action;

(C) The Department-approved plan and schedule for correction, including interim measures, progress to date, and any interim measures completed for any significant deficiency or fecal contamination in the groundwater source that has not been addressed as prescribed by OAR 333-061-0032(6); and

(D) The potential health effects language specified in OAR 333-061-0097(4)(b) if the system received notice of a E. coli -positive groundwater source sample that was not invalidated by the Department in accordance with OAR 333-061-0036(6)(x).

(b) The Department may require a water system with significant deficiencies that have been corrected before the next report is issued to inform its customers of the significant deficiency, how the deficiency was corrected, and the date of correction in accordance with subsection (5)(a) of this rule.

(6) Report delivery and recordkeeping:

(a) Except as provided in subsection (5)(g) of this rule, each community water system must mail or otherwise directly deliver one copy of the report to each customer.

(b) The system must make a good faith effort to reach consumers who do not get water bills, using means recommended by the Department. EPA expects that an adequate good faith effort will be tailored to the consumers who are served by the system but are not bill-paying customers, such as renters or workers. A good faith effort to reach consumers would include a mix of methods appropriate to the particular system such as: Posting the reports on the Internet; mailing to postal patrons in metropolitan areas; advertising the availability of the report in the news media; publication in a local newspaper; posting in public places such as cafeterias or lunch rooms of public buildings; delivery of multiple copies for distribution by singularly-billed customers such as apartment buildings or large private employers; delivery to community organizations.

(c) No later than the date the system is required to distribute the report to its customers, each community water system must mail a copy of the report to the Department, followed within 3 months by a certification that the report has been distributed to customers, and that the information is correct and consistent with the compliance monitoring data previously submitted to the Department.

(d) No later than the date the system is required to distribute the report to its customers, each community water system must deliver the report to any other agency or clearinghouse identified by the Department.

(e) Each community water system must make its reports available to the public upon request.

(f) Each community water system serving 100,000 or more persons must post its current year's report to a publicly-accessible site on the Internet.

(g) The Governor of a State or his designee, can waive the requirement of subsection (5)(a) of this rule for community water systems serving fewer than 10,000 persons.

(A) Such systems must:

(i) Publish the reports in one or more local newspapers serving the area in which the system is located;

(ii) Inform the customers that the reports will not be mailed, either in the newspapers in which the reports are published or by other means approved by the State; and

(iii) Make the reports available to the public upon request.

(B) Systems serving 500 or fewer persons may forego the requirements of paragraphs (5)(g)(A)(i) and (ii) of this rule if they provide notice at least once per year to their customers by mail, door-to-door delivery or by posting in an appropriate location that the report is available upon request.

(h) Any system subject to this rule must retain copies of its consumer confidence report for no less than 5 years.

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

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 431.110, 431.150

Hist.: OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 2-2008, f. & cert. ef. 2-15-08; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0045
Variances

(1) Variances from the maximum contaminant levels may be granted by the Department to public water systems under the following circumstances where:

(a) An evaluation satisfactory to the Department indicates that alternative sources of water are not reasonably available to the system;

(b) There will be no unreasonable risk to health;

(c) The water supplier has provided sufficient evidence to confirm that the best available treatment techniques which are generally available are unable to treat the water in question so that it meets maximum contaminant levels;

(d) The water supplier agrees to notify the water users at least once every three months, or more frequently if determined by the Department, that the water system is not in compliance;

(e) A compliance schedule is submitted which outlines how the water supplier intends to achieve compliance, and the water supplier agrees to review this schedule once every three years to determine whether changes have occurred in the conditions which formed the basis for the schedule; and

(f) A plan is submitted which outlines interim control measures including application of the best technology treatment technique to be implemented during the period that the variance is in effect.

(2) The Department shall document all findings of its determinations and if the Department prescribes a schedule requiring compliance with a contaminant level for which the variance is granted later than five years from the date of issuance of the variance the Department shall:

(a) Document the rationale for the extended compliance schedule;

(b) Discuss the rationale for the extended compliance schedule in the required public notice and opportunity for public hearing; and

(c) Provide the shortest practicable time schedule feasible under the circumstances.

(3) Before denying a request for a variance, the Department shall advise the water supplier of the reasons for the denial and shall give the supplier an opportunity to present additional information. If the additional information is not sufficient to justify granting the variance, the variance shall be denied.

(4) If the Department determines that the variance should be granted, it shall announce its intention to either hold a public hearing in the affected area prior to granting the variance; or serve notice of intent to grant the variance either personally, or by registered or certified mail to all customers connected to the water system, or by publication in a newspaper in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the Department may grant the variance.

(5) When a variance has been granted, and a water supplier fails to meet the compliance schedule, or fails to implement the interim control measures, or fails to undertake the monitoring required under the conditions of the variance, the Department may initiate enforcement action authorized by these rules.

(6) Variances from the maximum contaminant levels for volatile organic chemicals, organic chemicals and inorganic chemicals shall be issued by the Department as follows:

(a) The Department shall require Community water systems and Non-Transient Non-Community water systems to install and/or use any treatment method identified in OAR 333-061-0050(4)(b)(B), (E) and (F) as a condition for granting a variance except as provided in subsection (6)(b) of this rule. If, after the system's installation of the treatment method, the system cannot meet the MCL, that system shall be eligible for a variance.

(b) If a system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment methods identified in OAR 333-061-0050(4)(b)(B), (E) and (F) would only achieve an insignificant reduction in contaminants, the Department may issue a schedule of compliance that requires the system being granted the variance to examine other treatment methods as a condition of obtaining the variance.

(c) If the Department determines that a treatment method identified in subsection (6)(b) of this rule is technically feasible, the Department may require the system to install and/or use that treatment method in connection with a compliance schedule. The Department's determination shall be based upon studies by the system and other relevant information.

(d) The Department may require a public water system to use bottled water, point-of-use devices, point-of-entry devices or other means as a condition of granting a variance to avoid an unreasonable risk to health.

(7) The variances from the maximum contaminant level for fluoride shall be granted by the Department as follows:

(a) The Department shall require a Community water system to install and/or use any treatment method identified in OAR 333-061-0050(4)(b)(C) as a condition for granting a variance unless the Department determines that such treatment method is not available and effective for fluoride control for the system. A treatment method shall not be considered to be "available and effective" for an individual system if the treatment method would not be technically appropriate and technically feasible for that system. If, upon application by a system for a variance, the Department determines that none of the treatment methods identified in OAR 333-061-0050(4)(b)(C) are available and effective for the system, that system shall be entitled to a variance. The Department's determination as to the availability and effectiveness of such treatment methods shall be based upon studies by the system and other relevant information. If a system submits information to demonstrate that a treatment method is not available and effective for fluoride control for that system, the Department shall make a finding whether this information supports a decision that such treatment method is not available and effective for that system before requiring installation and/or use of such treatment method.

(b) The Department shall issue a schedule of compliance that may require the system being granted the variance to examine the following treatment methods to determine the probability that any of the following methods will significantly reduce the level of fluoride for that system, and if such probability exists, to determine whether any of these methods are technically feasible and economically reasonable, and that the fluoride reductions obtained will be commensurate with the costs incurred with the installation and use of such treatment methods for that system:

Modification of lime softening; Alum coagulation; Electrodialysis; Anion exchange resins; Well field management; Alternate source; Regionalization.

(c) If the Department determines that a treatment method identified in subsection (6)(b) of this rule or any other treatment method is technically feasible, economically reasonable, and will achieve fluoride reductions commensurate with the costs incurred with the installation and/or use of such treatment method for the system, the Department shall require the system to install and/or use that treatment method in connection with a compliance schedule. The Department's determination shall be based upon studies by the system and other relevant information.

(8) Public water systems that use bottled water as a condition for receiving a variance must meet the following requirements.

(a) The public water system must develop and put in place a monitoring program approved by the Department that provides reasonable assurances that the bottled water meets all MCLs. The public water system must monitor a representative sample of the bottled water for all applicable contaminants under OAR 333-061-0036 the first quarter that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the Department annually.

(b) As an alternative to subsection (7)(a) of this rule, the public water system must receive a certification from the bottled water company that the bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a); the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g)(1) through (3); and the bottled water does not exceed any MCLs or quality limits as set out in 21 CFR 103.35, 110, and 129. The public water system shall provide the certification to the Department the first quarter after it supplies bottled water and annually thereafter.

(c) The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system, via door-to-door bottled water delivery.

(9) Public water systems that use point-of-use devices as a condition for obtaining a variance must meet the following requirements:

(a) It is the responsibility of the public water system to operate and maintain the point-of-use treatment system.

(b) The public water system must develop a monitoring plan and obtain Department approval for the plan before point-of-use devices are installed for compliance. This monitoring plan must provide health protection equivalent to a monitoring plan for central water treatment.

(c) Effective technology must be properly applied under a plan approved by the Department and the microbiological safety of the water must be maintained.

(d) The water system must submit adequate certification of performance, field testing and, if not included in the certification process, a rigorous engineering design review to the Department for approval prior to installation.

(e) The design and application of the point-of-use devices must consider the tendency for increase in heterotrophic bacteria concentrations in

water treated with activated carbon. It may be necessary to use frequent backwashing, post-contractor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.

(f) All consumers shall be protected. Every building connected to the system must have a point-of-use device installed, maintained, and adequately monitored. The Department must be assured that every building is subject to treatment and monitoring, and that the rights and responsibilities of the public water system customer convey with title upon sale of property.

(10) Public water systems shall not use bottled water to achieve compliance with an MCL. At the discretion of the Department, point-of-use devices may be used to achieve compliance with MCLs for radionuclides and arsenic. Bottled water or point-of-use devices may be used on a temporary basis to avoid an unreasonable risk to health.

(11) The Department may grant a variance from the requirements of OAR 333-061-0030(4) "Microbiological Contaminants" for any system that demonstrates to the satisfaction of the Department that violations of the total coliform MCL are due to persistent growth of total coliform in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system. This demonstration, made by the system in writing and submitted to the Department for review, shall show that the system meets the following conditions:

(a) The system meets treatment level requirements of OAR 333-061-0032,

(b) The system shows no occurrence of coliforms at the entry point to the distribution system,

(c) The system meets the turbidity MCL,

(d) The system maintains a detectable disinfectant residual in the distribution system,

(e) The system has no history of waterborne disease outbreaks using the current treatment and source configuration,

(f) The system maintains regular contact with the Department to assess possible illness outbreaks,

(g) The system complies with coliform monitoring requirements and shows no occurrence of E. coli positive samples during the previous six months,

(h) The system has addressed requirements and recommendations of the previous sanitary survey conducted by the Department,

(i) The system fully complies with cross connection control program requirements contained in OAR 333-061-0070,

(j) The system agrees to submit a biofilm control plan to the Department within twelve months of the granting of the first request for a variance,

(k) The system monitors heterotrophic plate count weekly in conjunction with routine coliform sample collection and maintains HPC counts at levels less than 500 colonies per ml at any point where the disinfectant residual is less than 0.2 mg/l, and

(l) The system has a microbiological contaminant sampling plan approved by the Department.

(12) The Department is not permitted to issue any variances to the requirements of OAR 333-061-0030(3) as well as the requirements of OAR 333-061-0032, except as provided by section (13) of this rule, 333-061-0034 and 333-061-0036 pertaining to the treatment of surface water and groundwater under the direct influence of surface water and corrosion control treatment requirements for lead and copper. In addition, no exemptions will be granted for OAR 333-061-0032(3)(c) and 333-061-0032(5)(b).

(13) The Department may grant variances from standards requiring the use of a specified water treatment technique if the department:

(a) Determines that the use of a specified water treatment technique is not necessary to protect public health based on the nature of the raw water source for a public water system; and

(b) Prescribes monitoring and other requirements to the variance to protect public health.

Stat. Auth.: ORS 448

Stats. Implemented: ORS 448.115, 448.135

Hist.: HD 9-1981(Temp), f. & ef. 6-30-81; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0213, HD 2-1983, f. & ef. 2-23-83; HD 11-1985, f. & ef. 7-2-85; HD 30-1985, f. & ef. 12-4-85; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 9-1991(Temp), f. & cert. ef. 6-24-91; HD 1-1992, f. & cert. ef. 3-5-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 2-2008, f. & cert. ef. 2-15-08; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0050
Construction Standards

(1) General:

(a) These standards shall apply to the construction of new public water systems and to major additions or modifications to existing public water systems and are intended to assure that the system facilities, when constructed, will be free of public health hazards and will be capable of producing water which consistently complies with the maximum contaminant levels;

(b) Public water systems which may not comply fully with these construction standards, shall be allowed to continue in operation and shall not be required to undertake alterations to existing facilities, unless the standard is listed as a significant deficiency as prescribed in OAR 333-061-0076(4), is a condition identified as a deficiency specified in OAR 333-061-0076(8) and that creates a public health hazard, or if maximum contaminant levels are being exceeded. Existing facilities are:

(A) Facilities at public water systems constructed or installed prior to August 21, 1981; and

(B) Facilities at public water systems which have been in continual use in or as a public water system and not inoperative for more than 1 year.

(c) Non-public water systems that are converted to public water systems shall be modified as necessary to conform to the requirements of this rule.

(d) Facilities at public water systems shall be designed and constructed in a manner such that contamination will be effectively excluded, and the structures and piping will be capable of safely withstanding external and internal forces acting upon them;

(e) Only materials designed for potable water service and meeting National Sanitation Foundation Standard 61, Section 9 — Drinking Water System Components — Health Effects (Revised September, 1994) or equivalent shall be used in those elements of the water system which are in contact with potable water;

(f) New tanks, pumps, equipment, pipe valves and fittings shall be used in the construction of new public water systems, major additions or major modifications to existing water systems. The Department may permit the use of used items when it can be demonstrated that they have been renovated and are suitable for use in public water systems;

(g) Prior to construction of new facilities, the water supplier shall submit plans to the Department for approval as specified in OAR 333-061-0060(1)(a).

(h) Construction may deviate from the requirements of this section provided that documentation is submitted, to the satisfaction of the Department, that the deviation is equal to or superior to the requirements of this section as specified in OAR 333-061-0055 (variances from construction standards).

(i) A public water system or other Responsible Management Authority using groundwater, or groundwater under the direct influence of surface water, derived from springs, confined or unconfined wells that wish to have a state certified wellhead protection program shall comply with the requirements as specified in OAR 333-061-0057, 0060, and 0065, as well as 340-040-0140 through 0200. Additional technical information is available in the Oregon Wellhead Protection Guidance Manual.

(j) All new groundwater sources are subject to consideration for potential direct influence of surface water as prescribed in OAR 333-061-0032(7).

(2) Groundwater:

(a) Wells:

(A) For the purpose of this rule, wells are defined as holes or other excavations that are drilled, dug or otherwise constructed for the purpose of capturing groundwater or groundwater in hydraulic connection with surface water as a source of public drinking water.

(B) The area within 100 feet of the well shall be owned by the water supplier, or a perpetual restrictive easement shall be obtained by the water supplier for all land (with the exception of public rights-of-way) within 100 feet of the well. The easement shall be recorded with the county in which the well is located and with the recorded deed to the property. A certified true copy shall be filed with the Department;

(C) Not withstanding paragraph (2)(a)(A) of this rule, wells located on land owned by a public entity, (Federal, State, County, Municipality) which is not the water supplier, a permit issued by the public entity to the water supplier shall suffice in lieu of an easement. Said permit shall state that no existing or potential public health hazard shall be permitted within a minimum of 100 feet of a well site;

(D) Public or private roadways may be allowed within 100 feet of a confined well, provided the well is protected against contamination from surface runoff or hazardous liquids which may be spilled on the roadway and is protected from unauthorized access;

(E) The following sanitary hazards are not allowed within 100 feet of a well which serves a public water system unless waived by the Department: any existing or proposed pit privy, subsurface sewage disposal drain field; cesspool; solid waste disposal site; pressure sewer line; buried fuel storage tank; animal yard, feedlot or animal waste storage; untreated storm water or gray water disposal; chemical (including solvents,

pesticides and fertilizers) storage, usage or application; fuel transfer or storage; mineral resource extraction, vehicle or machinery maintenance or long term storage; junk/auto/scrap yard; cemetery; unapproved well; well that has not been properly abandoned or of unknown or suspect construction; source of pathogenic organisms or any other similar public health hazards. No gravity sewer line or septic tank shall be permitted within 50 feet of a well which serves a public water system. Clearances greater than indicated above shall be provided when it is determined by the Department that the aquifer sensitivity and degree of hazard require a greater degree of protection. Above-ground fuel storage tanks provided for emergency water pumping equipment may be exempted from this requirement by the Department provided that a secondary containment system is in place that will accommodate 125% of the fuel tank storage;

(F) Except as in paragraph (2)(a)(A) and (2)(a)(E) of this rule, in those areas served by community gravity sanitary sewers, the area of ownership or control may be reduced to 50 feet;

(G) Wells shall not be located at sites which are prone to flooding. In cases where the site is subject to flooding, the area around the well shall be mounded, and the top of the well casing shall be extended at least 2 feet above the anticipated 100-year (1%) flood level;

(H) Except as otherwise provided herein, wells shall be constructed in accordance with the general standards for the construction and maintenance of water wells in Oregon as prescribed in OAR Chapter 690, Departments 200 through 220;

(I) Wells as defined in paragraph (2)(a)(A) of this rule that are less than 12 feet in depth must be constructed so as to be cased and sealed from the surface to a minimum of three feet above the bottom of the well. The casing may consist of concrete or metal culvert pipe or other pre-approved materials. The seal shall be watertight, be a minimum of four inches in thickness and may consist of cement, bentonite or concrete (see concrete requirements prescribed in OAR 690-210-315). The construction and placement of these wells must comply with all requirements of this rule.

(J) Before a well is placed into operation as the source of supply at a public water system, laboratory reports as required by OAR rule 333-061-0036 shall be submitted by the water supplier;

(K) Water obtained from wells which exceed the maximum contaminant levels shall be treated as outlined in section (4) of this rule;

(L) The pump installation, piping arrangements, other appurtenances, and well house details at wells which serve as the source of supply for a public water system, shall meet the following requirements:

(i) The line shaft bearings of turbine pumps shall be water-lubricated, except that bearings lubricated with non-toxic approved food-grade lubricants may be permitted in wells where water-lubricated bearings are not feasible due to depth to the water;

(ii) Where turbine pumps are installed, the top of the casing shall be sealed into the pump motor. Where submersible pumps are installed, the top of the casing shall be provided with a watertight sanitary seal;

(iii) A casing vent shall be provided and shall be fitted with a screened return bend;

(iv) Provisions shall be made for determining the depth to water surface in the well under pumping and static conditions;

(v) A sampling tap shall be provided on the pump discharge line;

(vi) Piping arrangements shall include provisions for pumping the total flow from the well to waste;

(vii) A method of determining the total output of each well shall be provided. This requirement may be waived by the Department at confined wells which serve as the source of supply for Transient Non-Community water systems;

(viii) A reinforced concrete slab shall be poured around the well casing at ground surface. The slab shall be sloped to drain away from the casing;

(ix) The ground surface around the well slab shall be graded so that drainage is away from the well;

(x) The top of the well casing shall extend at least 12 inches above the concrete slab;

(xi) Provisions shall be made for protecting pump controls and other above-ground appurtenances at the well head. Where a wellhouse is installed for this purpose, it shall meet applicable building codes and shall be insulated, heated and provided with lights, except that where the wellhouse consists of a small removable box-like structure the requirement for lights may be waived by the Department;

(xii) The wellhouse shall be constructed so that the well pump can be removed.

(xiii) Wells equipped with pitless adaptors or units are not required to meet the requirements of paragraphs (L)(iii), (viii) and (xii) of this subsection.

(M) The area in the vicinity of a well, particularly the area uphill or upstream, shall be surveyed by the water supplier to determine the location and nature of any existing or potential public health hazards;

(N) The requirements with respect to land ownership, clearances from public health hazards, and protection against flooding for wells in an unconfined aquifer shall be the same or more restrictive than those prescribed for wells in confined aquifers, as determined by the Department.

(O) Before a well is placed into operation as the source of supply for a public water system, the following documents shall be submitted by the water supplier:

(i) Reports on pumping tests for yield and drawdown for unconfined wells;

(ii) Reports of laboratory analyses on contaminants in the water as required by OAR 333-061-0036;

(iii) Performance data on the pumps and other equipment;

(iv) Proposals for disinfection as required by section (5) of this rule, if applicable.

(v) Reports on determination of potential direct influence by surface water into groundwater source as prescribed in section (3) of this rule.

(b) Springs:

(A) In addition to those requirements under subsection (2)(a) of this rule, construction of spring supplies shall meet the following requirements:

(i) An intercepting ditch shall be provided above the spring to effectively divert surface water;

(ii) A fence shall be installed around the spring area unless other provisions are made to effectively prevent access by animals and unauthorized persons;

(iii) The springbox shall be constructed of concrete or other impervious durable material and shall be installed so that surface water is excluded;

(iv) The springbox shall be provided with a screened overflow which discharges to daylight, an outlet pipe provided with a shutoff valve, a bottom drain, an access manhole with a tightly fitting cover, and a curb around the manhole.

(v) Spring collection facilities that meet the definition of well in paragraph (2)(a)(A) of this rule must comply with construction requirements specified in paragraph (2)(a)(I) of this rule.

(B) Reports on flow tests shall be provided to establish the yield of springs.

(3) Surface water and groundwater under direct surface water influence source facilities:

(a) In selecting a site for an infiltration gallery, or for a direct intake from a stream, lake, or impounding reservoir, consideration shall be given to land use in the watershed. A sanitary survey of the watershed shall be made by the water supplier to evaluate natural and man-made factors which may affect water quality and investigations shall also be made of seasonal variations in water quality and quantity. A report giving the results of this survey shall be submitted for review and approval by the Department.

(b) A determination shall be made as to the status of water rights, and this information shall be submitted to the Department for review.

(c) Impounding reservoirs shall be designed and constructed so that they include the following features:

(A) The capacity shall be sufficient to meet projected demands during drought conditions;

(B) Outlet piping shall be arranged so that water can be withdrawn from various depths;

(C) Facilities shall be provided for releasing undesirable water.

(d) Direct intake structures shall be designed and constructed so that they include the following features:

(A) Screens shall be provided to prevent fish, leaves and debris from entering the system;

(B) Provisions shall be made for cleaning the screens, or self-cleaning screens shall be installed;

(C) Motors and electrical controls shall be located above flood level;

(D) Provisions shall be made to restrict swimming and boating in the vicinity of the intake;

(E) Valves or sluice gates shall be installed at the intake to provide for the exclusion of undesirable water when required.

(4) Water treatment facilities (other than disinfection):

(a) General

(A) Water treatment facilities shall be capable of producing water which consistently does not exceed maximum contaminant levels. The type of treatment shall depend on the raw water quality. The Department shall make determinations of treatment capabilities based upon recommendations in the USEPA SWTR Guidance Manual.

(B) Investigations shall be undertaken by the water supplier prior to the selection or installation of treatment facilities to determine the physical, chemical and microbiological characteristics of the raw water as appropri-

ate. These investigations shall include a determination of the seasonal variations in water quality, as well as a survey to identify potential sources of contamination which may affect the quality of the raw water.

(C) Water obtained from wells constructed in conformance with the requirements of these rules and which is found not to exceed the maximum contaminant levels, may be used without treatment at public water systems;

(D) Laboratory equipment shall be provided so that the water supplier can perform analyses necessary to monitor and control the treatment processes.

(b) Best Available Technology

(A) Pilot studies or other supporting data shall be used to demonstrate the effectiveness of any treatment method other than that defined as best available technology. Pilot study protocol shall be approved beforehand by the Department. When point-of-use (POU) or point-of-entry (POE) devices are used for compliance, programs to ensure proper long-term operation, maintenance, and monitoring shall be provided by the water system to ensure adequate performance.

(B) The Department identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for volatile organic chemicals:

(i) Central treatment using packed tower aeration for all these chemicals.

(ii) Central treatment using granular activated carbon for all these chemicals except vinyl chloride.

(C) The Department identifies the following as the best available technology, treatment techniques or other means generally available for achieving compliance with the Maximum Contaminant Level for fluoride.

(i) Activated alumina absorption, centrally applied.

(ii) Reverse osmosis, centrally applied.

(D) The Department identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total coliforms.

(i) Protection of wells from contamination by coliforms by appropriate placement and construction;

(ii) Maintenance of a disinfectant residual throughout the distribution system;

(iii) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and maintaining a minimum pressure of 20 psi at all service connections.

(iv) Filtration treatment and/or disinfection of surface water or groundwater under the direct influence of surface water, or disinfection of groundwater using strong oxidants such as chlorine, chlorine dioxide, or ozone; and

(v) For systems using groundwater, compliance with the requirements of a Department-approved wellhead protection program.

(E) The Department identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for organic chemicals.

(i) Central treatment using packed tower aeration for Dibromochloropropane, Ethylene Dibromide, Hexachlorocyclopentadiene and Di(2-ethylhexyl)adipate.

(ii) Central treatment using granular activated carbon for all these chemicals except Trihalomethanes and Glyphosate.

(iii) Central treatment using oxidation (chlorination or ozonation) for Glyphosate.

(F) The Department identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for inorganic chemicals. Preoxidation may be required to convert Arsenic III to Arsenic V.

(i) Central treatment using coagulation/filtration for systems with 500 or more service connections for Antimony, Arsenic V (for systems with populations 501-10,000), Asbestos, Beryllium, Cadmium, Chromium, Mercury (influent concentration ≥ 10ug/L), and Selenium (Selenium IV only).

(ii) Central treatment using direct and diatomite filtration for Asbestos.

(iii) Central treatment using granular activated carbon for Mercury.

(iv) Central treatment using activated alumina for Arsenic V (for systems with populations l0,000 or less), Beryllium, Selenium and Thallium.

(v) Central treatment using ion exchange for Arsenic V (for systems with populations 10,000 or less), Barium, Beryllium, Cadmium, Chromium, Cyanide, Nickel, Nitrate, Nitrite and Thallium.

(vi) Central treatment using lime softening for systems with 500 or more service connections for Arsenic V (for systems with populations of 501-10,000), Barium, Beryllium, Cadmium, Chromium (Chromium III only), Mercury (influent concentration ≥ 10ug/L), Nickel and Selenium.

(vii) Central treatment using reverse osmosis for Antimony, Arsenic V (for systems with populations of 501-10,000), Barium, Beryllium, Cadmium, Chromium, Cyanide, Mercury (influent concentration ≥ 10ug/L), Nickel, Nitrate, Nitrite, and Selenium.

(viii) Central treatment using corrosion control for Asbestos and Lead and Copper.

(ix) Central treatment using electrodialysis for Arsenic V (for systems with populations of 501-10,000), Barium, Nitrate, and Selenium.

(x) Central treatment using alkaline chlorination (pH≥8.5) for Cyanide.

(xi) Central treatment using coagulation-assisted microfiltration for Arsenic V (for systems with populations 501-10,000).

(xii) Central treatment using oxidation/filtration for Arsenic V (to obtain high removals, iron to Arsenic ratio must be at least 20:1).

(xiii) Point-of-use treatment using activated alumina for Arsenic V (for systems with populations 10,000 or less).

(xiv) Point-of-use treatment using reverse osmosis for Arsenic V (for systems with populations 10,000 or less).

(G) The Department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for disinfection byproducts:

(i) For TTHM and HAA5, when monitoring in accordance with OAR 333-061-0036(4)(c): enhanced coagulation, enhanced softening or GAC10, with chlorine as the primary and residual disinfectant.

(ii) For bromate concentrations: control of ozone treatment process to reduce production of bromate. (iii)For chlorite concentrations: control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels .

(iv) For TTHM and HAA5, for water systems that disinfect their source water and monitor in accordance with OAR 333-061-0036(4)(d): enhanced coagulation or enhanced softening plus GAC10; or nanofiltration with a molecular weight cutoff less than or equal to 1000 Daltons; or GAC20.

(v) For TTHMs and HAA5s, for purchasing water systems with populations greater than or equal to 10,000 and that monitor in accordance with OAR 333-061-0036(4)(d): improved distribution system and storage tank management to reduce residence time, plus the use of chloramines for disinfectant residual maintenance. This applies only to the disinfected water that purchasing water systems receive from a wholesale system.

(vi) For TTHMs and HAA5s, for purchasing water systems with populations less than 10,000 and that monitor in accordance with OAR 333-061-0036(4)(d): improved distribution system and storage tank management to reduce residence time. This applies only to the disinfected water that purchasing water systems receive from a wholesale system.

(H) The Department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum residual disinfectant levels: Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

(I) The Department identifies the following as the best available technology, treatment techniques, or other means available for achieving compliance with the MCLs for radionuclides.

(i) Central treatment using ion exchange for combined radium-226/228, beta particle/photon activity and uranium.

(ii) Central treatment using reverse osmosis for combined radium-226/228, gross alpha particle activity, beta particle/photon activity, and uranium (for systems with populations 501-10,000).

(iii) Central treatment using lime softening for combined radium-226/228, and uranium (for systems with populations 501-10,000).

(iv) Central treatment using enhanced coagulation/filtration for uranium.

(v) Central treatment using activated alumina for uranium (for systems with populations of 10,000 or less).

(vi) Central treatment using greensand filtration for combined radium-226/228.

(vii) Central treatment using electrodialysis for combined radium-226/228.

(viii) Central treatment using pre-formed hydrous manganese oxide filtration for combined radium-226/228.

(ix) Central treatment using co-precipitation with barium for combined radium-226/228.

(x) Point-of-use treatment using ion exchange for combined radium-226/228, beta particle/photon activity, and uranium.

(xi) Point-of use treatment using reverse osmosis for combined radium-226/228, gross alpha particle activity, beta particle/ photon activity, and uranium (for systems with populations of 10,000 or less).

(c) Filtration of Surface Water Sources and Groundwater Sources Under the Direct Influence of Surface Water

(A) All water systems using surface water or groundwater sources under the direct influence of surface water that fail to meet the criteria for avoiding filtration prescribed in OAR 33-061-0032(2) and (3) must meet all requirements of this subsection for installing filtration treatment.

(B) There are four standard filtration methods: conventional filtration, direct filtration, slow sand, and diatomaceous earth. Other filtration technologies are only acceptable if their efficiency at removing target organisms and contaminants can be demonstrated to be equal to or more efficient than these. The assumed log removals credited to filtration of Giardia lamblia and viruses will be based on recommendations in the USEPA SWTR Guidance Manual. In all cases, filtration processes must be designed and operated to achieve at least 2.0 log removal of Giardia lamblia. For membrane filtration, removal credits shall be verified by challenge study according to paragraphs (4)(c)(H) and (I) of this rule. Bag and Cartridge Filtration must have removal credits demonstrated in a challenge study according to paragraph (4)(c)(L) of this rule. The combination of filtration and disinfection must meet the inactivation levels prescribed in OAR 333-061-0032(1). Any water system wishing to challenge the assumed log removal credits must conduct demonstration studies based on the recommendations in the USEPA SWTR Guidance Manual and have the study protocol approved by the Department.

(C) Pilot studies shall be conducted by the water supplier to demonstrate the effectiveness of any filtration method other than conventional filtration. Pilot study protocol shall be approved in advance by the Department. Results of the pilot study shall be submitted to the Department for review and approval.

(D) Regardless of the filtration method used, the water system must achieve a minimum of 0.5-log reduction of Giardia lamblia and a 1.0-log reduction of viruses from disinfection alone after filtration treatment.

(E) All filtration systems shall be designed and operated so as to meet the requirements prescribed in OAR 333-061-0032(4) and (5). Design of the filtration system must be in keeping with accepted standard engineering references acknowledged by the Department such as the Great Lakes Upper Mississippi River "Recommended Standards for Water Works" technical reports by the International Reference Center for Community Water Supply and Sanitation, or publications from the World Health Organization. A list of additional references is available from the Department upon request.

(F) Systems using conventional or direct filtration that employ multiple filters shall be designed such that turbidity measurements are monitored for each filter independently of the other filter(s). Each filter shall have a provision to discharge effluent water as waste.

(G) Additional requirements for membrane filtration. Each membrane filter system must have a particle counter or laser turbidimeter installed after filtration for continuous integrity monitoring. The operation and maintenance manual must include a diagnosis and repair plan such that the ability to remove pathogens is not compromised.

(H) Challenge Study criteria for Membrane Filtration. Water systems receive Cryptosporidium treatment credit for membrane filtration, as defined in OAR 333-061-0020(113), that meets the criteria of this paragraph. The level of treatment credit a water system receives is equal to the lower of the values determined in this paragraph.

(i) The removal efficiency demonstrated during challenge testing conducted under the conditions in accordance with paragraph (4)(c)(I) of this rule.

(ii) The maximum removal efficiency that can be verified through direct integrity testing of the membrane filtration process under the conditions prescribed by paragraph (4)(c)(J) of this rule.

(I) Challenge Testing. The membrane filter used by the water system must undergo challenge testing to evaluate removal efficiency, and results of the challenge testing must be reported to the Department. Challenge testing must be conducted according to the criteria specified in this paragraph. Water systems may use data from challenge testing conducted prior to June 1, 2009 if the prior testing was consistent with the criteria specified in this paragraph.

(i) Challenge testing must be conducted on a full-scale membrane module, identical in material and construction to the membrane modules used in the water system's treatment facility, or a smaller-scale membrane module, identical in material and similar in construction to the full-scale module. A module is defined as the smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

(ii) Challenge testing must be conducted using Cryptosporidium oocysts or a surrogate that is removed no more efficiently than Cryptosporidium oocysts. Cryptosporidium or the surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate, in both the feed and filtrate water, must be determined using a method capable of discretely quantifying the specific challenge particulate used in the test; gross measurements such as turbidity may not be used.

(iii) The maximum feed water concentration that can be used during a challenge test is based on the detection limit of the challenge particulate in the filtrate and must be determined according to the following equation:

Maximum Feed Concentration = 3.16 x 106 x (Filtrate Detection Limit)

(iv) Challenge testing must be conducted according to representative hydraulic conditions at the maximum design flux and maximum design process recovery specified by the manufacturer for the membrane module. Flux is defined as the throughput of a pressure driven membrane process expressed as flow per unit of membrane area. Recovery is defined as the volumetric percent of feed water that is converted to filtrate over the course of an operating cycle uninterrupted by events such as chemical cleaning or a solids removal process (i.e., backwashing).

(v) Removal efficiency of a membrane module must be calculated from the challenge test results and expressed as a log removal value according to the following equation:

LRV = LOG10(Cf)x LOG10(Cp)

Where:

LRV = log removal value demonstrated during the challenge test;

Cf = the feed concentration measured during the challenge test; and

Cp = the filtrate concentration measured during the challenge test. Equivalent units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, the term Cp is set equal to the detection limit for the purpose of calculating the LRV. An LRV must be calculated for each membrane module evaluated during the challenge test.

(vi) The removal efficiency of a membrane filtration process demonstrated during challenge testing must be expressed as a log removal value (LRVC-Test). If fewer than 20 modules are tested, then LRVC-Test is equal to the lowest of the representative LRVs among the modules tested. If 20 or more modules are tested, then LRVC-Test is equal to the 10th percentile of the representative LRVs among the modules tested. The percentile is defined by (i/(n+1))where i is the rank of n individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(vii) The challenge test must establish a quality control release value (QCRV) for a non-destructive performance test that demonstrates the Cryptosporidium removal capability of the membrane filtration module. This performance test must be applied to each production membrane module used by the system that was not directly challenge tested in order to verify Cryptosporidium removal capability. Production modules that do not meet the established QCRV are not eligible for the treatment credit demonstrated during the challenge test.

(viii) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane or the applicability of the non-destructive performance test and associated QCRV, additional challenge testing to demonstrate the removal efficiency of, and determine a new QCRV for, the modified membrane must be conducted and submitted to the Department.

(J) Direct integrity testing. Water systems must conduct direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration process, and that meets the requirements described in this paragraph. A direct integrity test is defined as a physical test applied to a membrane unit in order to identify and isolate integrity breaches (i.e., one or more leaks that could result in contamination of the filtrate).

(i) The direct integrity test must be independently applied to each membrane unit in service. A membrane unit is defined as a group of membrane modules that share common valving that allows the unit to be isolated from the rest of the water system for the purpose of integrity testing or other maintenance.

(ii) The direct integrity method must have a resolution of 3 micrometers or less, where resolution is defined as the size of the smallest integrity breach that contributes to a response from the direct integrity test.

(iii) The direct integrity test must have a sensitivity sufficient to verify the log treatment credit awarded to the membrane filtration process by the Department, where sensitivity is defined as the maximum log removal value that can be reliably verified by a direct integrity test. Sensitivity must be determined using the approach in either paragraphs (4)(c)(J)(iii)(I) or (II) of this rule as applicable to the type of direct integrity test the system uses.

(I) For direct integrity tests that use an applied pressure or vacuum, the direct integrity test sensitivity must be calculated according to the following equation:

LRVDIT = LOG10 (Qp /(VCF x Qbreach))

Where:

LRVDIT = the sensitivity of the direct integrity test;

Qp = total design filtrate flow from the membrane unit;

Qbreach = flow of water from an integrity breach associated with the smallest integrity test response that can be reliably measured; and

VCF = volumetric concentration factor. The volumetric concentration factor is the ratio of the suspended solids concentration on the high pressure side of the membrane relative to that in the feed water.

(II) For direct integrity tests that use a particulate or molecular marker, the direct integrity test sensitivity must be calculated according to the following equation:

LRVDIT = LOG10(Cf)-LOG10(Cp)

Where:

LRVDIT = the sensitivity of the direct integrity test;

Cf = the typical feed concentration of the marker used in the test; and

Cp = the filtrate concentration of the marker from an integral membrane unit.

(iv) Water systems must establish a control limit within the sensitivity limits of the direct integrity test that is indicative of an integral membrane unit capable of meeting the removal credit awarded by the Department.

(v) If the result of a direct integrity test exceeds the control limit established under paragraph (4)(c)(J)(iv) of this rule, the water system must remove the membrane unit from service. Water systems must conduct a direct integrity test to verify any repairs, and may return the membrane unit to service only if the direct integrity test is within the established control limit.

(vi) Water systems must conduct direct integrity testing on each membrane unit at a frequency of not less than once each day that the membrane unit is in operation. The Department may approve less frequent testing, based on demonstrated process reliability, the use of multiple barriers effective for Cryptosporidium, or reliable process safeguards.

(K) Indirect integrity monitoring. Water systems must conduct continuous indirect integrity monitoring on each membrane unit according to the criteria specified in this paragraph. Indirect integrity monitoring is defined as monitoring some aspect of filtrate water quality that is indicative of the removal of particulate matter. A water system that implements continuous direct integrity testing of membrane units in accordance with the criteria specified in paragraphs (4)(c)(J)(i) through (v) of this rule is not subject to the requirements for continuous indirect integrity monitoring. Water systems must submit a monthly report to the Department summarizing all continuous indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken in each case.

(i) Unless the Department approves an alternative parameter, continuous indirect integrity monitoring must include continuous filtrate turbidity monitoring.

(ii) Continuous monitoring must be conducted at a frequency of no less than once every 15 minutes.

(iii) Continuous monitoring must be separately conducted on each membrane unit.

(iv) If indirect integrity monitoring includes turbidity and the filtrate turbidity readings are above 0.15 NTU for a period greater than 15 minutes (i.e., two consecutive 15-minute readings above 0.15 NTU), direct integrity testing in accordance with paragraphs (4)(c)(J)(i) through (v) of this rule must immediately be performed on the associated membrane unit.

(v) If indirect integrity monitoring includes a Department-approved alternative parameter and if the alternative parameter exceeds a Department-approved control limit for a period greater than 15 minutes, direct integrity testing in accordance with paragraphs (4)(c)(J)(i) through (v) of this rule must immediately be performed on the associated membrane unit.

(L) Challenge Study requirements for Bag and Cartridge Filtration.

(i) The Cryptosporidium treatment credit awarded to bag or cartridge filters must be based on the removal efficiency demonstrated during challenge testing that is conducted according to the criteria specified in this paragraph. A factor of safety equal to 1-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit. Water systems may use results from challenge testing conducted prior to June 1, 2009 if the prior testing was consistent with the criteria specified in this paragraph.

(ii) Challenge testing must be performed on full-scale bag or cartridge filters and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the water system will use for removal of Cryptosporidium. Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(iii) Challenge testing must be conducted using Cryptosporidium or a surrogate that is removed no more efficiently than Cryptosporidium. The microorganism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate must be determined using a method capable of discreetly quantifying the specific microorganism or surrogate used in the test; gross measurements such as turbidity may not be used.

(iv) The maximum feed water concentration that can be used during a challenge test must be based on the detection limit of the challenge particulate in the filtrate (i.e., filtrate detection limit) and must be calculated using the following equation:

Maximum Feed Concentration = 1 x 104 x (Filtrate Detection Limit)

(v) Challenge testing must be conducted at the maximum design flow rate for the filter as specified by the manufacturer.

(vi) Each filter evaluated must be tested for a duration sufficient to reach 100 percent of the terminal pressure drop, which establishes the maximum pressure drop under which the filter may be used to comply with the requirements of this paragraph.

(vii) Removal efficiency of a filter must be determined from the results of the challenge test and expressed in terms of log removal values using the following equation:

LRV = LOG10(Cf)-LOG10(Cp)

Where:

LRV = log removal value demonstrated during challenge testing;

Cf = the feed concentration measured during the challenge test; and

Cp = the filtrate concentration measured during the challenge test. In applying this equation, the same units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, then the term Cp must be set equal to the detection limit.

(viii) Each filter tested must be challenged with the challenge particulate during three periods over the filtration cycle: within two hours of startup of a new filter; when the pressure drop is between 45 and 55 percent of the terminal pressure drop; and at the end of the cycle after the pressure drop has reached 100 percent of the terminal pressure drop. An LRV must be calculated for each of these challenge periods for each filter tested. The LRV for the filter (LRVfilter) must be assigned the value of the minimum LRV observed during the three challenge periods for that filter.

(ix) If fewer than 20 filters are tested, the overall removal efficiency for the filter product line must be set equal to the lowest LRVfilter among the filters tested. If 20 or more filters are tested, the overall removal efficiency for the filter product line must be set equal to the 10th percentile of the set of LRVfilter values for the various filters tested. The percentile is defined by (i/(n+1))where i is the rank of n individual data points ordered lowest to highest. If necessary, the 10th percentile may be calculated using linear interpolation.

(x) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and submitted to the Department.(d) Criteria and procedures for public water systems using point-of-entry (POE) or point-of-use (POU) devices.

(A) Public water systems may use POE or POU devices to comply with maximum contaminant levels, where allowed, only if they meet the requirements of this subsection.

(B) It is the responsibility of the public water system to operate and maintain the POE or POU treatment system.

(C) The public water system must develop and obtain Department approval for a monitoring plan before POE or POU devices are installed for compliance. Under the plan approved by the Department, POE or POU devices must provide health protection equivalent to central water treatment. “Equivalent” means that the water would meet all Maximum Contaminant Levels as prescribed in OAR 333-061-0030 and would be of acceptable quality similar to water distributed by a well-operated central treatment plant. Monitoring must include contaminant removal efficacy, physical measurements and observations such as total flow treated and mechanical condition of the treatment equipment.

(D) Effective technology must be properly applied under a plan approved by the Department and the microbiological safety of the water must be maintained.

(i) The water supplier must submit adequate certification of performance, field testing, and, if not included in the certification process, a rigorous engineering design review of the POE or POU devices to the Department for approval prior to installation.

(ii) The design and application of the POE or POU devices must consider the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contractor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.

(iii) The POE or POU device must be evaluated to assure that the device will not cause increased corrosion of lead and copper bearing materials located between the device and the tap that could increase contaminant levels of lead and copper at the tap.

(E) All consumers shall be protected. Every building connected to the system must have a POE or POU device installed, maintained, and adequately monitored. The Department must be assured that every building is subject to treatment and monitoring, and that the rights and responsibilities of the public water system customer convey with title upon sale of property.

(5) Facilities for continuous disinfection and disinfectant residual maintenance:

(a) Water obtained from surface sources or groundwater sources under the direct influence of surface water shall, as a minimum, be provided with

continuous disinfection before such water may be used as a source of supply for a public water system. Water obtained from wells constructed in conformance with the requirements of these rules and which is found not to exceed microbiological maximum contaminant levels, may be used without treatment at public water systems;

(b) Water obtained from wells or springs shall be considered groundwater unless determined otherwise by the Department. Wells and springs may be utilized without continuous disinfection if the construction requirements of section (2) of this rule are met and analyses indicate that the water consistently meets microbiological standards. A well or spring that is inadequately constructed and shows a history of microbiological contamination shall first be upgraded to meet current construction standards, and if microbiological contamination still persists, then continuous disinfection shall be provided prior to use in public water systems.

(c) In public water systems where continuous disinfection is required as the sole form of treatment, or as one component of more extensive treatment to meet the requirements prescribed in OAR 333-061-0032(1), the facilities shall be designed so that:

(A) The disinfectant applied shall be capable of effectively destroying pathogenic organisms;

(B) The disinfectant is applied in proportion to water flow; and

(C) Disinfectants, other than ultraviolet light and ozone disinfection treatment, shall be capable of leaving a residual in the water which can be readily measured and which continues to serve as an active disinfectant; and

(D) Sufficient contact time shall be provided to achieve "CT" values capable of the inactivation required by OAR 333-061-0032(1) For ultraviolet light disinfection treatment, sufficient irradiance expressed in milliWatts per square centimeter (mWs/cm2) and exposure time expressed in seconds (s) shall be provided to achieve UV dose levels expressed as (mWs/cm2) or milli-Joules per square centimeter (mJ/cm2) capable of the inactivation required by 333-061-0032(1).

(d) When continuous disinfection, other than ultraviolet light disinfection, is required for reasons other than the treatment of surface water sources or groundwater sources under the direct influence of surface water, in addition to the requirements of paragraphs (5)(c)(A) through (C) of this rule, the facilities shall be designed so that:

(A) The primary disinfection treatment is sufficient to ensure at least 99.99 percent (4-log) inactivation and/or removal of viruses as determined by the Department; or

(B) There is sufficient contact time provided to achieve disinfection under all flow conditions between the point of disinfectant application and the point of first water use:

(i) When chlorine is used as the primary disinfectant, the system shall be constructed to achieve a free chlorine residual of 0.2 mg/l after 30 minutes contact time under all flow conditions before first water use;

(ii) When ammonia is added to the water with the chlorine to form a chloramine as the disinfectant, the system shall be constructed to achieve a combined chlorine residual of at least 2.0 mg/l after 3 hours contact time under all flow conditions before first water use;

(e) Provisions shall be made to alert the water supplier before the chlorine supply is exhausted.

(f) For continuous disinfection only, provisions shall be made for sampling the water before and after chlorination;

(g) Testing equipment shall be provided to determine the chlorine residual;

(h) Chlorinator piping shall be designed to prevent the contamination of the potable water system by backflow of untreated water or water having excessive concentrations of chlorine;

(i)The disinfectant must be applied in proportion to water flow;

(j) Chlorine gas feeders and chlorine gas storage areas shall:

(A) Be enclosed and separated from other operating areas;

(B) Chlorine cylinders shall be restrained in position to prevent upset by chaining 100 and 150 pound cylinders two-thirds of their height up from the floor and by double chocking one ton cylinders;

(C) The room housing the feeders and cylinders shall be above ground surface, shall have doors which open outward and to the outside and shall be ventilated by mechanical means at floor level and shall have an air intake located higher than the exhaust ventilation;

(D) Be located so that chlorine gas, if released, will not flow into the building ventilation systems;

(E) Have corrosion resistant lighting and ventilation switches located outside the enclosure, adjacent to the door;

(F) Be provided with a platform or hydraulic scale for measuring the weight of the chlorine cylinders;

(G) Be provided with a gas mask or self contained breathing apparatus approved by the National Institute of Occupational Safety and Health (NIOSH) for protection against chlorine gas and kept in good working condition. Storage of such equipment shall be in an area adjoining the chlorine room and shall be readily available. (Also see the Oregon Occupational Health and Safety regulations contained in OAR chapter 437.)

(k) When continuous disinfection treatment is provided through ultraviolet light (UV) disinfection, the facilities shall be designed to meet the requirements of this subsection:

(A) The UV unit must achieve the dosage indicated in Table 38 for the required pathogen inactivation. [Table not included. See ED.NOTE.]

(B) Ultraviolet lamps are insulated from direct contact with the influent water and are removable from the lamp housing;

(C) The treatment unit must have an upstream valve or device that prevents flows exceeding the manufacturer's maximum rated flow rate, an ultraviolet light sensor that monitors light intensity through the water during operation, and a visual and audible alarm with an automatic water flow shut-off if the ultraviolet light intensity drops below the failsafe set point;

(D) There must be a visual means to verify operation of all ultraviolet lamps;

(E) The lamps, lamp sleeves, housings and other equipment must be able to withstand a working pressure of at least 100 psig (689 kPa);

(F) The treatment facility must be sheltered from the weather and accessible for routine maintenance as well as routine cleaning and replacement of the lamp sleeves and cleaning of the sensor windows/lenses;

(G) The lamps must be changed as per the manufacturer's recommendation; and

(H) The treatment unit must have shut-off valves at both the inlet side and the outlet side of the treatment unit. There shall be no bypass piping around the treatment unit.

(I) Reactor validation testing. All water systems, except those specified in paragraph (J) of this subsection, must use UV reactors that have undergone validation testing to determine the operating conditions under which the reactor delivers the UV dose required in OAR 333-061-0036(5)(c) (i.e., validated operating conditions). These operating conditions must include flow rate, UV intensity as measured by a UV sensor, and UV lamp status.

(i) When determining validated operating conditions, water systems must account for the following factors: UV absorbance by the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps or other critical system components; and inlet and outlet piping or channel configurations of the UV reactor.

(ii) Validation testing must include the following: full scale testing of a reactor that conforms uniformly to the UV reactors used by the water system and inactivation of a test microorganism whose dose response characteristics have been quantified with a low pressure mercury vapor lamp.

(iii) The Department may approve an alternative approach to validation testing.

(J) Non-Community water systems using only groundwater sources, and having minimal distribution systems as determined by the Department, may use ultraviolet light as the only disinfectant when total coliforms have been detected in the source water and no E. coli has been detected. UV units must meet the specifications of a Class A UV system under the National Sanitation Foundation (NSF) standard 55. The minimum ultraviolet light failsafe dosage set point shall be equivalent to 40 mW-s/cm2 (40 mJ/cm2)with a wavelength between 200 and 300 nanometers.

(6) Finished water storage:

(a) Distribution reservoirs and treatment plant storage facilities for finished water shall be constructed to meet the following requirements:

(A) They shall be constructed of concrete, steel, wood or other durable material capable of withstanding external and internal forces which may act upon the structure;

(B) Ground-level reservoirs shall be constructed on undisturbed soil, bedrock or other stable foundation material capable of supporting the structure when full;

(C) Steel reservoirs, standpipes and elevated tanks shall be constructed in conformance with the AWWA Standards D100 and D103;

(D) Concrete reservoirs shall be provided with sufficient reinforcing to prevent the formation of cracks, and waterstops and dowels shall be placed at construction joints. Poured-in-place wall castings shall be provided where pipes pass through the concrete;

(E) Wooden reservoirs shall be redwood or other equally durable wood and shall be installed on a reinforced concrete base. Where redwood reservoirs are used, separate inlet and outlet pipes are required and the water entering the reservoir must be have a disinfectant continuously applied so as to result in a detectable residual in the water leaving the reservoir;

(F) Start-up procedures for new redwood tanks shall consist of filling the tank with a solution of water containing a minimum of 2 pounds of sodi-

um carbonate per 1,000 gallons of water and retaining this solution in the tank a minimum of seven days before flushing;

(G) Where ground-level reservoirs are located partially below ground, he bottom shall be above the ground water table and footing drains discharging to daylight shall be provided to carry away ground water which may accumulate around the perimeter of the structure;

(H) The finished water storage capacity shall be increased to accommodate fire flows when fire hydrants are provided;

(I) Finished water storage facilities shall have watertight roofs;

(J) An access manhole shall be provided to permit entry to the interior for cleaning and maintenance. When the access manhole is on the roof of the reservoir there shall be a curbing around the opening and a lockable watertight cover that overlaps the curbing;

(K) Internal ladders of durable material, shall be provided where the only access manhole is located on the roof;

(L) Screened vents shall be provided above the highest water level to permit circulation of air above the water in finished water storage facilities;

(M) A drain shall be provided at the lowest point in the bottom, and an overflow of sufficient diameter to handle the maximum flow into the tank shall be provided at or near the top of the sidewall. The outlet ends of the drain and overflow shall be fitted with angle-flap valves or equivalent protection and shall discharge with an airgap to a watercourse or storm drain capable of accommodating the flow;

(N) A silt stop shall be provided at the outlet pipe;

(O) Where a single inlet/outlet pipe is installed and the reservoir floats on the system, provisions shall be made to insure an adequate exchange of water and to prevent degradation of the water quality and to assure the disinfection levels required in paragraph (5)(c)(D)(i) of this rule;

(P) A fence or other method of vandal deterrence shall be provided around distribution reservoirs;

(Q) When interior surfaces of finished water storage tanks are provided with a protective coating, the coating shall meet the requirements of National Sanitation Foundation Standard 61, Section 9 - Drinking Water System Components — Health Effects (Revised September 1994) or equivalent.

(R) Reservoirs and clearwells that are to be used as disinfection contact time shall use a tracer study to determine the actual contact time. The Department must approve procedures and protocols for the tracer study prior to the initiation of the study. The Department recommends the USEPA SWTR Guidance Manual for tracer study procedure and protocol.

(S) Reservoirs and clearwells that are to be used for disinfection contact time shall have a means to adequately determine the flow rate on the effluent line.

(b) Pressure tanks for finished water shall meet the following requirements:

(A) Pressure tanks shall be installed above normal ground surface;

(B) Bypass piping around the pressure tank shall be provided to permit operation of the system while the tank is being maintained or repaired;

(C) Pressure tanks greater than 1,000 gallons shall be provided with an access manhole and a water sight-glass.

(D) All pressure tanks shall be provided with a drain, a pressure gauge, an air blow-off valve, means for adding air and pressure switches for controlling the operation of the pump(s);

(E) Pressure tanks shall be constructed of steel or an alternative material provided the tank is NSF 61 certified and shall be designed for pressure at least 50% greater than the maximum system pressure anticipated.

(7) Pumping facilities:

(a) Wherever possible, booster pumps shall take suction from tanks and reservoirs to avoid the potential for negative pressures on the suction line which result when the pump suction is directly connected to a distribution main;

(b) Pumps which take suction from distribution mains for the purpose of serving areas of higher elevation shall be provided with a low pressure cut-off switch on the suction side set at no less than 20 psi;

(c) Suction lift at pumping stations shall be avoided as far as possible, and pumps shall be installed so that the suction line is under a positive head. If suction lift cannot be avoided, provision shall be made for priming with water which does not exceed maximum contaminant levels;

(d) Pumping stations shall be located above maximum anticipated 100-year (1%) flood level, and the area around the pumping station shall be graded so that surface drainage is away from the station;

(e) Pumping stations shall be of durable construction so as to protect the equipment from the elements. The door to the pumping station shall be lockable, and facilities for heating and lighting shall be provided. The floor of the pumping station shall be sloped to provide adequate drainage.

(8) Distribution systems:

(a) Wherever possible, distribution pipelines shall be located on public property. Where pipelines are required to pass through private property, easements shall be obtained from the property owner and shall be recorded with the county clerk;

(b) Pipe, pipe fittings, valves and other appurtenances utilized at Community water systems shall be manufactured, installed and tested in conformance with the latest standards of the American Water Works Association, National Sanitation Foundation or other equivalent standards acceptable to the Department;

(c) In Community water systems, distribution mains located in public roadways or easements, and the portion of the service connections from the distribution main to the customer's property line or service meter where provided are subject to the requirements of these rules. The piping from the customer's property line, or the meter where provided, to the point of water use (the building supply line) is subject to the requirements of the State Plumbing Code;

(d) In all Public Water Systems where the system facilities and the premises being served are both on the same parcel of property, requirements relating to pipe materials and pipe installation shall comply with the State Plumbing Code;

(e) Distribution piping shall be designed and installed so that the pressure measured at the property line in the case of Community water systems, or at the furthest point of water use, in the case of a Transient Non-Community water system of the type described in subsection (d) of this section, shall not be reduced below 20 psi;

(f) Distribution piping shall be carefully bedded and fully supported in material free from rocks and shall be provided with a cover of at least 30 inches. Select backfill material shall be tamped in layers around and over the pipe to support and protect it. Large rocks or boulders shall not be used as backfill over the pipe;

(g) Provision shall be made at all bends, tees, plugs, and hydrants to prevent movement of the pipe or fitting;

(h) Wherever possible, dead ends shall be minimized by looping. Where dead ends are installed, or low points exist, blow-offs of adequate size shall be provided for flushing;

(i) Air-relief valves shall be installed at high points where air can accumulate. The breather tube on air-relief valves shall be extended above ground surface and provided with a screened, downward facing elbow;

(j) Yarn, oakum, lead or other material which may impair water quality shall not be used where it will be in contact with potable water;

(k) Nonconductive water pipe (plastic or other material) that is not encased in conductive pipe or casing must have an electrically conductive wire or other approved conductor for locating the pipe when the pipeline is underground. The wire shall be No. 18 AWG (minimum) solid copper with blue colored insulation. Ends of wire shall be accessible in water meter boxes, valve boxes or casings, or outside the foundation of buildings where the pipeline enters the building. The distance between tracer lead access locations shall not be more than 1,000 feet. Joints or splices in wire shall be waterproof.

(l) Piping that is to be used for disinfection contact time shall be verified by plug flow calculations under maximum flow conditions.

(9) Crossings-Sanitary sewers and water lines:

(a) All reference to sewers in this section shall mean sanitary sewers;

(b) In situations involving a water line parallel to a sewer main or sewer lateral, the separation between the two shall be as indicated in Figure 1 [Figure not included. See ED NOTE.]

(c) In situations where a water line and a sewer main or sewer lateral cross, the separation between the two shall be as follows:

(A) Wherever possible, the bottom of the water line shall be 1.5 feet or more above the top of the sewer line and one full length of the water line shall be centered at the crossing;

(B) Where the water line crosses over the sewer line but with a clearance of less than 1.5 feet, the sewer line shall be exposed to the sewer line joints on both sides of the crossing to permit examination of the sewer pipe. If the sewer pipe is in good condition and there is no evidence of leakage from the sewer line, the 1.5-foot separation may be reduced. However, in this situation, the water supplier must center one length of the water line at the crossing and must prepare a written report of the findings and indicating the reasons for reducing the separation. If the water supplier determines that the conditions are not favorable or finds evidence of leakage from the sewer line, the sewer line shall be replaced with a full length of pipe centered at the crossing point, of PVC pressure pipe (ASTM D-2241, SDR 32.5), high-density PE pipe (Drisco pipe 1000), ductile-iron Class 50 (AWWA C-51), or other acceptable pipe; or the sewer shall be encased in a reinforced concrete jacket for a distance of 10 feet on both sides of the crossing.

(C) Where the water line crosses under the sewer line, the water supplier shall expose the sewer line and examine it as indicated in paragraph (9)(c)(B) of this rule. If conditions are favorable and there is no evidence of leakage from the sewer line, the sewer line may be left in place, but special

precautions must be taken to assure that the backfill material over the water line in the vicinity of the crossing is thoroughly tamped in order to prevent settlement which could result in the leakage of sewage. In this situation, the water supplier must center one length of the water line at the crossing and must prepare a written report recording the manner in which the sewer line was supported at the crossing and the material and methods used in backfilling and tamping to prevent settlement of the sewer. If the water supplier determines that conditions are not favorable or finds evidence of leakage from the sewer line, the provisions of paragraph (9)(c)(B) of this rule apply.

(d) When a water main is installed under a stream or other watercourse, a minimum cover of 30 inches shall be provided over the pipe. Where the watercourse is more than 15 feet wide, the pipe shall be of special construction with flexible watertight joints, valves shall be provided on both sides of the crossing so that the section can be isolated for testing or repair, and test cocks shall be provided at the valves. [Figure not included. See ED NOTE.]

(10) Disinfection of facilities:

(a) Following completion of new facilities and repairs to existing facilities, those portions of the facilities which will be in contact with the water delivered to users shall be disinfected with chlorine before they are placed into service. Other disinfectants may be used if it is demonstrated that they can also achieve the same result as chlorine;

(b) Prior to disinfection, the facilities shall be cleaned and flushed with potable water according to AWWA Standards C651 through C654;

(c) For wells, valves, pumps, water mains and service connections, disinfection by chlorination shall be accomplished according to AWWA standards C651 through C654 which includes, but is not limited to, the introduction of a chlorine solution with a free chlorine residual of 25 mg/l into the system in a manner which will result in a thorough wetting of all surfaces and the discharge of all trapped air. The solution shall remain in place for 24 hours. After the 24-hour period, the free chlorine residual shall be checked, and if it is found to be 10 mg/l or more, the chlorine solution shall be drained, the facility flushed with potable water and a minimum of two consecutive samples taken at least 24 hours apart shall be collected from the facility for microbiological analysis. If the results of the analysis indicate that the water is free of coliform organisms, the facility may be put into service. If the check measurement taken after the 24-hour contact period indicates a free chlorine residual of less than 10 mg/l, the facilities shall be flushed, rechlorinated and rechecked until a final residual of 10 mg/l or more is achieved. Likewise, if the microbiological analysis indicates the presence of coliform organisms, the flushing and disinfection must be repeated until a sample free of coliform organisms is obtained;

(d) For reservoirs and tanks, disinfection by chlorination shall be accomplished according to AWWA Standard C652 which includes, but is not limited to, the following methods:

(A) Filling the reservoir or tank and maintaining a free chlorine residual of not less than 10 mg/l for the appropriate 6 or 24 hour retention period; or

(B) Filling the reservoir or tank with a 50 mg/l chlorine solution and leaving for 6 hours; or

(C) Directly applying by spraying or brushing a 200 mg/l solution to all surfaces of the storage facility in contact with water if the facility were full to the overflow elevation.

(e) When the procedures described in paragraphs (10)(d)(A) and (B) of this rule are followed, the reservoir or tank shall be drained after the prescribed contact period and refilled with potable water, and a sample taken for microbiological analysis. If the results of the analysis indicate that the water is free of coliform organisms, the facility may be put into service. If not, the procedure shall be repeated until a sample free of coliform organisms is obtained;

(f) When the procedure described in paragraph (10)(d)(C) of this rule is followed, the reservoir or tank shall be filled with potable water and a sample taken for microbiological analysis. It will not be necessary to flush the reservoir or tank after the chlorine solution is applied by spraying or brushing. Microbiological analysis shall indicate that the water is free of coliform organisms before the facility can be put into service;

(g) When a reservoir is chlorinated following routine maintenance, inspection, or repair, it may be put back into service prior to receiving the report on the microbiological analysis provided the water leaving the reservoir has a free chlorine residual of at least 0.4 mg/l or a combined chlorine residual of at least 2.0 mg/l.

(h) Underwater divers used for routine maintenance, inspection, or repair of reservoirs shall use a full body dry suit with hardhat scuba and an external air supply. The diver shall be disinfected by spraying a 200 mg/l solution of chlorine on all surfaces that will come into contact with drinking water.

(i) A water line may be returned to service, following repairs or routine maintenance, prior to receiving a report on the microbiological analysis if the following procedures have been completed.

(A) Customer meters were shut off prior to placing the water line out of service;

(B) The area below the water line to be repaired was excavated and dewatered;

(C) The exposed pipe was treated with a hypochlorite solution;

(D) The water line and any other appurtenance or item affected by the repair and/or maintenance was disinfected by chlorination according to AWWA standards C651 through C654;

(E) The water line was flushed thoroughly, and a concentration of residual chlorine has been re-established that is comparable to the level normally maintained by the water system, if applicable; and

(F) Microbiological analysis has been conducted as a record of repair effectiveness. [Publications: Publications referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 448.131
Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.273, 448.279
Hist.: HD 106, f. & ef. 2-6-76; HD 12-1979, f. & ef. 9-11-79; HD 10-1981, f. & ef. 6-30-81; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0215, HD 2-1983, f. & ef. 2-23-83; HD 21-1983, f. 10-20-83, ef. 11-1-83; HD 11-1985, f. & ef. 7-2-85; HD 30-1985, f. & ef. 12-4-85 HD 3-1987, f. & ef. 2-17-87; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 7-1992, f. & cert. ef. 6-9-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 11-1994, f. & cert. ef. 4-11-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2008, f. & cert. ef. 2-15-08; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0058
Wellfield Determination

(1) Water systems possessing two or more wells that separately supply water to the distribution separately may be eligible to have those wells considered as a wellfield source for monitoring purposes provided the requirements of this rule are met. Information pertinent to determining whether the wellfield designation is appropriate can be found in the water system's Source Water Assessment Report.

(2) To be classified as a wellfield, the wells must meet the following criteria:

(a) The wells must be within 2,500 feet of one another or as determined in a state approved hydrogeological study to minimize inter-well interference drawdowns. For wells located in a low-impact land use area, this criterion may be waived at the discretion of the Department.

(b) The wells must produce from the same and no other aquifer. This criterion is determined using source water assessment results, based on well reports, maps and other hydrogeological information.

(3) To be considered for wellfield designation, the water supplier is asked to submit the following to the Department:

(a) A schematic drawing showing all sources, entry points and relevant sample taps;

(b) A map and description of the land use activities within the respective wellhead protection areas (using the inventory section of the Source Water Assessment Report); and

(c) A description of the pumping patterns.

(4) If a water system's wells are considered to comprise a wellfield, the susceptibility analysis conducted during the source water assessment is utilized to determine the sampling point(s). Table 47 summarizes the alternatives: [Table not included. See ED. NOTE.]

(5) To determine the most susceptible well, the area within the 2-year time-of-travel is considered. The Department will consider the potential contaminant source inventory determined during the source water assessment, the aquifer sensitivity, pumping patterns and other pertinent hydrogeological information.

(6) The Department may still designate more than one entry point within the wellfield as a sampling point if well construction and/or land use practices warrant. For a large area containing numerous wells, sub-wellfields may be identified, each with its own sample site designation.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 431 & 448
Stats. Implemented:
Hist.: OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0060
Plan Submission and Review Requirements

(1) Plan Submission:

(a) Construction and installation plans shall be submitted to and approved by the Department before construction begins on new systems or

major additions or modifications, as determined by the Department, are made to existing systems. Plans shall be drawn to scale;

(b) Preliminary plans, pilot studies, master plans and construction plans shall be prepared by a Professional Engineer registered in Oregon, and submitted to the Department unless exempted by the Department (See OAR 333-061-0060(4));

(c) Plans shall set forth the following:

(A) Sufficient detail, including specifications, to completely and clearly illustrate what is to be constructed and how those facilities will meet the construction standards set forth in these regulations. Elevation or section views shall be provided where required for clarity;

(B) Supporting information attesting to the quality of the proposed source of water;

(C) Vicinity map of the proposed project relative to the existing system or established landmarks of the area;

(D) Name of the owner of the water system facilities during construction and the name of the owner and operator of the facilities after completion of the project;

(E) Procedures for cleaning and disinfecting those facilities which will be in contact with the potable water.

(d) Prior to drilling a well, a site plan shall be submitted which shows the site location, topography, drainage, surface water sources, specifications for well drilling, location of the well relative to sanitary hazards, dimensions of the area reserved to be kept free of potential sources of contamination, evidence of ownership or control of the reserve area and the anticipated depth of the aquifer from which the water is to be derived. The Department will review well reports from the area and in consultation with the local watermaster and the well constructor as appropriate will recommend the depth of placement of the casing seal. After the well is drilled, the following documents shall be submitted to the Department for review and approval: Well driller's report, report of the pump test which indicates that the well has been pumped for a sufficient length of time to establish the reliable yield of the well on a sustained basis, including data on the static water level, the pumping rate(s), the changes in drawdown over the duration of the test, the rate of recovery after the pump was turned off, reports on physical, chemical and microbiological quality of the well water, performance data on the well pump, a plan of the structure for protecting above-ground controls and appurtenances, and a plan showing how the well will be connected to the water system. (See OAR 333-061-0050(2).)

(e) Any community, non-transient non-community, or transient non-community water system that treats surface water or groundwater under the influence of surface water and that desires to make a significant change to its disinfection treatment process as defined by paragraphs (1)(e)(A) through (1)(e)(D) of this rule, is required to develop a disinfection profile according to OAR 333-061-0036(4)(g). The water system must consult with and provide any additional information requested by the Department prior to making such a change. The water system must develop a disinfection profile for Giardia lamblia and viruses, calculate a disinfection benchmark, describe the proposed change in the disinfection process, and analyze the effect(s) of the proposed change on current levels of disinfection according to the USEPA Disinfection Profiling and Benchmarking Guidance Manual and/or the USEPA LT1-ESWTR Disinfection Profiling and Benchmarking Technical Guidance Manual and submit the information to the Department for review and approval. Significant changes to the disinfection treatment process include:

(A) Changes to the point of application:

(B) Changes to the disinfectants used in the treatment process;

(C) Changes to the disinfection process;

(D) Any other modification identified by the Department.

(f) A water system subject to paragraph (1)(e) of this rule must calculate a disinfection benchmark using the following procedure:

(A) From data collected to develop the disinfection profile, determine the average Giardia lamblia inactivation for each calendar month by dividing the sum of all Giardia lamblia inactivations for that month by the number of values calculated for that month.

(B) Determine the lowest monthly average value out of the twelve values. This value becomes the disinfection benchmark.

(C) Water systems required to develop disinfection profiles as prescribed by subsection (1)(e) of this rule must meet the requirements of this paragraph:

(i) Water systems must monitor at least weekly for a period of 12 consecutive months to determine the total log inactivation for Giardia lamblia and viruses. If water systems monitor more frequently, the monitoring frequency must be evenly spaced. Water systems that operate for fewer than 12 months per year must monitor weekly during the period of operation;

(ii) Water systems must determine log inactivation for Giardia lamblia through the entire plant, based on CT99.9 values in Tables 27 through 34 in OAR 333-061-0036(5) as applicable; and [Table not included. See ED. NOTE.]

(iii) Water systems must determine log inactivation for viruses through the entire treatment plant based on a protocol approved by the Department.

(g) A water system that uses either chloramines, chlorine dioxide or ozone for primary disinfection must also calculate the disinfection benchmark for viruses using a method approved by the Department in addition to the disinfection profile for Giardia lamblia. This viral benchmark must be calculated in the same manner as is used for the Giardia lamblia disinfection benchmark described in subsection (1)(f) of this rule.

(2) Plan review.

(a) Upon receipt of plans, the Department shall review the plans and either approve them or advise that correction or clarification is required. When the correction or clarification is received, and the item(s) in question are resolved, the Department shall then approve the plans;

(b) Upon completion of a project, a professional engineer registered in Oregon shall submit to the Department a statement certifying that the project has been constructed in compliance with the approved plans and specifications. When substantial deviations from the approved plans are made, as-built plans showing compliance with these rules shall be submitted to the Department;

(c) Plans shall not be required for emergency repair of existing facilities. In lieu of plans, written notice shall be submitted to the Department immediately after the emergency work is completed stating the nature of the emergency, the extent of the work and whether or not any threats to the water quality exists or existed during the emergency.

(3) Plan review fees: Plans submitted to the Department shall be accompanied by a fee as indicated in Table 48. Those plans not accompanied by a fee will not be reviewed. [Table not included. See ED. NOTE.]

(4) Plan review exemptions:

(a) Water suppliers may be exempted from submitting plans of main extensions, providing they:

(A) Have provided the Department with a current master plan; and

(B) Certify that the work will be carried out in conformance with the construction standards of these rules; and

(C) Submit to the Department an annual summary of the projects completed; and

(D) Certify that they have staff qualified to effectively supervise the projects.

(b) Those water suppliers certifying that they have staff qualified to effectively plan, design and supervise their projects, may request the Department for further exemption from this rule. Such requests must be accompanied by a listing of staff proposed to accomplish the work and a current master plan. To maintain the exemption, the foregoing must be annually updated;

(c) At the discretion of the Department, Community, Transient and Non-Transient Non-Community and State Regulated water systems may be exempted from submitting engineered plans. They shall, however, submit adequate plans indicating that the project meets the minimum construction standards of these rules.

(5) Master plans.

(a) Community water systems with 300 or more service connections shall maintain a current master plan. Master plans shall be prepared by a professional engineer registered in Oregon and submitted to the Department for review and approval.

(b) Each master plan shall evaluate the needs of the water system for at least a twenty year period and shall include but is not limited to the following elements:

(A) A summary of the overall plan that includes the water quality and service goals, identified present and future water system deficiencies, the engineer's recommended alternative for achieving the goals and correcting the deficiencies, and the recommended implementation schedule and financing program for constructing improvements.

(B) A description of the existing water system which includes the service area, source(s) of supply, status of water rights, current status of drinking water quality and compliance with regulatory standards, maps or schematics of the water system showing size and location of facilities, estimates of water use, and operation and maintenance requirements.

(C) A description of water quality and level of service goals for the water system, considering, as appropriate, existing and future regulatory requirements, nonregulatory water quality needs of water users, flow and pressure requirements, and capacity needs related to water use and fire flow needs.

(D) An estimate of the projected growth of the water system during the master plan period and the impacts on the service area boundaries, water supply source(s) and availability, and customer water use.

(E) An engineering evaluation of the ability of the existing water system facilities to meet the water quality and level of service goals, identification of any existing water system deficiencies, and deficiencies likely to develop within the master plan period. The evaluation shall include the water supply source, water treatment, storage, distribution facilities, and operation and maintenance requirements. The evaluation shall also include a description of the water rights with a determination of additional water availability, and the impacts of present and probable future drinking water quality regulations.

(F) Identification of alternative engineering solutions, environmental impacts, and associated capital and operation and maintenance costs, to correct water system deficiencies and achieve system expansion to meet anticipated growth, including identification of available options for cooperative or coordinated water system improvements with other local water suppliers.

(G) A description of alternatives to finance water system improvements including local financing (such as user rates and system development charges) and financing assistance programs.

(H) A recommended water system improvement program including the recommended engineering alternative and associated costs, maps or schematics showing size and location of proposed facilities, the recommended financing alternative, and a recommended schedule for water system design and construction.

(I) If required as a condition of a water use permit issued by the Water Resources Department, the Master Plan shall address the requirements of OAR 690-086-0120 (Water Management and Conservation Plans).

(c) The implementation of any portion of a water system master plan must be consistent with OAR 333-061 (Public Drinking Water Systems, DHS), 660-011 (Public Facilities Planning, Department of Land Conservation and Development) and 690-086 (Water Management and Conservation Plans, Water Resources Department).

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

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.273 & 448.279

Hist.: HD 106, f. & ef. 2-6-76; HD 4-1980, f. & ef. 3-21-80; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0220, HD 2-1983, f. & ef. 2-23-83; HD 13-1985, f. & ef. 8-1-85; HD 9-1989, f. & cert. ef. 11-13-89; HD 3-1994, f. & cert. ef. 1-14-94; HD 11-1994, f. & cert. ef. 4-11-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0064

Emergency Response Plan and Water System Operations Manual Requirements

(1) All public water systems shall maintain a current emergency response plan.

(a) The emergency response plan shall be completed according to the following schedule and shall be reviewed and updated at least every five (5) years.

(A) Completed by September 30, 2003 for public water systems serving 100,000 population or more.

(B) Completed by June 30, 2004 for public water systems serving a population of 50,000 or more but less than 100,000.

(C) Completed by December 31, 2004 for public water systems serving a population greater than 3,300 but less than 50,000.

(D) Completed by June 30, 2005 for public water systems serving a population of 3,300 or less.

(E) If a public water system applying for funds from the Safe Drinking Water Revolving Loan Fund Program is required to develop an emergency response plan as a part of a capacity assessment, then the emergency response plan is required to be completed before final payout of the loan.

(b) All public water systems shall complete a security vulnerability assessment and develop a prioritized plan for risk reduction.

(c) As evidence of completion, all public water systems shall submit a statement to the Department certifying that the Emergency Response Plan and vulnerability assessment have been completed according to the requirements of this rule and that staff have been instructed in the use of the emergency response plan. The emergency response plan/vulnerability assessment shall be made available for review by the Department and/or the County Health Department. All Community water systems > 3,300 population are required to submit a copy of their Vulnerability Assessment and certification of completion for their Emergency Response Plan and Vulnerability Assessment to EPA as required in the federal Bioterrorism Preparedness and Response Act of 2002.

(d) Community water systems shall coordinate with the lead County Emergency Coordinator when preparing or revising an emergency response plan.

(e) The emergency response plan shall include but is not limited to the following elements:

(A) Communications and authority:

(i) Develop an emergency contacts list, and review and update this list at least annually.

(ii) Decision-making authorities and responsibilities of water system personnel shall be determined and detailed in the emergency response plan.

(iii) Procedure for notification of agencies, the water users, and the local media.

(B) Water system security Public water systems shall develop a security program. The security program shall include, but is not limited to, the following components: security management, physical activity, physical security, chemical storage and use, personnel, computer system, and program evaluation as defined in the State Model Emergency Response Plan.

(C) Water system hazard review

(i) Public water systems shall conduct an inspection of the water system annually to identify the hazards that could affect the water system.

(ii) Public water systems shall correct construction deficiencies to eliminate hazards or potential hazards, correct major sanitary survey deficiencies as determined by the Department, and perform regular maintenance.

(D) Emergency equipment and water supplies.

(i) Public water systems shall make provisions for an auxiliary power supply if not a gravity system, and redundant equipment for critical components. Community water systems shall identify equipment that can be utilized in the event of an intentional attack which can render harmless or significantly lessen the impact of the attack on the public health and safety and supply of public drinking water.

(ii) Public water systems shall develop a plan for emergency water to include the rationing of drinking water, identifying and utilizing alternative drinking water sources and supplies, and alternative distribution of drinking water.

(E) Emergency response procedures

(i) Public water systems shall develop procedures for responding to emergencies most likely to strike the water system. Community water systems shall develop plans and procedures that can be implemented in the event of a terrorist or other intentional attack on the water system.

(ii) The emergency response plan shall describe procedures to isolate all parts of the water system. Community water systems shall develop actions and procedures which can render harmless or significantly lessen the impact of terrorist attacks or other intentional actions on public health and safety and supply of public drinking water.

(iii) The emergency response plan shall describe the emergency disinfection procedure, process for issuing a boil water advisory, and process for handling a waterborne disease outbreak.

(f) Water system staff shall be instructed and trained in the use of the emergency response plan.

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 448.160

Hist.: OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0065

Operation and Maintenance

(1) Public water systems shall be operated and maintained in a manner that assures continuous production and delivery of potable water by:

(a) Operating all phases and components of the system effectively in the manner for which they were designed;

(b) Assuring that all leaks are promptly repaired and, broken or malfunctioning equipment is promptly repaired or replaced;

(c) Making readily available and in good condition the proper equipment, tools and parts to make repairs to the system. When possible, notice shall be given to the water users of impending repairs that will affect the quality of the water or the continuity of the water service. All repairs must meet the construction standards of these rules and comply with disinfection requirements of OAR 333-061-0050 prior to reestablishing use of the repaired portion of the system;

(d) Implementing actions to assure safe drinking water during emergencies. Water systems wishing to have a state certified wellhead protection program shall comply with the contingency planning requirements as prescribed in OAR 333-061-0057(4).

(2) Personnel:

(a) Personnel responsible for maintenance and operation of public water systems shall be competent, knowledgeable of all the functions of that particular facility and shall have the training and experience necessary to assure continuous delivery of water which does not exceed the maximum contaminant levels;

(b) Certification in the Oregon Water System Operator's Certification Program is required for personnel in responsible charge of operations for all Community and Non-Transient Non-Community water systems. See Certification Rules OAR 333-061-0205 through 333-061-0295.

(c) Personnel in responsible charge of Transient Non-Community water systems that use surface water sources or ground sources under the direct influence of surface water are required to attend the Department's Small Water System Training Course or equivalent training.

(3) The identity of ownership of a water system shall be filed with the Department. Notification of changes in ownership shall be filed immediately with the Department upon completion of the transaction.

(4) All public water systems shall maintain a current water system operations manual.

(a) The water system operations manual shall be completed according to the requirements of the capacity assessment or sanitary survey and shall be reviewed and updated at least every five (5) years. If a public water system applying for funds from the Safe Drinking Water Revolving Loan Fund Program is required to develop a water system operations manual as a part of a capacity assessment, then the water system operations manual is required to be completed before final payout of the loan.

(b) As evidence of completion, public water systems shall submit a statement to the Department certifying that the water system operations manual has been completed according to the requirements in this rule, and that staff have been instructed in the use of the water system operations manual.

(c) The water system operations manual shall include, but is not limited to, the following elements if they are applicable:

(A) Source operation and maintenance;

(B) Water treatment operation and maintenance;

(C) Reservoir operation and maintenance;

(D) Distribution system operation and maintenance; and

(E) Written protocols for on-site operators describing the operational decisions the operator is allowed to make under OAR 333-061-0225.

(d) Water system staff shall be instructed and trained in the use of the water system operations manual.

(5) Documents and records:

(a) The following documents and records shall be retained by the water supplier at the Community water system facility and shall be available when the system is inspected or upon request by the Department:

(A) Complete and current as-built plans and specifications of the entire system and such other documents as are necessary for the maintenance and operation of the system;

(B) Current operating manuals covering the general operation of each phase of the water system;

(C) A current master plan and/or revisions thereof;

(D) Data showing production capabilities of each water source and system component;

(E) Current records of the number, type and location of service connections;

(F) Current records of raw water quality, both chemical and microbiological;

(G) Current records of all chemicals and dosage rates used in the treatment of water;

(H) Reports on maintenance work performed on water treatment and delivery facilities;

(I) Records relating to the sampling and analysis undertaken to assure compliance with the maximum contaminant levels;

(J) Record of residual disinfectant measurements, where applicable;

(K) Records of cross connection control and backflow prevention device testing, where applicable;

(L) Records of customer complaints pertaining to water quality and follow-up action undertaken;

(M) Fluoridation records, where applicable;

(N) Other records as may be required by these rules.

(6) Chlorination and use of other chemicals:

(a) Chlorinators and other equipment used to apply chemicals at a public water system shall be operated and maintained in accordance with the manufacturers' specifications and recommendations for efficient operation and safety.

(b) When chlorine is used as the disinfectant, the procedures shall be as follows:

(A) Chlorine shall be applied in proportion to the flow;

(B) For reasons other than the treatment of surface water sources or groundwater sources under the direct influence of surface water, the rate of application shall be sufficient to result in a free chlorine residual of at least 0.2 mg/l after a 30-minute contact time and throughout the distribution system;

(c) When ammonia is added to the water with the chlorine to form a chloramine as the disinfectant, for reasons other than the treatment of surface water sources or groundwater sources under the direct influences of surface water, the rate of application shall result in a combined chlorine residual of at least 2.0 mg/l after a 3-hour contact time;

(d) When corrosion control chemicals are applied to achieve compliance with the lead and copper rule, the point of application shall be after all other treatment processes unless determined otherwise by the Department.

(7) When an emergency arises within a water system which affects the quality of water produced by the system, the water supplier shall notify the Department immediately.

Stat. Auth.: ORS 431 & 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.273 & 448.279

Hist.: HD 106, f. & ef. 2-6-76; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0225, HD 2-1983, f. & ef. 2-23-83; HD 20-1983, f. 10-20-83, ef. 11-1-83; HD 1-1988, f. & cert. ef. 1-6-88; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 7-1992, f. & cert. ef. 6-9-92; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0070

Cross Connection Control Requirements

(1) Water suppliers shall undertake cross connection control programs to protect the public water systems from pollution and contamination.

(2) The water supplier's responsibility for cross connection control shall begin at the water supply source, include all public treatment, storage, and distribution facilities under the water supplier's control, and end at the point of delivery to the water user's premise.

(3) Water suppliers shall develop and implement cross connection control programs that meet the minimum requirements set forth in these rules.

(4) Water suppliers shall develop a procedure to coordinate cross connection control requirements with the appropriate local administrative authority having jurisdiction.

(5) The water supplier shall ensure that inspections of approved air gaps, approved devices, and inspections and tests of approved backflow prevention assemblies protecting the public water system are conducted:

(a) At the time of installation, any repair or relocation;

(b) At least annually;

(c) More frequently than annually for approved backflow prevention assemblies that repeatedly fail, or are protecting health hazard cross connections, as determined by the water supplier;

(d) After a backflow incident; or

(e) After an approved air gap is re-plumbed.

(6) Approved air gaps, approved devices, or approved backflow prevention assemblies, found not to be functioning properly shall be repaired, replaced or re-plumbed by the water user or premise owner, as defined in the water supplier's local ordinance or enabling authority, or the water supplier may take action in accordance with subsection 9(a) of these rules.

(7) A water user or premise owner who obtains water from a water supplier must notify the water supplier if they add any chemical or substance to the water.

(8) Premise isolation requirements:

(a) For service connections to premises listed or defined in Table 49 (Premises Requiring Isolation), the water supplier shall ensure an approved backflow prevention assembly or an approved air gap is installed; [Table not included. See ED. NOTE.]

(A) Premises with cross connections not listed or defined in Table 49 (Premises Requiring Isolation), shall be individually evaluated. The water supplier shall require the installation of an approved backflow prevention assembly or an approved air gap commensurate with the degree of hazard on the premise, as defined in Table 50 (Backflow Prevention Methods); [Table not included. See ED. NOTE.]

(B) In lieu of premise isolation, the water supplier may accept an in-premise approved backflow prevention assembly as protection for the public water system when the approved backflow prevention assembly is installed, maintained and tested in accordance with the Oregon Plumbing Specialty Code and these rules.

(b) Where premise isolation is used to protect against a cross connection, the following requirements apply;

(A) The water supplier shall:

(i) Ensure the approved backflow prevention assembly is installed at a location adjacent to the service connection or point of delivery;

(ii) Ensure any alternate location used must be with the approval of the water supplier and must meet the water supplier's cross connection control requirements; and

(iii) Notify the premise owner and water user, in writing, of thermal expansion concerns.

(B) The premise owner shall:

(i) Ensure no cross connections exist between the point of delivery from the public water system and the approved backflow prevention assemblies, when these are installed in an alternate location; and

(ii) Assume responsibility for testing, maintenance, and repair of the installed approved backflow prevention assembly to protect against the hazard.

(c) Where unique conditions exist, but not limited to, extreme terrain or pipe elevation changes, or structures greater than three stories in height, even with no actual or potential health hazard, an approved backflow prevention assembly may be installed at the point of delivery; and

(d) Where the water supplier chooses to use premise isolation by the installation of an approved backflow prevention assembly on a one- or two-family dwelling under the jurisdiction of the Oregon Plumbing Specialty Code and there is no actual or potential cross connection, the water supplier shall:

(A) Install the approved backflow prevention assembly at the point of delivery;

(B) Notify the premise owner and water user in writing of thermal expansion concerns; and

(C) Take responsibility for testing, maintenance and repair of the installed approved backflow prevention assembly.

(9) In community water systems, water suppliers shall implement a cross connection control program directly, or by written agreement with another agency experienced in cross connection control. The local cross connection program shall consist of the following elements:

(a) Local ordinance or enabling authority that authorizes discontinuing water service to premises for:

(A) Failure to remove or eliminate an existing unprotected or potential cross connection;

(B) Failure to install a required approved backflow prevention assembly;

(C) Failure to maintain an approved backflow prevention assembly; or

(D) Failure to conduct the required testing of an approved backflow prevention assembly.

(b) A written program plan for community water systems with 300 or more service connections shall include the following:

(A) A list of premises where health hazard cross connections exist, including, but not limited to, those listed in Table 49 (Premises Requiring Isolation); [Table not included. See ED. NOTE.]

(B) A current list of certified cross connection control staff members;

(C) Procedures for evaluating the degree of hazard posed by a water user's premise;

(D) A procedure for notifying the water user if a non-health hazard or health hazard is identified, and for informing the water user of any corrective action required;

(E) The type of protection required to prevent backflow into the public water supply, commensurate with the degree of hazard that exists on the water user's premise, as defined in Table 50 (Backflow Prevention Methods); [Table not included. See ED. NOTE.]

(F) A description of what corrective actions will be taken if a water user fails to comply with the water supplier's cross connection control requirements;

(G) Current records of approved backflow prevention assemblies installed, inspections completed, backflow prevention assembly test results on backflow prevention assemblies and verification of current Backflow Assembly Tester certification; and

(H) A public education program about cross connection control.

(c) The water supplier shall prepare and submit a cross connection control Annual Summary Report to the Department, on forms provided by the Department, before the last working day of March each year.

(d) In community water systems having 300 or more service connections, water suppliers shall ensure at least one person is certified as a Cross Connection Control Specialist, unless specifically exempted from this requirement by the Department.

(10) Fees: Community water systems shall submit to the Department an annual cross connection program implementation fee, based on the number of service connections, as follows:

Service Connections — Fee
15-99 — $30.
100-999 — $75.
1,000-9,999 — $200.
10,000 or more — $350.

(a) Billing invoices will be mailed to water systems in the first week of November each year and are due by January first of the following year;

(b) Fees are payable to Department of Human Services by check or money order;

(c) A late fee of 50% of the original amount will be added to the total amount due and will be assessed after January 31 of each year.

(11) In transient or non-transient non-community water systems, the water supplier that owns and/or operates the system shall:

(a) Ensure no cross connections exist, or are isolated from the potable water system with an approved backflow prevention assembly, as required in section (12) of this rule;

(b) Ensure approved backflow prevention assemblies are installed at, or near, the cross connection; and

(c) Conduct a cross connection survey and inspection to ensure compliance with these rules. All building permits and related inspections are to be made by the Department of Consumer and Business Services, Building Codes Division, as required by ORS 447.020.

(12) Approved backflow prevention assemblies required under these rules shall be assemblies approved by the University of Southern California, Foundation for Cross Connection Control and Hydraulic Research, or other equivalent testing laboratories approved by the Department.

(13) Backflow prevention assemblies installed before the effective date of these rules that were approved at the time of installation, but are not currently approved, shall be permitted to remain in service provided the assemblies are not moved, the piping systems are not significantly remodeled or modified, the assemblies are properly maintained, and they are commensurate with the degree of hazard they were installed to protect. The assemblies must be tested at least annually and perform satisfactorily to the testing procedures set forth in these rules.

(14) Tests performed by Department-certified Backflow Assembly Testers shall be in conformance with procedures established by the University of Southern California, Foundation for Cross Connection Control and Hydraulic Research, Manual of Cross Connection Control, 9th Edition, December 1993, or other equivalent testing procedures approved by the Department.

(15) Backflow prevention assemblies shall be tested by Department-certified Backflow Assembly Testers, except as otherwise provided for journeyman plumbers or apprentice plumbers in OAR 333-061-0072 of these rules (Backflow Assembly Tester Certification). The Backflow Assembly Tester shall provide a copy of each completed test report to the water user or premise owner, and the water supplier:

(a) Within 10 working days; and

(b) The test reports will be in a manner and form acceptable to the water supplier.

(16) All approved backflow prevention assemblies subject to these rules shall be installed in accordance with OAR 333-061-0071 and the Oregon Plumbing Specialty Code.

(17) The Department shall establish an advisory board for cross connection control issues consisting of not more than nine members, and including representation from the following:

(a) Oregon-licensed Plumbers;

(b) Department-certified Backflow Assembly Testers;

(c) Department-certified Cross Connection Specialists;

(d) Water Suppliers;

(e) The general public;

(f) Department-certified Instructors of Backflow Assembly Testers or Cross Connection Specialists;

(g) Backflow assembly manufacturers or authorized representatives;

(h) Engineers experienced in water systems, cross connection control and/or backflow prevention; and

(i) Oregon-certified Plumbing Inspectors. [Table not included. See ED. NOTE.]

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

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

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.131, 448.150, 448.268, 448.271, 448.273, 448.279, 448.295 & 448.300

Hist.: HD 106, f. & ef. 2-6-76; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0230, HD 2-1983, f. & ef. 2-23-83; HD 20-1983, f. 10-20-83, ef. 11-1-83; HD 30-1985, f. & ef. 12-4-85; HD 3-1987, f. & ef. 2-17-87; HD 1-1988, f. & cert. ef. 1-6-88; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 1-1994, f. & cert. ef. 1-7-94; HD 1-1996, f. 1-2-96, cert. ef. 1-2-96; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; PH 34-2004, f. & cert. ef. 11-2-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 2-2008, f. & cert. ef. 2-15-08; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0071
Backflow Prevention Assembly Installation and Operation Standards

(1) Any approved backflow prevention assembly required by OAR 333-061-0070 shall be installed in a manner that:

(a) Facilitates its proper operation, maintenance, inspection, and in-line testing using standard installation procedures approved by the Department, such as, but not limited to, University of Southern California, Manual of Cross-Connection Control, 9th Edition, the Pacific Northwest Section American Water Works Association, Cross Connection Control Manual, 6th Edition, or the local administrative authority having jurisdiction;

(b) Precludes the possibility of continuous submersion of an approved backflow prevention assembly, and precludes the possibility of any submersion of the relief valve on a reduced pressure principle backflow prevention assembly; and

(c) Maintains compliance with all applicable safety regulations and the Oregon Plumbing Specialty Code.

(2) For premise isolation installation:

(a) The approved backflow prevention assembly shall be installed at a location adjacent to the service connection or point of delivery; or

(b) Any alternate location must be with the advance approval of the water supplier and must meet the water supplier's cross connection control requirements; and

(c) The premise owner shall ensure no cross connections exist between the point of delivery from the public water system and the approved backflow prevention assembly.

(3) Bypass piping installed around any approved backflow prevention assembly must be equipped with an approved backflow prevention assembly to:

(a) Afford at least the same level of protection as the approved backflow prevention assembly being bypassed; and

(b) Comply with all requirements of these rules.

(4) All Oregon Plumbing Specialty Code approved residential multipurpose fire suppression systems constructed of potable water piping and materials do not require a backflow prevention assembly.

(5) Stand-alone fire suppression systems shall be protected commensurate with the degree of hazard, as defined in Table 50 (Backflow Prevention Methods). [Table not included. See ED. NOTE.]

(6) Stand-alone irrigation systems shall be protected commensurate with the degree of hazard, as defined in Table 50 (Backflow Prevention Methods). [Table not included. See ED. NOTE.]

(7) An Atmospheric Vacuum Breaker (AVB) shall: [Figure 2 not included. See ED. NOTE.]

(a) Have absolutely no means of shut-off on the downstream or discharge side of the atmospheric vacuum breaker;

(b) Not be installed in dusty or corrosive atmospheres;

(c) Not be installed where subject to flooding;

(d) Be installed a minimum of 6 inches above the highest downstream piping and outlets;

(e) Be used intermittently;

(f) Have product and material approval under the Oregon Plumbing Specialty Code for non-testable devices.

(g) Not be pressurized for more than 12 hours in any 24-hour period; and

(h) Be used to protect against backsiphonage only, not backpressure.

(8) A Pressure Vacuum Breaker Backsiphonage Prevention Assembly (PVB) or Spill-Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly (SVB) shall: [Figure 3 not included. See ED. NOTE.]

(a) Be installed where occasional water discharge from the assembly caused by pressure fluctuations will not be objectionable;

(b) Have adequate spacing available for maintenance and testing;

(c) Not be subject to flooding;

(d) Be installed a minimum of 12 inches above the highest downstream piping and outlets;

(e) Have absolutely no means of imposing backpressure by a pump or other means. The downstream side of the pressure vacuum breaker backsiphonage prevention assembly or spill-resistant pressure vacuum breaker backsiphonage prevention assembly may be maintained under pressure by a valve; and

(f) Be used to protect against backsiphonage only, not backpressure.

(9) A Double Check Valve Backflow Prevention Assembly (DC) or Double Check Detector Backflow Prevention Assembly (DCDA): [Figure 4 not included. See ED. NOTE.]

(a) Shall conform to bottom and side clearances when the assembly is installed inside a building;

(b) May be installed vertically as well as horizontally provided the assembly is specifically listed for that orientation in the Department's Approved Backflow Prevention Assembly List.

(c) May be installed below grade in a vault, provided that water-tight fitted plugs or caps are installed in the test cocks, and the assembly shall not be subject to continuous immersion;

(d) Shall not be installed at a height greater than 5 feet unless there is a permanently installed platform meeting Oregon Occupational Safety and Health Administration (OR-OSHA) standards to facilitate servicing the assembly;

(e) May be installed with reduced clearances if the pipes are 2 inches in diameter or smaller, provided that they are accessible for testing and repairing, and approved by the appropriate local administrative authority having jurisdiction;

(f) Shall have adequate drainage provided except that the drain shall not be directly connected to a sanitary or storm water drain. Installers shall check with the water supplier and appropriate local administrative authority having jurisdiction for additional requirements;

(g) Shall be protected from freezing when necessary; and

(h) Be used to protect against non-health hazards under backsiphonage and backpressure conditions.

(10) A Reduced Pressure Principle Backflow Prevention Assembly (RP) or Reduced Pressure Principle-Detector Backflow Prevention Assembly (RPDA): [Figure 5 not included. See ED. NOTE.]

(a) Shall conform to bottom and side clearances when the assembly is installed inside a building. Access doors may be provided on the side of an above-ground vault;

(b) Shall always be installed horizontally, never vertically, unless they are specifically approved for vertical installation;

(c) Shall always be installed above the 100-year (1%) flood level unless approved by the appropriate local administrative authority having jurisdiction;

(d) Shall never have extended or plugged relief valves;

(e) Shall be protected from freezing when necessary;

(f) Shall be provided with an approved air gap drain;

(g) Shall not be installed in an enclosed vault or box unless a boresighted drain to daylight is provided;

(h) May be installed with reduced clearances if the pipes are 2 inches in diameter or smaller, are accessible for testing and repairing, and approved by the appropriate local administrative authority having jurisdiction;

(i) Shall not be installed at a height greater than 5 feet unless there is a permanently installed platform meeting Oregon Occupational Safety and Health Administration (OR-OSHA) standards to facilitate servicing the assembly; and

(j) Be used to protect against a non-health hazard or health hazard for backsiphonage or backpressure conditions.

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

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

Stat. Auth.: ORS 431 & 448

Stats. Implemented:: ORS 431.110, 431.150, 448.131, 448.150, 448.268 & 448.273

Hist.: HD 9-1989, f. & cert. ef. 11-13-89; HD 1-1994, f. & cert. ef. 1-7-94, Renumbered from 333-061-0099; HD 1-1996, f. 1-2-96, cer.t. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; PH 34-2004, f. & cert. ef. 11-2-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0076

Sanitary Surveys

(1) All sanitary surveys as defined by OAR 333-061-0020(158) and this rule shall be conducted by the Department or contract county health department staff.

(2) Public water systems must provide the Department, upon request, any existing information that will enable the Department to conduct a sanitary survey.

(3) The sanitary survey report shall be completed by staff and sent to the water system following the site visit. The content of the sanitary survey report shall address, at a minimum, the following components of a water system: source of supply; treatment; distribution system; finished water storage; pumps, pump facilities and controls; monitoring, reporting and data verification; system management and operations; and operator certification compliance.

(4) The sanitary survey report must identify any significant deficiency prescribed in this section, or any violation of drinking water regulations, discovered in the on-site visit. For the purposes of sanitary surveys, significant deficiencies for all water systems are:

(a) Surface Water Treatment:

(A) Incorrect location for compliance turbidity monitoring;

(B) For systems serving >3300 no auto-dial, call-out alarm or auto-plant shutoff for low chlorine residual;

(C) For conventional or direct filtration, no auto-dial, call-out alarm or auto-plant shutoff for high turbidity when no operator is on-site.

(D) For conventional filtration, settled water turbidity not measured daily;

(E) For conventional or direct filtration, turbidity profile not conducted on individual filters at least quarterly;

(F) For cartridge filtration, no pressure gauges before and after cartridge filter;

(G) For cartridge filtration, filters not changed according to manufacturer's recommended pressure differential; and

(H) For diatomaceous earth filtration, body feed not added with influent flow.

(b) Groundwater Well Construction:

(A) Sanitary seal and casing not watertight;

(B) Does not meet setbacks from hazards;

(C) Wellhead not protected from flooding;
(D) No raw water sample tap;
(E) No treated sample tap, if applicable;
(F) If well vent exists, not screened.
(c) Groundwater Springbox Construction:
(A) Not constructed of impervious, durable material;
(B) No watertight access hatch/entry;
(C) No screened overflow;
(D) Does not meet setbacks from hazards.
(d) Disinfection:
(A) No means to adequately determine flow rate on contact chamber effluent line;
(B) Failure to calculate CT values correctly;
(C) No means to adequately determine disinfection contact time under peak flow and minimum storage conditions.
(e) Finished water storage:
(A) Hatch not locked;
(B) Roof and hatch not watertight;
(C) No flap-valve or equivalent over drain/overflow;
(D) No screened vent.

(5) Sanitary survey fees. All community, non-transient non-community, transient non-community, and state regulated water systems are required to undergo a sanitary survey on a frequency determined by the Department and are subject to a fee payable to the Department by December 31of the year in which the sanitary survey is conducted. The fee schedule is as follows: [Table not included. See ED. NOTE.]

(6) Response required to address survey significant deficiencies:(a) Water systems that use surface water sources or groundwater sources under direct influence of surface water must respond in writing to the Department or county Health Department within 45 days of receiving the sanitary survey report. The response of the water system must include:

(A) The plan the public water system will follow to resolve or correct the identified significant deficiencies; and

(B) The plan the public water system will follow to resolve or correct any violations of drinking water regulations as identified during the sanitary survey or any other time; and

(C) The schedule the public water system will follow to execute the plan.

(b) Beginning on December 1, 2009, water systems that use only groundwater sources must consult with the Department or county Health Department within 30 days of receiving written notice of a significant deficiency or a violation of a drinking water regulation identified during the sanitary survey.

(A) Water systems must have completed corrective action or be in compliance with a Department-specified corrective action plan within 120 days of receiving written notice of a significant deficiency, as specified in OAR 333-061-0032(6)(e).

(7) Public water systems that fail to respond to the Department or county Health Department within the timeframe specified , are required to issue a tier 2 public notice as prescribed in OAR 333-061-0042(2)(b)(E).

(8) Public water systems must correct the deficiencies or violations identified in the sanitary survey according to the documented schedule identified in section (4) of this rule. Failure to do so constitutes a violation of these rules.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 431 & 448
Stats. Implemented: ORS 431.123, 431.131, 448.175, 448.273
Hist.: OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 2-2008, f. & cert. ef. 2-15-08; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0077
Composite Correction Program & Comprehensive Performance Evaluations

(1) All Comprehensive Performance Evaluation Reports (CPEs) as defined by OAR 333-061-0020(26) and this rule shall be conducted by the Department or contract county health department staff.

(2) Any public water system using surface water or groundwater under direct surface water influence which treats the water using conventional or direct filtration treatment is subject to the Composite Correction Program, including CPEs, as determined necessary or appropriate by the Department.

(3) Any public water system using surface water or groundwater under direct surface water influence which treats the water using conventional or direct filtration treatment that has a measured filtered water turbidity level greater than 2.0 NTU from any individual filter in two consecutive measurements taken 15 minutes apart in each of two consecutive months as stated in OAR 333-061-0040(1)(d)(B) (ii)(IV) is required to have a CPE conducted on that public water system's water treatment facility.

(4) The CPE report shall be completed by staff and sent to the water system following the site visit. The content of the CPE report shall include, at a minimum, the following components: An assessment of the water treatment plant performance from current and historical water quality data, an evaluation of each major (treatment) unit process, an identification and prioritization of the water treatment plant performance limiting factors, and an assessment by the Department if additional comprehensive technical assistance would be beneficial to the water system. The CPE results must be written into a report and submitted to the public water system by the Department.

(5) The public water system receiving the CPE report must respond in writing to the Department or the local county health department within 45 days (for systems serving at least 10,000 people) or 120 days (for systems serving less than 10,000 people) of receiving the report as required by OAR 333-061-0040(1)(k). The response of the public water system must include:

(a) The plan the public water system will follow to resolve or correct the identified performance limiting factors that are within the water system's (and its governing body) ability to control; and

(b) The schedule the public water system will follow to execute the plan.

(6) The public water system must take corrective action through the CCP according to the schedule identified in paragraph (5)(b) of this rule to resolve the performance limiting factors identified. Failure by the water system to take corrective action to resolve the performance limiting factors constitutes a violation of these rules.

Stat. Auth.: ORS 448.150
Stats. Implemented: ORS 431.123, 448.131, 448.175 & 448.273
Hist.: OHD 23-2001, f. & cert. ef. 10-31-01; PH 12-2003, f. & cert. ef. 8-15-03; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0090
Penalties

(1) Violation of these rules shall be punishable as set forth in ORS 448.990 which stipulates that violation of any section of these rules is a Class A misdemeanor.

(2) Pursuant to ORS 448.280, 448.285 and 448.290, any person who violates these rules shall be subject to a civil penalty. Each and every violation is a separate and distinct offense, and each day's violation is a separate and distinct violation.

(3) Under ORS 448.290, only the Administrator can impose penalties and the penalties shall not become effective until after the person is given an opportunity for a hearing.

(4) The civil penalty for the following violations shall not exceed $1,000 per day for each violation:

(a) Failure to obtain approval of plans prior to the construction of water system facilities;

(b) Failure to construct water system facilities in compliance with approved plans;

(c) Failure to take immediate action to correct maximum contaminant level violations;

(d) Failure to comply with sampling and analytical requirements;

(e) Failure to comply with reporting and public notification requirements;

(f) Failure to meet the conditions of a compliance schedule developed under a variance or permit;

(g) Failure to comply with cross connection control requirements;

(h) Failure to comply with the operation and maintenance requirements;

(i) Failure to comply with an order issued by the Administrator.

(5) Civil penalties shall be based on the population served by public water systems and shall be in accordance with Table 51 below: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 431 & 448
Stats. Implemented: ORS 448.280, 285 & 290
Hist.: HD 106, f. & ef. 2-6-76; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0245, HD 2-1983, f. & ef. 2-23-83; HD 3-1987, f. & ef. 2-17-87; HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0097
Adverse Health Effects Language

When providing the information on potential adverse health effects required by these rules in notices of violations of maximum contaminant levels, maximum residual disinfectant levels, treatment technique requirements, or notices of the granting or the continued existence of variances or permits, or notices of failure to comply with a variance or permit schedule,

the owner or operator of a public water system shall include the language specified below for each contaminant.

(1) Adverse Health Effects for Organic Chemicals:

(a) Volatile Organic Chemicals (VOCs):

(A) Benzene. Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.

(B) Carbon tetrachloride. Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(C) Chlorobenzene. Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.

(D) o-Dichlorobenzene. Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

(E) p-Dichlorobenzene. Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.

(F) 1,2-Dichloroethane. Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

(G) 1,1-Dichloroethylene. Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(H) Cis-1,2-Dichloroethylene. Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(I) Trans-1,2-Dichloroethylene. Some people who drink water containing trans-1,2- dichloroethylene well in excess of the MCL over many years could experience problems with their liver.

(J) Dichloromethane(methylene chloride). Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

(K) 1,2-Dichloropropane. Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.

(L) Ethylbenzene. Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

(M) Styrene. Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(N) Tetrachloroethylene(PCE). Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.

(O) 1,2,4-trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

(P) 1,1,1-Trichloroethane. Some people who drink water containing 1,1,1- trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.

(Q) 1,1,2-Trichloroethane. Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.

(R) Trichloroethylene. Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(S) Toluene. Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.

(T) Vinyl chloride. Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.

(U) Xylenes. Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

(b) Synthetic Organic Chemicals (SOCs):

(A) 2,4-D. Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.

(B) 2,4,5-TP(Silvex). Some people who drink water containing 2,4,5-TP in excess of the MCL over many years could experience liver problems.

(C) Alachlor. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

(D) Atrazine. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

(E) Benzo(a)pyrene. Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.

(F) Carbofuran. Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.

(G) Chlordane. Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.

(H) Dalapon. Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(I) Di(2-ethylhexyl)adipate. Some people who drink water containing di(2-ethylhexyl)adipate well in excess of the MCL over many years could experience toxic effects such as weight loss, liver enlargement or possible reproductive difficulties.

(J) Di(2-ethylhexyl)phthalate. Some people who drink water containing di(2-ethylhexyl)phthalate well in excess of the MCL over many years may have problems with their liver or experience reproductive difficulties, and may have an increased risk of getting cancer.

(K) Dibromochloropropane (DBCP). Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(L) Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(M) Diquat. Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

(N) Dioxin (2,3,7,8-TCDD). Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(O) Endothall. Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

(P) Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(Q) Ethylene dibromide (EDB). Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.

(R) Glyphosate. Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

(S) Heptachlor. Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(T) Heptachlor epoxide. Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(U) Hexachlorobenzene. Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys or adverse reproductive effects, and may have an increased risk of getting cancer.

(V) Hexachlorocyclopentadiene. Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.

(W) Lindane. Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

(X) Methoxychlor. Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

(Y) Oxamyl. Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

(Z) Polychlorinated biphenyls (PCBs). Some people who drink water containing polychlorinated biphenyls in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.

(AA) Pentachlorophenol. Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience

problems with their liver or kidneys, and may have an increased risk of getting cancer.

(BB) Picloram. Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.

(CC) Simazine. Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.

(DD) Toxaphene. Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.

(2) Special Notice for Lead and Copper.

(a) Mandatory health effects information. When providing the information in public notices on the potential adverse health effects of lead in drinking water, the owner or operator of the water system shall include the following specific language in the notice:

"Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure."

(b) Mandatory health effects information. When providing information on the potential adverse health effects of copper in drinking water, the owner or operator of the water system shall include the following specific language in the notice:

"Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor."

(3) Inorganics — public notice language.

(a) Antimony. Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.

(b) Arsenic. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

(c) Asbestos. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.

(d) Barium. Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.

(e) Beryllium. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

(f) Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

(g) Chromium. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

(h) Cyanide. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

(i) Fluoride. Some people who drink water containing fluoride in excess of the MCL (4.0 mg/l) over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL (2.0mg/l) or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.

(j) Mercury. Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

(k) Nitrate (as nitrogen). Infants below the age of 6 months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(l) Nitrite. Infants below the age of 6 months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(m) Total Nitrate and Nitrite. Infants below the age of 6 months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.

(n) Selenium. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.

(o) Thallium. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

(4) Special Notice for microbiological contaminants.

(a) When providing information in public notices required under OAR 333-061-0042(2)(b)(A) for a violation of total coliform bacteria (333-061-0030(4)(a)), the owner or operator of the water system shall include the following specific language in the notice:

"Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems."

(b) When providing information in Public Notices required under OAR 333-061-0042(2)(a)(A) or OAR 333-061-0042(2)(a)(G) for a violation of fecal coliform/E. coli bacteria (333-061-0030(4)(b)), the owner or operator of the water system shall include the following specific language in the notice:

"Fecal coliforms and E. Coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems."

(c) When providing information under OAR 333-061-0042(2)(b)(A) and 333-061-0030(4)(a) for a violation of total coliform bacteria maximum contaminant level, where the violation has been shown to result from persistent coliform growth in the distribution system, the owner or operator may include the following specific language in the notice with approval from the Department. This language may be used in addition to, but not in place of, the mandatory language contained in 333-061-0097(4)(a):

"In this case, coliforms are present on inside surfaces of water mains and piping even in the presence of a disinfectant and even though proper water treatment and water system operation has taken place. This presence of coliforms presents no hazard to the health of water users, but does interfere with the water system's sampling program. Correction of the problem is difficult and may involve temporary treatment changes that may cause noticeable changes in the water's taste, odor, or appearance. These corrective actions will be carried out after the water system submits a plan which is approved by the Department of Human Services."

(d) Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include, bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.

(5) Treatment Techniques — Public Notice Language.

(a) Acrylamide. Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

(b) Epichlorohydrin. Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

(c) Surface Water Treatment Rule (Giardia, viruses, heterotrophic plate count bacteria, Legionella), Interim Enhanced Surface Water Treatment Rule (Giardia, viruses, heterotrophic plate count bacteria, Legionella and Cryptosporidium), Long Term 1 Enhanced Surface Water Treatment Rule (Giardia, viruses, heterotrophic plate count bacteria, Legionella and Cryptosporidium) and Filter Backwash Recycling Rule (Cryptosporidium). Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(d) Groundwater. Inadequately treated or inadequately protected water may contain disease-causing organisms. These organisms can cause symptoms such as diarrhea, nausea, cramps, and associated headaches.

(e) Use of an emergency groundwater source that has been identified as potentially groundwater under direct influence of surface water, but has not been fully evaluated. This type of source may not be treated sufficiently to inactivate pathogens such as Giardia lamblia and Cryptosporidium.

(6) Disinfectant and Disinfection Byproducts — Special Adverse Health Effects Language.

(a) Total Trihalomethanes (TTHMs). Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.

(b) Haloacetic Acids (HAA). Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.

(c) Chlorine. Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.

(d) Chloramines. Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.

(e) Chlorine dioxide. (where any 2 consecutive daily samples taken at the entrance to the distribution system are above the MRDL). Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.

NOTE: In addition to the language in this introductory text of subsection (6)(e) of this rule, water systems must include either the language in paragraphs (6)(e)(A) or (6)(e)(B) of this rule. Water systems with a violation at the treatment plant, but not in the distribution system, are required to use the language in paragraph (6)(e)(A) of this rule and treat the violation as a non-acute violation. Water systems with a violation in the distribution system are required to use the language in paragraph (6)(e)(B) of this rule and treat the violation as an acute violation.

(A) The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, and do not include violations within the distribution system serving users of this water supply. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to present consumers.

(B) The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system serving water users. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects of excessive exposure to chlorine dioxide-treated water. The purpose of this notice is to advise that such persons should consider reducing their risk of adverse effects from these chlorine dioxide violations by seeking alternate sources of water for human consumption until such exceedances are rectified. Local and State health authorities are the best sources for information concerning alternate drinking water.

(f) Bromate. Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.

(g) Chlorite. Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.

(h) Total Organic Carbon (TOC). Total Organic Carbon (TOC) has no health effects. However, TOC provides a medium for the formation of disinfection byproducts (DBPs). These byproducts include trihalomethanes and haloacetic acids. Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.

(7) Adverse health effects for radionuclides:

(a) Beta/photon emitters. Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(b) Alpha emitters. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(c) Combined Radium-226/228. Some people who drink water containing radium-226 or -228 in excess of the MCL over many years may have an increased risk of getting cancer.

(d) Uranium. Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.

Stat. Auth.: ORS 448.131
Stats. Implemented: ORS 431.110, 431.150, 448.131. 448.150, 448.273 & 448.279
Hist.: HD 9-1989, f. & cert. ef. 11-13-89; HD 26-1990, f. 12-26-90, cert. ef. 12-29-90; HD 9-1991(Temp), f. & cert. ef. 6-24-91; HD 1-1992, f. & cert. ef. 3-5-92; HD 7-1992, f. & cert. ef. 6-9-92; HD 12-1992, f. & cert. ef. 12-7-92; HD 3-1994, f. & cert. ef. 1-14-94; HD 11-1994, f. & cert. ef. 4-11-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0220
Classification of Water Systems

(1) Water suppliers responsible for Community or Non-Transient Non-Community water systems must at all times employ, contract with or otherwise utilize an operator designated to supervise the water system, to be in direct responsible charge of the water system, and to be available during those periods of time when treatment processes and operational decisions that affect public health are made.

(2) The operator(s) described in section (1) above, must be certified at a level equal to or greater than the classification of that water system.

(3) Water systems are classified according to the size and complexity of the water system or water treatment plants to determine the classification type and level required for the operator.

(4) The owner of a water system subject to these rules must report to the Department the name(s) of the operator(s) which they have designated to be in direct responsible charge of the system and notify the Department within 30 days of any change of operator.

(5) The water supplier may employ, contract with, or utilize other operators as needed on-site in addition to those required under (1) and (2) above. For operators certified at less than the Department-required level for treatment and/or distribution, the water supplier must establish a written protocol for each of these other operators that:

(a) Describes the operational decisions the operator is allowed to make;

(b) Describes the conditions under which the operator must consult with the certified operator in direct responsible charge, and when and how contact is made;

(c) Takes into account the certification level of the operator; their knowledge, skills, and abilities, and the range of expected operating conditions of the water system; and

(d) Is signed and dated by the operator in direct responsible charge and the other operator and is available for inspection by the Department.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 431 & 448
Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 14-1997, f. & cert. ef. 10-31-97; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0225
General Requirements Applying to Water Systems

(1) Water suppliers responsible for Community or Non-Transient Non-Community water systems must at all times employ, contract with or otherwise utilize an operator designated to supervise the water system, to be in direct responsible charge of the water system, and to be available during those periods of time when treatment processes and operational decisions that affect public health are made.

(2) The operator(s) described in section (1) above, must be certified at a level equal to or greater than the classification of that water system.

(3) Water systems are classified according to the size and complexity of the water system or water treatment plants to determine the classification type and level required for the operator.

(4) The owner of a water system subject to these rules must report to the Department the name(s) of the operator(s) which they have designated to be in direct responsible charge of the system and notify the Department within 30 days of any change of operator.

(5) The water supplier may employ, contract with, or utilize other operators as needed on-site in addition to those required under (1) and (2) above. For operators certified at less than the Department-required level for treatment and/or distribution, the water supplier must establish a written protocol for each of these other operators that:

(a) Describes the operational decisions the operator is allowed to make;

(b) Describes the conditions under which the operator must consult with the certified operator in direct responsible charge, and when and how contact is made;

(c) Takes into account the certification level of the operator; their knowledge, skills, and abilities, and the range of expected operating conditions of the water system; and

(d) Is signed and dated by the operator in direct responsible charge and the other operator and is available for inspection by the Department.

Stat. Auth.: ORS 448
Stats. Implemented: ORS 448.450, 448.455, 448.460, 448.465 & 448.994
Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 16-2001(Temp), f. 7-31-01, cert. ef. 8-1-01 thru 1-28-02; Administrative correction 3-14-02; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 4-2009, f. & cert. ef. 5-18-09

333-061-0270
Refusal, Suspension, or Revocation of Certification

(1) The Department may deny an applicant, suspend, or revoke a certification of competency for violation of any of these rules:

(a) The applicant obtained the certificate by fraud, deceit, or misrepresentation.

(b) The applicant has been grossly negligent, incompetent or has demonstrated misconduct in the performance of the duties of an operator or supervisor of a water distribution system or water treatment plant in Oregon or any other state, province or country.

(c) The applicant/operator has violated or failed to comply with any Department rule or order.

(d) The applicant/operator fails to comply with any Department investigation.

(e) Any person who knowingly makes any false statement or misrepresentation in any application, record, or other document filed with the Department.

(2) Any applicant whose application or certificate has been denied, suspended, or revoked has the right to appeal pursuant to ORS Chapter 183.

(3) No person whose certificate has been revoked under this rule is eligible to apply for certification for one year from the effective date of the final order of revocation. Any such person who applies for certification must meet all the requirements established for new applicants and pay a reinstatement fee.

Stat. Auth.: ORS 431 & 448

Stats. Implemented: ORS 431.110, 431.150, 448.450, 448.455, 448.460, 448.465 & 448.994

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 4-2009, f. & cert. ef. 5-18-09

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Rule Caption: WIC Vendor and Farmer Administration.

Adm. Order No.: PH 5-2009

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Rules Adopted: 333-054-0027, 333-054-0035, 333-054-0055, 333-054-0065

Rules Amended: 333-054-0010, 333-054-0020, 333-054-0025, 333-054-0030, 333-054-0040, 333-054-0050, 333-054-0060, 333-054-0070

Subject: The Department of Human Services, Public Health Division is adopting and amending administrative rules in chapter 333, division 54 as they pertain to vendors and farmers accepting a newly implemented format for supplemental food distribution known as cash value vouchers (CVVs). Additionally, clarifications and adjustments to definitions, the vendor agreement, violations and sanctions have been made to reflect current program vendor and farmer management practices.

Rules Coordinator: Sally Peters—(971) 673-0561

333-054-0010
Definitions

(1) "A50" means an authorized vendor or applicant that derives, or is expected to derive, more than 50 percent of its total annual food sales from WIC food sales. The total food sales do not include alcohol, tobacco, lottery or any other non-food item.

(2) "Abbreviated administrative review" means a hearing that is held at the request of a vendor that has been issued an application denial, civil money penalty, fine, or sanction by DHS. Abbreviated Reviews are facilitated by DHS staff other than the staff person that imposed the sanction. A facilitated discussion is held in order to resolve the imposition of a sanction.

(3) "Adequate participant access" means there are authorized vendors sufficient for participant need.

(4) "Annual Food Sales" means sales of all Food Stamp/Supplemental Nutrition Assistance Program (FSP/SNAP) eligible foods intended for home preparation and consumption including meat, fish, and poultry; bread and cereal products; dairy products; fruits and vegetables. Food items such as condiments and spices, coffee, tea, cocoa, and carbonated and non-carbonated drinks may be included in food sales when offered for sale along with foods in the categories identified above. Food sales do not include sales of any items that cannot be purchased with food stamp benefits, such as hot foods or food that will be eaten in the store.

(5) "Applicant" means any person, or person with an interest in the business, making a written request for authorization to participate in the WIC Program, including vendors and farmers that reapply for authorization.

(6) "Authorization" means the process by which DHS assesses, selects, and enters into agreements with stores and farmers that apply or subsequently reapply to be vendors or authorized farmers allowed to transact CVVs.

(7) "Authorized food" means any supplemental foods listed on the WIC Authorized Food List, food instrument or CVV.

(8) "Authorized shopper" means the participant or any person designated by a participant who has been documented as such at the local agency to act on the participant's behalf and, in the case of an infant or child, the caretaker or the caretaker's designee. This includes any representative posing as a participant or participant designee as authorized by DHS.

(9) "CFR" means Code of Federal Regulations.

(10) "Change of Ownership" means a change in the ownership or control of ten percent or more of any class of stock in a corporation; a change in, addition of or removal of a partner of any partnership; a change in ownership or control of ten percent or more of the total investment commitment in partnership; or a change in the owner of a sole proprietorship.

(11) "CMP" means civil money penalty.

(12) "Cash Value Voucher" or "CVV" means a fixed-dollar check, voucher, electronic benefit transfer (EBT) card or other document which is used by a participant to obtain WIC authorized fruits and vegetables.

(13) "Compliance buy" means a single covert, on-site visit in which a DHS authorized representative poses as an authorized shopper and attempts to transact, or transacts, one or more food instruments or CVVs.

(14) "DHS" means the Department of Human Services.

(15) "Disqualification" means cancelling the WIC program participation of a vendor or farmer, as a punitive action.

(16) "Farmer" means an individual who owns, leases, rents or sharecrops land to grow, cultivate or harvest crops on that land.

(17) "Farmer agreement" means a standard written legal contract between the farmer and DHS that sets forth responsibilities of the parties.

(18) "FNS" means the Food and Nutrition Service of the U. S. Department of Agriculture.

(19) "FSP" means the Food Stamp Program, of the Food and Nutrition Service of the U.S. Department of Agriculture.

(20) "Food instrument" means a WIC Program voucher, check, coupon or other WIC approved document, which is used to obtain authorized foods.

(21) "Full administrative review" means a formal hearing that is held before an assigned administrative law judge from the state Office of Administrative Hearings. Attorneys may be present to represent both parties. Formal procedures are followed as to the presentation of evidence, examination of documentation and cross-examination of witnesses in accordance with 7 CFR § 246.18 and ORS Chapter183.

(22) "Incentive item" means a food or non-food item offered free of charge to WIC shoppers to motivate them to shop at a particular store. Examples of incentive items include, but are not limited to, cash prizes, lottery tickets, transportation, sales/specials such as a buy-one-get one free or free additional ounces offer, and other free food or merchandise.

(23) "Inventory audit" means an examination of food invoices or other proofs of vendor purchases to determine whether a vendor has purchased sufficient quantities of authorized foods to support the vendor's claim for reimbursement for such foods from DHS during a specific period of time.

(24) "Investigation" means a period of review, beginning with the start of an inventory audit or the first compliance buy and closing when the audit has been completed or a sufficient number of compliance buys have been completed to provide evidence of compliance or non-compliance, not to exceed 24 months, to determine a vendor or farmer's compliance with program rules and procedures.

(25) "Local agency" means:

(a) A public or private non profit health or human services agency that provides health services, either directly or through contract, in accordance with 7 CFR § 246.5;

(b) An Indian Health Service unit;

(c) An Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an Indian Health Service unit; or

(d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an Indian Health Service unit.

(26) "Mid-Contract Assessment" means a procedure used by DHS to evaluate whether WIC authorized vendors/farmers continue to meet selection criteria throughout their agreement term.

(27) "Overcharge" means intentionally or unintentionally charging DHS more for authorized foods than the actual shelf price or the price charged to other shoppers.

(28) "Participant" means any pregnant woman, breastfeeding woman, post-partum woman, infant or child who receives authorized foods or food instruments or CVVs under the WIC Program, and the breastfed infant of any participating breastfeeding woman.

(29) "Pattern" means three or more of the same rule violation that occurs within a single investigation.

(30) "Peer group" means a group of vendors considered to be in the same category by DHS based on factors such as store type, store size and geography.

(31) "Person" means a human being, a public or private corporation, an unincorporated association, a partnership, a Limited Liability

Corporation, a sole proprietor, a government or a governmental instrumentality.

(32) "Person with an interest in the business" means an officer, director, partner, or manager of the business or a shareholder with 10 percent interest or more in the business.

(33) "Price adjustment" means an adjustment made by DHS, in accordance with the vendor/farmer agreement, to the purchase price on a food instrument or CVV, after it has been submitted by a vendor/farmer for redemption to ensure that the payment to the vendor/farmer for the food instrument or CVV complies with DHS price limitations.

(34) "Prominently displayed" means immediately noticeable by persons entering the vendor location.

(35) "Routine monitoring" means an overt, on-site visit in which DHS authorized representatives or federal officials identify themselves to vendor or farm personnel.

(36) "Shelf Price Survey" or "SPS" means a tool used by DHS to collect a sample of a WIC authorized vendor's current shelf prices.

(37) "Stand Alone Pharmacy" means a pharmacy that is operated independently from or is not located in a WIC authorized grocery store. These stores are exempt from the minimum stock requirements set forth for grocery vendors.

(38) "Store Run Pharmacy" means a pharmacy that is located within a WIC authorized grocery store and is affiliated with that business entity.

(39) "Termination" means the cancellation of a vendor or farmer agreement which may or may not be linked to a disqualification.

(40) "Trafficking" means buying or selling food instruments or CVVs for cash.

(41) "U.S.C." means United States Code.

(42) "Unauthorized food item" means foods and/or brands, and/or size not allowed on the WIC Authorized Food List. It also means foods not specified on a food instrument or CVV as eligible for purchase for that participant, with WIC benefits.

(43) "Vendor" means the current owner(s) or any person with an interest in the business, of any retail store location that is currently authorized by DHS to participate in the WIC Program. Vendor may also refer to the authorized store location.

(44) "Vendor agreement" means a standard written legal contract between the vendor and DHS that sets forth responsibilities of the parties.

(45) "Vendor Price List" means a comprehensive list of current authorized foods and minimum stock requirements, with current shelf prices completed by the vendor.

(46) "Violation" means an activity that is prohibited by OAR 333-054-0000 through 333-054-0070 and is classified in OAR 333-054-0050 and OAR 333-054-0055.

(47) "WIC Authorized Food List" means the supplemental foods approved by the State of Oregon.

(48) "WIC Program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. §1786.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.600
Stats. Implemented: ORS 409.600
Hist.: HD 7-1993, f. & cert. ef. 6-11-93; HD 31-1994, f. & cert. ef. 12-22-94; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09

333-054-0020
How a Vendor Becomes WIC Authorized

(1) Only vendors authorized by DHS may accept Oregon food instruments or CVVs in exchange for authorized foods.

(2) Application:

(a) An applicant shall submit a completed application to DHS, which includes:

(A) An application form;

(B) A Vendor Price List;

(C) A current Food Stamp Authorization number; and

(D) Any other documents or information required by DHS.

(b) DHS may limit the periods during which applications for vendor authorization will be accepted and processed. DHS will process applications, outside of the limited application period, if it determines the applicant's store is necessary to ensure adequate participant access in a specific geographic location.

(3) Selection Criteria: In order for DHS to consider authorizing an applicant, the applicant shall:

(a) Demonstrate and maintain competitive pricing as determined by DHS based on the applicant's shelf prices and as compared to data from the peer group appropriate to the applicant's characteristics. Such data may include redemption prices and/or shelf prices. If an applicant's store is necessary to ensure adequate participant access, it may be exempt from this requirement;

(b) Possess a current bank account number;

(c) Not have, within the previous six years, a criminal conviction or civil judgment involving fraud or any other offense related to the applicant's business integrity or honesty;

(d) Possess a current FSP authorization number. Pharmacies, military commissaries, and stores that are determined by DHS as necessary to provide adequate participant access shall be exempt from this selection requirement due to the nature of the services they provide for the WIC Program;

(e) Not have a history of serious violations with either the WIC Program or Food Stamp Program;

(f) Not be currently disqualified from participation in another state's WIC Program. DHS shall not authorize an applicant that has been assessed a CMP in lieu of disqualification by another state WIC Program until the period of the disqualification that would otherwise have been imposed has expired;

(g) Not be currently disqualified from participation in the Food Stamp Program. DHS shall not authorize an applicant that has been assessed a FSP civil money penalty in lieu of disqualification until the period of the disqualification that would otherwise have been imposed has expired unless this store has been determined necessary for participant access;

(h) Have a fixed location for each store;

(i) Stock representative items from all food categories specified on the Vendor Price List. Minimum quantities specified on the Vendor Price List shall be stocked or on order before authorization of an applicant:

(A) DHS may grant a written exception if the applicant is able to provide documentation that appropriate stock was on order at the time of the initial on-site review and will be in the store within 7 days;

(B) DHS may grant a written exception to this requirement for cases where there is no participant need in the applicant's area for a specific authorized food item, such as infant formula. DHS shall determine participant need based on the local agency's input regarding a vendor request for exception, vendor redemption data relative to the vendor's request, and the number of infants using formula in the vendor's store's zip code. If a local agency notifies the vendor of a specific need for that authorized food item, the vendor will ensure that the authorized food item is available within 7 days of the request;

(C) Pharmacies are exempt from this requirement; however, they shall obtain infant formula, including formula that requires a prescription, within 72 hours of a DHS or participant request.

(j) An applicant must purchase infant formula, which is to be sold to WIC shoppers, only from manufacturers, wholesalers, distributors, and retailers authorized by the Oregon WIC Program.

(k) Vendor must maintain and provide documentation of FSP/SNAP-eligible food sales throughout the contract period. According to USDA, §CFR 245.2, "Food sales" means sales of all foods that are eligible items under the FSP/SNAP. These foods are intended for home preparation and consumption and include:

(A) Meat, fish, and poultry;

(B) Bread and cereal products;

(C) Dairy products; and

(D) Fruits and vegetables.

(l) Food items such as condiments and spices, coffee, tea, cocoa, and carbonated and noncarbonated beverages may be included in food sales when offered for sale along with foods in the four primary categories. Food sales do not include sales of any items that are not approved for purchase with Food Stamp benefits, such as alcoholic beverages, hot foods, or foods that will be eaten on the store premises.

(m) Vendor must maintain and provide documentation and receipts showing source(s) of infant formula purchases.

(4) Authorization Requirements:

(a) DHS or the local agency shall conduct a documented on-site visit prior to, or at the time of, authorization of an applicant, including evaluating the inventory and condition of authorized foods and providing the applicant with the WIC Program information prior to or at the time of authorization;

(b) DHS shall conduct a live interactive training prior to or at the time of authorization. DHS shall designate the date, time, and location of the training, except that DHS shall provide the vendor with at least one alternate date on which to attend such training; and

(c) Once authorized, the vendor shall remain in compliance with the current selection criteria set forth in OAR 333-054-0020(3) for the duration of the vendor agreement. DHS shall disqualify the vendor at any time the vendor does not meet the current selection criteria.

(5) Application Denials: DHS shall give the applicant written notification of denial, in conformance with ORS chapter 183, as otherwise pro-

vided in these rules, DHS may deny an applicant authorization for reasons including, but not limited to, the following:

(a) The applicant's failure to meet the selection criteria;

(b) The applicant's failure to meet all of the WIC rules initially or for the duration of the vendor agreement;

(c) The applicant's store or business has been sold by its previous owner in an attempt to circumvent a WIC program sanction. In making this determination, DHS may consider such factors as whether the applicant's store or business was sold to a relative by blood or marriage of the previous owner(s) or sold to any person for less than its fair market value;

(d) The applicant's history of complaints, violations and/or sanctions;

(e) The applicant's refusal to accept training from the WIC program; or

(f) The applicant's misrepresentation of information on the application.

(6) Subsequent to authorization, an agreement may be terminated if it is found that the vendor provided false or omitted pertinent information during the authorization process.

Stat. Auth.: ORS 409.600
Stats. Implemented: ORS 409.600
Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09

333-054-0025
Above 50% Vendors (A50)

(1) An applicant that is likely to derive more than 50 percent of the store's annual food sales from WIC transactions will not be authorized except for cases of participant access hardship as determined solely by DHS.

(2) An existing A50 will be allowed to close a current location and open at a new location as long as there is no break in service to WIC participants.

(3) Provision of incentive items. DHS may not authorize or continue the authorization of an A50 vendor, or make payments to an A50 vendor which provides or indicates an intention to provide prohibited incentive items to customers. Evidence of such intent includes, but is not necessarily limited to, advertising the availability of prohibited incentive items.

(a) DHS may approve any of the following incentive items to be provided by A50 vendors to customers, at the discretion of DHS:

(A) Food, merchandise, or services obtained at no cost to the vendor, subject to documentation;

(B)Food, merchandise, or services of nominal value, i.e., having a per item cost of less than two dollars ($2), subject to documentation;

(C) Food sales and specials which involve no cost or less than two dollars ($2) in cost to the vendor for the food items involved, subject to documentation, and do not result in a charge to a WIC food instrument for foods in excess of the foods listed on the food instrument; and

(D) Minimal customary courtesies of the retail food trade, such as helping the customer to obtain an item from a shelf or from behind a counter, bagging food for the customer, and assisting the customer with loading the food into a vehicle.

(b) The following incentive items are prohibited for A50 vendors to provide to customers:

(A) Services which result in a conflict of interest or the appearance of such conflict for the A50 vendor, such as assistance with applying for WIC benefits;

(B) Lottery tickets provided to customers at no charge or below face value;

(C) Cash gifts in any amount for any reason;

(D) Anything made available in a public area as a complimentary gift which may be consumed or taken without charge;

(E) An allowable incentive item provided more than once per customer per shopping visit, regardless of the number of customers or food instruments involved, unless the incentive items had been obtained by the vendor at no cost or the total value of multiple incentive items provided during on shopping visit would not exceed the less than two dollar ($2) nominal value limit;

(F) Food, merchandise, or services of greater than nominal value provided to the customer;

(G) Food, merchandise sold to customers below cost, or services purchased by customers below fair market value;

(H) Any kind of incentive item which incurs a liability for the WIC Program; and

(I) Any kind of incentive item which violates any Federal, State, or local law or regulations.

(c) For-profit goods or services offered by the A50 vendor to WIC participants at fair market value based on comparable for-profit goods or services of other businesses are not incentive items subject to approval or prohibition, except that such goods or services must not constitute a conflict of interest or result in a liability for the WIC Program.

(4) If a currently authorized vendor is found to derive more than 50 percent of the store's annual food sales from WIC transactions DHS will terminate the vendor agreement unless the vendor is necessary for participant access.

Stat. Auth.: ORS 409.600
Stat. Implemented: ORS 409.600
Hist.: PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09

333-054-0027
How a Farmer Becomes WIC Authorized

(1) Only authorized farmers may accept CVVs from participants in exchange for eligible foods. Authorized farmers may not accept CVVs from unauthorized farmers.

(2) In order to be eligible for participation in the WIC program, a farmer applicant must:

(a) Grow, cultivate, or harvest fresh fruits, vegetables and cut herbs in Oregon or a bordering county in a contiguous state to sell to participants;

(b) Complete the farmer application and return it to the appropriate state office to verify eligibility; and

(c) Agree to follow the terms and conditions of the farmer agreement.

(3) Applications will be used to determine authorization for the WIC program.

(4) DHS and the WIC program are not required to authorize all applicants.

(5) Any individual who purchases all the produce they plan to sell is considered a distributor and is not allowed to participate in the WIC program as a farmer.

Stat. Auth.: ORS 409.600
Stats. Implemented: ORS 409.600
Hist.: PH 5-2009, f. & cert. ef. 6-1-09

333-054-0030
Vendor Agreements

(1) Each applicant who has been approved for authorization shall sign a vendor agreement.

(a) The term of a vendor agreement shall not exceed three years.

(b) The vendor agreement shall be signed by a representative of DHS and a representative of the vendor who has the legal authority to sign the vendor agreement and obligate the applicant to the terms of the vendor agreement.

(c) Failure to adhere to the vendor agreement is a violation and may result in a sanction.

(2) DHS shall provide a vendor with not less than 15 days advance written notice of the expiration of its vendor agreement.

(3) In the event of any change in store facilities that adversely impacts participants' ability to transact food instruments or CVVs (including, but not limited to store remodel, building damage, and equipment failure), DHS may terminate the vendor agreement.

(4) DHS shall immediately terminate the vendor agreement if it determines that the vendor has provided false information in connection with its application for authorization.

(5) Either DHS or the vendor may terminate the vendor agreement for cause after providing at least 15 days advance written notice to the other party. If DHS initiates the termination, it must offer the opportunity for appeal.

(6) DHS shall terminate a vendor agreement when DHS determines that there is a relationship, real or apparent, which jeopardizes the fair and objective administration of the program between a vendor and DHS or any of its local agencies.

(7) When a vendor has more than one store location, the vendor agreement shall include a list of each store's name and location. Individual store locations may be added or deleted, by amendment to the vendor agreement or disqualification of an individual store location, without affecting the remaining store locations. Each store location included in the vendor agreement shall meet all applicable laws and rules.

(8) Neither DHS nor the vendor is obligated to renew the vendor agreement.

(9) The vendor agreement does not constitute a license or property interest.

(10) DHS may terminate the vendor agreement if a vendor has not been selected for regular use by at least five (5) authorized shoppers during the six month period prior to the agency's review.

(11) The vendor agreement must include a requirement that the vendor comply with OAR 333-054-0000 to 333-054-0070 as applicable to vendors.

(12) The vendor agrees not to influence an authorized shopper's selection of authorized foods.

(13) The vendor agrees not to retain WIC identification or any information that identifies a shopper as a WIC participant or disclose information regarding a client of the WIC program to any person other than DHS, its representatives or a federal official.

(14) The vendor agrees to comply with terms in a final order issued by DHS or an investigation by federal or state officials.

(15) A vendor will not require authorized shoppers to pay for authorized foods during a WIC transaction other than with a food instrument or CVV. However, it is permissible for a vendor to request payment over the dollar amount listed on a CVV if the cost of the authorized purchase exceeds the CVV amount.

(16) A vendor shall provide DHS or a federal official access to food instruments or CVVs negotiated on requested dates.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.600
Stats. Implemented: ORS 409.600
Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09

333-054-0035
Farmer Agreements

(1) A farmer application/agreement must be signed by a representative who has legal authority to obligate the farmer.

(2) The farmer application/agreement must include a requirement that the farmer comply with OAR 333-054-0000 through 333-054-0070, as applicable to farmers.

(3) The farmer application/agreement will be valid for three years.

(4) Neither DHS nor the farmer is obligated to renew the agreement.

(5) An authorized farmer must comply with requirements contained in 7 CFR 246 and the terms and conditions of the farmer application/agreement.

Stat. Auth.: ORS 409.600
Stats. Implemented: ORS 409.600
Hist.: PH 5-2009, f. & cert. ef. 6-1-09

333-054-0040
Vendor and Farmer Monitoring

DHS shall monitor vendors and farmers for compliance with applicable laws and rules, which may include on-site investigation of selected vendors.

(1) DHS or its authorized representative must conduct compliance buys or inventory audits to collect evidence of improper vendor practices.

(2) DHS or its authorized representative shall conduct routine monitorings of selected vendors.

(3) DHS shall conduct covert compliance buys and/or routine monitorings of authorized farmers for compliance with DHS rules and regulations.

Stat. Auth.: ORS 409.600
Stats. Implemented: ORS 409.600
Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09

333-054-0050
Vendor Violation Notifications and Sanctions

(1) Prior warning:

(a) DHS must notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless DHS determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation.

(b) Prior to imposing a sanction for a pattern of violative incidences, DHS must either provide such notice to the vendor, or document in the vendor file the reason(s) for determining that such a notice would compromise an investigation.

(c) If notification is provided, DHS may continue its investigation after the notice of violation is received by the vendor, or presumed to be received by the vendor consistent with DHS' procedures for providing such notice.

(d) All incidences of a violation occurring during the first compliance buy visit must constitute only one incidence of that violation for the purpose of establishing a pattern of incidences.

(e) A single violative incidence may only be used to establish the violations as written in 333-054-0050(c) and 333-054-0050(d).

(2) Vendors shall receive a written "Notice of Non-compliance" for a single instance of:

(a) Failing to comply with Part 3 of the vendor's current vendor agreement;

(b) Failing to complete and return the Vendor Price List by the deadline set by DHS;

(c) Failing to complete and return the Shelf Price Survey (SPS) by the deadline set by DHS;

(d) Failing to provide the authorized shopper with a receipt for foods purchased with a food instrument or CVV;

(e) Failing to ensure that within 60 days of a name change the outside sign bears the same name as that listed on the vendor agreement;

(f) Influencing an authorized shopper's selection of authorized foods;

(g) Requesting or requiring any identification or information from the authorized shopper other than the WIC Program identification card;

(h) Selling expired authorized foods or infant formula to authorized shoppers;

(i) Failing to respond to a request issued by DHS;

(j) Failing to accept training when required by DHS;

(k) Using the "WIC" acronym or logos in an unauthorized manner;

(l) Failing to maintain or provide, to DHS upon request, invoices or receipts to show source(s) of formula purchase;

(m) Retaining WIC identification or any information that identifies a shopper as a WIC participant or disclosing information regarding a client of the WIC Program to any person other than DHS, its representatives or a federal official;

(n) Failing to comply with the terms in a final order issued by DHS;

(o) Failing to comply with an investigation by federal or state officials;

(p) Refusing DHS or a federal official access to food instruments or CVVs negotiated on the day of review;

(q) Failing to provide, within two business days of DHS' request, purchasing/receiving records to substantiate the volume and prices charged to DHS;

(r) Violating the nondiscrimination clause listed in the vendor agreement; and

(s) A50s only: Failing to maintain or provide, to DHS upon request, documentation for each incentive item.

(3) Sanctions:

(a) For the following violations, DHS shall disqualify a vendor for one year:

(A) A pattern of providing unauthorized food items in exchange for food instruments or CVVs, including charging for authorized food provided in excess of those listed on the food instrument;

(B) A pattern of failing to stock appropriate quantities of authorized foods and infant formula;

(C) A pattern of providing change when redeeming a food instrument or CVV;

(D) A pattern of allowing a refund or any other item of value in exchange for authorized foods or providing exchanges for authorized food items obtained with food instruments or CVVs, except for exchanges of an identical authorized food item when the original authorized food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized food item means the exact brand and size as the original authorized food item obtained and returned by the authorized shopper;

(E) A50s only: A pattern of providing WIC shoppers with incentive items or other merchandise and/or services not approved by DHS.

(b) For the following violations, DHS shall disqualify the vendor for three years:

(A) One incident of the sale of alcohol, an alcoholic beverage, or a tobacco product in exchange for a food instrument or CVV;

(B) Failing a DHS inventory audit;

(C) A pattern of claiming reimbursement for the sale of an amount of a specific authorized food item, which exceeds the store's documented inventory of that authorized food item for a specific period of time;

(D) A pattern of vendor overcharges;

(E) A pattern of receiving, transacting and/or redeeming food instruments or CVVs outside of authorized channels or locations. This includes, but is not limited to use of an unauthorized vendor and/or unauthorized person, and/or redemption of food instruments or CVVs outside of an authorized store location;

(F) A pattern of charging for foods not received by the authorized shopper; and

(G) A pattern of providing credit or non-food items in exchange for food instruments or CVVs, other than those items listed in OAR 333-054-0050(3)(c) and 333-054-0050(3)(d).

(c) For the following violations, DHS shall disqualify the vendor for six years:

(A) One incident of buying or selling a food instrument or CVV for cash (trafficking); or

(B) One incident of selling a firearm, ammunition, explosive, or controlled substance, as defined in 21 U.S.C. § 802, in exchange for a food instrument or CVV.

(d) DHS shall permanently disqualify a vendor convicted of trafficking in food instruments or CVVs or selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. § 802 in exchange for a food instrument or CVV.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.600
Stats. Implemented: ORS 409.600
Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09

333-054-0055
Farmer Violations and Sanctions

(1) A farmer is in violation if a farmer fails to comply with WIC program rules and the terms and conditions of the farmer application/agreement or fails to respond to requests, implement corrective action, or comply with the terms in final orders as directed by DHS.

(2) Farmer Sanctions:

(a) CVVs that are not stamped with the farmer's DHS-assigned identification number will be returned to the farmer without payment;

(b) CVVs redeemed with the following violations will not be reimbursed:

(A) Accepting a CVV before the "First Day To Use" or after the "Last Day To Use;"

(B) Failing to enter the actual purchase price in the designated box;

(C) Failing to obtain the authorized shoppers signature at the time of the transaction, in the designated box, on the front of the CVV accepted for payment.

(c) DHS may issue a written notification of non-compliance to an authorized farmer for an initial incident of:

(A) Accepting CVVs for ineligible foods;

(B) Failing to prominently display the official sign provided by DHS, each market day when at authorized farmers' markets or authorized farm stands;

(C) Failing to provide WIC shoppers with the full amount of product for the value of each CVV;

(D) Failing to ensure that WIC shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(E) Failing to reimburse DHS for CVVs that are improperly transacted;

(F) Charging sales tax on CVV purchases;

(G) Seeking restitution from WIC participants for CVVs not paid by DHS;

(H) Giving cash back for purchases less than the value of the CVV (providing change);

(I) Accepting CVVs from an unauthorized farmer;

(J) Failing to respond to requests, implement corrective action, or comply with the terms in final orders as directed by DHS;

(K) Using CVVs for any purpose other than to deposit or cash them at the authorized farmer's financial institution; and

(L) Failing to cooperate with staff from DHS or the Oregon Department of Agriculture in monitoring for compliance with program requirements and failing to provide information that DHS or the Oregon Department of Agriculture may require.

(d) DHS may disqualify a farmer for six months for an initial incident of providing credit in exchange for CVVs.

(e) DHS may disqualify a farmer for six months, for second or subsequent incidents of:

(A) Accepting CVVs for ineligible foods;

(B) Failing to prominently display the official sign provided by DHS, each market day when at authorized farmers' markets or authorized farm stands;

(C) Failing to provide WIC shoppers with the full amount of product for the value of each CVV;

(D) Failing to ensure that WIC shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(E) Charging sales tax on CVV purchases;

(F) Seeking restitution from WIC participants for CVVs not paid by DHS;

(G) Using CVVs for any purpose other than deposit or cash at the authorized farmer's financial institution;

(H) Charging WIC participants higher prices than other customers;

(I) Giving cash back for purchases less than the value of the CVV (providing change);

(J) Accepting CVVs from an unauthorized farmer; and

(K) Failing to respond to requests, implement corrective action, or comply with the terms in final orders as directed by DHS.

(f) DHS may disqualify a farmer for one year following second or subsequent incidents of:

(A) Failing to reimburse DHS for CVVs that are improperly transacted; or

(B) Failing to cooperate with staff from DHS or the Oregon Department of Agriculture in monitoring for compliance with program requirements and failing to provide information required to be submitted by DHS or the Oregon Department of Agriculture.

(g) DHS may immediately disqualify a farmer for three years for an incident of:

(A) Trafficking in CVVs (exchanging checks for cash, controlled substances, tobacco products, firearms, or alcohol) in any amount; or

(B) A USDA substantiated violation of laws regarding non-discrimination, and applicable USDA instructions.

Stat. Auth.: ORS 409.600
Stat. Implemented: ORS 409.600
Hist.: PH 5-2009, f. & cert. ef. 6-1-09

333-054-0060
Vendor Disqualifications

(1) A vendor may not apply for authorization during a period of disqualification from the WIC Program.

(2) DHS shall not accept a vendor's voluntary withdrawal from the WIC Program as an alternative to disqualification. In addition, DHS may not use non-renewal as an alternative to disqualification.

(3) DHS shall disqualify a vendor that does not pay, partially pays or fails to timely pay, a CMP assessed in lieu of disqualification, for the length of the disqualification corresponding to the violation for which the CMP was assessed.

(4) In order to participate in the WIC program after a vendor is disqualified, it must apply for authorization after the disqualification period has passed.

(5) DHS shall disqualify a vendor for a period corresponding to the most serious sanction during the course of a single investigation when DHS determines the vendor has committed multiple violations. DHS shall include all violations in the notice of administrative action. If a sanction for a specific violation is not upheld after the hearing or appeal, DHS may impose a sanction for any remaining violations.

(7) If the basis for disqualification of a vendor is for violation of OAR 333-054-0050(3)(d), the effective date of the disqualification is the date the vendor received notice, either actual or constructive, of the disqualification.

(8) DHS may disqualify a vendor that has been disqualified or assessed a CMP in lieu of disqualification by another WIC state agency for a mandatory sanction.

(a) The length of the disqualification shall be for the same length of time as the disqualification by the other WIC state agency or, in the case of a CMP in lieu of disqualification assessed by the other WIC state agency, for the same length of time for which the vendor would otherwise have been disqualified. The disqualification may begin at a later date than the sanction imposed by the other WIC state agency.

(b) If DHS determines that disqualification of a vendor would result in inadequate participant access, DHS shall not impose a CMP in lieu of disqualification.

(9) DHS shall disqualify a vendor who has been disqualified from the FSP/SNAP. The disqualification shall be for the same length of time as the FSP/SNAP disqualification, although it may begin at a later date than the FSP/SNAP disqualification. Such disqualification by the WIC program shall not be subject to administrative or judicial review under the WIC program.

(a) DHS may disqualify a vendor who has been assessed a CMP in lieu of disqualification in the FSP, as provided in 7 CFR § 278.6. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the FSP/SNAP. DHS shall determine if the disqualification of a vendor would result in inadequate participant access prior to disqualifying a vendor for FSP/SNAP disqualification pursuant to paragraph (9) of this rule or for any of the violations listed in this rule. If DHS determines that disqualification of the vendor would result in inadequate participant access, DHS shall not disqualify or impose a CMP in lieu of disqualification. DHS shall include participant access documentation in vendor files.

(b) DHS shall provide the appropriate FNS office with a copy of the notice of adverse action and information on vendors it has disqualified. This information shall include the vendor's name, address, identification number, the type of violation(s), length of the disqualification, or the length of

the disqualification corresponding to the violation for which a FSP/SNAP CMP was assessed.

(10) Disqualification from the WIC Program may result in disqualification as a retailer in the FSP/SNAP. Such disqualification may not be subject to administrative or judicial review under the FSP/SNAP.

(11) Prior to disqualifying a vendor, DHS shall determine if disqualification of the vendor would result in inadequate participant access.

(a) If DHS determines that disqualification of the vendor would result in inadequate participant access, DHS shall not disqualify the vendor and shall impose a CMP in lieu of disqualification.

(b) DHS shall include documentation of its participant access determination and any supporting documentation in the vendor's file.

(c) DHS shall not impose a CMP in lieu of disqualification for third or subsequent sanctions, even if the disqualification results in inadequate participant access.

(d) DHS shall not impose a CMP in lieu of disqualification for trafficking or an illegal sales conviction, even if the disqualification results in inadequate participant access.

(12) Pursuant to 7 CFR 246.12 (l)(1), DHS shall use the following formula to calculate a CMP imposed in lieu of disqualification:

(a) Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of administrative action is dated;

(b) Multiply the average monthly redemptions figure by 10 percent (.10); and

(c) Multiply the product from paragraph (10)(b) of this rule by the number of months for which the store would have been disqualified. This is the amount of the CMP, provided that the CMP shall not exceed $11,000 for each violation. For a violation that warrants permanent disqualification, the amount of the CMP shall be $11,000. DHS shall impose a CMP for each violation when during the course of a single investigation DHS determines a vendor has committed multiple violations. The total amount of CMPs imposed for violations cited as part of a single investigation shall not exceed $44,000.

(13) DHS shall use the formula in section (10)(a) through (c) of this rule to calculate a CMP in lieu of disqualification for any violation under 333-054-0050(3)(a). DHS has the discretion to reduce the amount of this CMP in quarterly increments, after reviewing the following criteria:

(a) Whether the vendor had other WIC violations or complaints within the 12 months immediately proceeding the month the notice of administrative action is dated;

(b) The degree of severity of the violations and/or complaints in (11)(a);

(c) If the vendor being sanctioned is part of a multi-store chain, whether there is a pattern within the corporation of violations and the seriousness of those violations; and

(d) The degree of cooperation shown by the vendor, demonstrated by the vendor's willingness to schedule staff training and to make changes in store operations based on DHS recommendations.

(14) DHS shall, where appropriate, refer vendors who abuse the WIC Program to appropriate federal, state or local authorities for prosecution under applicable statutes.

(15) A vendor who commits fraud or abuse of the Program is subject to prosecution under applicable federal, state or local laws. A vendor who has embezzled, willfully misapplied, stolen or fraudulently obtained program funds, assets, or property shall be subject to a fine of not more than $25,000 or imprisonment for not more than five years or both, if the value of the funds is $100 or more. If the value is less than $100, the penalties are a fine of not more than $1,000 or imprisonment for not more than one year or both.

(16) A vendor may be subject to actions in addition to the sanctions in this rule, such as claims by DHS of reimbursement for improperly redeemed food instruments or CVVs and penalties outlined in 7 CFR § 246.12(1)(2)(i).

(17) DHS shall use the following criteria to determine inadequate participant access:

(a) The availability of other authorized vendors within a 15-mile radius;

(b) Accessibility to public transportation;

(c) Physical geographic barriers;

(d) Catering to a specific minority population;

(e) Local agency recommendations based upon identified participants' needs;

(f) Unavailability of public transportations and roads; and

(g) Number of WIC participants living near the vendor.

(18) Any time DHS uses criteria in (17) of this rule, DHS shall include participant access documentation in vendor file.

(19) DHS shall not reimburse for food instruments or CVVs submitted by a vendor for payment during a period of disqualification.

(20) A vendor is not entitled to receive any compensation for revenues lost as a result of a disqualification.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 409.600
Stats. Implemented: ORS 409.600
Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09

333-054-0065
Farmer Disqualifications

(1) Farmers who do not comply with WIC program requirements are subject to sanctions, including fines, in addition to, or in lieu of, disqualification.

(a) Prior to disqualifying a farmer, DHS may determine if disqualification of the farmer would result in inadequate participant access. If DHS determines that disqualification of the farmer would result in inadequate participant access, DHS may impose a CMP in lieu of disqualification in the amount of 5 percent of the farmer's CVVs sales over the last twelve months or $250.00, whichever is greater.

(b) DHS must give written notice to a farmer of an action proposed to be taken against a farmer, not less than fifteen days before the effective date of the action. The notice must state what action is being taken, the effective date of the action, and the procedure for requesting a hearing.

(c) A farmer that has been disqualified from the WIC program may reapply at the end of the disqualification period.

(d) DHS may accept a farmer's voluntary withdrawal from the program as an alternative to disqualification. If a farmer chooses to withdraw in lieu of disqualification, the farmer may not apply for participation until the following year.

(e) DHS will not reimburse farmers who have been disqualified or have withdrawn in lieu of disqualification.

(f) Fines must be paid to DHS within the time period specified in the Notice.

(2) A farmer who commits fraud or abuse of the WIC program is subject to prosecution under applicable federal, state or local laws.

Stat. Auth.: ORS 409.600
Stats. Implemented: ORS 409.600
Hist.: PH 5-2009, f. & cert. ef. 6-1-09

333-054-0070
Administrative Review

(1) DHS shall provide a full administrative review in accordance with the provisions of ORS chapter 183 for the following, as applicable:

(a) Denial of authorization based on a determination that the vendor or farmer is attempting to circumvent a sanction;

(b) Termination of an agreement for cause;

(c) Disqualification;

(d) Imposition of a fine or a CMP in lieu of disqualification; and

(e) Denial of authorization based on the vendor selection criteria for competitive price or minimum variety and quantity of authorized WIC foods.

(2) DHS may provide a vendor with an abbreviated or full administrative review in accordance with the provisions of ORS chapter 183 for the following, as applicable:

(a) Denial of authorization based on selection criteria for business integrity or for a current FSP disqualification or CMP penalty for hardship;

(b) Denial of authorization based on a DHS selection criteria for previous history of WIC sanctions or FSP withdrawal of authorization or disqualification;

(c) Denial of authorization based on DHS' limiting criteria;

(d) Termination of an agreement because of a change in ownership or location or cessation of operations;

(e) Disqualification based on a trafficking conviction;

(f) Disqualification based on the imposition of an FSP CMP for hardship;

(g) Disqualification or CMP based on a USDA mandatory sanction from another state WIC agency; and

(h) Application of criteria used to determine whether a store is an A50.

(3) The vendor or farmer shall not be entitled to an administrative review for the following actions, as applicable:

(a) The validity or appropriateness of DHS' limiting or selection criteria;

(b) The validity or appropriateness of DHS' participant access criteria and DHS' participant access determinations;

(c) DHS' determination regarding whether an effective policy and program in effect to prevent trafficking regardless of the vendor or farmer's awareness, approval, and/or involvement in the violation activity;

(d) Denial of authorization if DHS vendor authorization is subject to the procurement procedures applicable to DHS;

(e) The expiration of the agreement;

(f) Disputes regarding food instrument or CVV payments and claims;

(g) Disqualification of a vendor as a result of disqualification from FSP/SNAP;

(h) DHS' determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction;

(i) DHS' determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required;

(j) The validity or appropriateness of DHS' criteria used to determine whether or not a vendor is an A50 store; and

(k) The validity or appropriateness of DHS' prohibition of incentive items and DHS' denial of an A50 vendor's request to provide an incentive item to customers.

(4) A request for a hearing must be in writing and must be received within thirty (30) days from the date of the notice describing the proposed action.

(5) DHS may, at its discretion, permit the market or farmer to continue participating in the program pending the outcome of an administrative hearing. The farmer may be required to repay funds for CVVs redeemed during the pendency of the hearing, depending on the hearing outcome.

(6) If an agreement expires during the appeal period, DHS will accept application for renewal and delay determination until all appeals have been exhausted.

Stat. Auth.: ORS 409.600
Stats. Implemented: ORS 409.600
Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09

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

Rule Caption: Family Support Services for Children with Developmental Disabilities.
Adm. Order No.: SPD 4-2009
Filed with Sec. of State: 6-1-2009
Certified to be Effective: 6-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 411-305-0010, 411-305-0020, 411-305-0030, 411-305-0050, 411-305-0080, 411-305-0090, 411-305-0110, 411-305-0120, 411-305-0140, 411-305-0160, 411-305-0170, 411-305-0180
Rules Repealed: 411-305-0040
Rules Ren. & Amend: 411-305-0060 to 411-305-0105, 411-305-0070 to 411-305-0025, 411-305-0100 to 411-305-0027, 411-305-0130 to 411-305-0115, 411-305-0150 to 411-305-0023
Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently revising the family support services rules in OAR chapter 411, division 305 to adopt the recommendations of the Children's Budget Note Steering Committee that was convened at the request of the 2005 Oregon Legislature.
Rules Coordinator: Christina Hartman—(503) 945-6398

411-305-0010
Statement of Purpose, Principles, and Statutory Authority

(1) PURPOSE. The rules in OAR chapter 411, division 305 prescribe standards, responsibilities, and procedures for providing family support services to children with developmental disabilities and their families within the principles and philosophy that are the foundation of all developmental disability services. Family support services are a social benefit provided to all children with developmental disabilities who are eligible to receive case management services through a community developmental disability program. Family support services and available funding are intended to reach as many children and families as possible and are individualized to each family. Family support services foster and strengthen flexible networks of community-based, private, public, formal, informal, family-centered, and family-directed supports designed to increase families' abilities to care for children with developmental disabilities and to support the integration and inclusion of children with developmental disabilities into all aspects of community life.

(2) PRINCIPLES AND PHILOSOPHY. Family support services are individualized and built on the principles of family support and self-determination. The principles of family support, as outlined in ORS 417.342, are based on the belief that all individuals, regardless of disability, chronic illness, or special need, have the right to a permanent and stable family and that supporting families in caring for their children at home is in the best interest of the children, families, and communities. The principles of self-determination are based on the belief that the surest, most cost effective ways to foster and preserve family and community membership may be constructed and managed by those receiving 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 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2000, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0020
Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" mean activities usually performed in the course of a normal day in a 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 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 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 Plan is the only plan of care required by the Seniors and People with Disabilities Division for a child receiving family support services.

(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) "Case Management" means an organized service to assist individuals to select, obtain, and utilize resources, and monitor services.

(6) "Child" means an individual under the age of 18 and eligible for family support services.

(7) "Child and Family-Centered Planning" means a process, either formal or informal, for gathering and organizing information that:

(a) Facilitates the full participation, choice, and control by families of children with developmental disabilities in decisions relating to the supports that meet the priorities of the family;

(b) Responds to the needs of the entire family in a timely and appropriate manner;

(c) Is easily accessible to and usable by families of children with disabilities;

(d) Helps a child and family to determine and describe choices about the child's life and goals and to design strategies for supporting the child and family in pursuit of these goals;

(e) Helps the child, the family, and others chosen by the child or the child's parent or guardian to identify and use existing abilities, relationships, and resources to strengthen naturally occurring opportunities for support in the family home and in the community; and

(f) Is conducted in a manner and setting consistent with the child's and family's needs and preferences, including but not limited to simple interviews with the child and family, informal observations in the family home and community settings, or formally structured meetings.

(8) "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 contract with the Seniors and People with Disabilities Division or a local mental health authority.

(9) "Cost Effective" means that in the opinion of the services coordinator, a specific service or support meets the child's service needs and costs less than, or is comparable to, other service options considered.

(10) "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.

(11) "DHS" means the Department of Human Services.

(12) "Direct Assistance Funds" mean public funds contracted by the Department of Human Services to the community developmental disability program to assist families with purchase of supports for children in family support services according to each child's assessed need and the child's Annual Plan.

(13) "Employer-Related Supports" mean activities that assist a family with directing and supervising provision of services described in a child's Annual 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.

(14) "Family" for determining a child's eligibility for family support services 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.

(15) "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.

(16) "Family Satisfaction" means the extent to which a service or support meets a need, solves a problem, or adds value for a family, as determined by the family receiving the service or support.

(17) "Family Support" means individualized planning and service coordination, assisting families to access information and supports required by the child for the child to live in the family home, and access to funding when available. Supports, resources, and other assistance are designed to:

(a) Support families in their efforts to raise their children with disabilities in the family home;

(b) Strengthen the role of the family as the primary caregiver;

(c) Support families in determining their needs and in making decisions concerning necessary, desirable, and appropriate services;

(d) Promote the use of existing formal and informal supports and social networks, strengthening natural sources of support, and helping build connections to existing community resources and services; and

(e) Involve youth with disabilities in decision-making about their own lives, consistent with their unique strengths, resources, priorities, concerns, abilities, and capabilities.

(18) "Family Support Policy Oversight Group" means a group appointed by the community developmental disability program to provide consumer-based leadership and advice regarding family support issues such as development of policy, evaluation of services, and use of resources. The Family Support Policy Oversight Group may be a subgroup of an advisory body that has a broader scope or it may be a separate body with a specific focus on family support services.

(19) "Fiscal Intermediary" means a person or entity that receives and distributes direct assistance funds on behalf of the family of an eligible child who employs persons to provide services, supervision, or training in the home or community according to the child's Annual Plan.

(20) "General Business Provider" means an organization or entity selected by the parent or guardian of an eligible child, and paid with direct assistance 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.

(21) "Guardian" means a person or agency appointed by the courts that is authorized by the court to make decisions about services for the child.

(22) "Incident Report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving a child.

(23) "Independence" means the extent to which individuals exert control and choice over their own lives.

(24) "Independent Provider" means a person selected by a child's parent or guardian and paid with direct assistance funds that personally provide services to the child.

(25) "Individual" means a child with developmental disabilities for whom services are planned and provided.

(26) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources used by and available to other persons;

(b) Participation by individuals 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 reside in homes that are in proximity to community resources and foster contact with persons in their community.

(27) "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.

(28) "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.

(29) "OHP" means the Oregon Health Plan.

(30) "Parent" means biological parent, adoptive parent, or stepparent.

(31) "Plan Year" The initial plan year begins on the start date specified on the child's first Annual Plan after entry into services are authorized by the child's parent or guardian and the services coordinator and ends in 365 days. A plan year may not exceed twelve consecutive months.

(32) "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.

(33) "Primary Caregiver" means the child's parent, guardian, relative, or other non-paid parental figure that provides the direct care of the child at the times that a paid provider is not available.

(34) "Provider Organization" means an entity selected by a child's parent or guardian, and paid with direct assistance 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.

(35) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(36) "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, 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 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 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.

(37) "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 the child's Annual Plan, and acts as a proponent for children with developmental disabilities and their families.

(38) "Social Benefit" means a service or financial assistance provided to a family solely intended to assist a child to function in society on a level comparable to that of a person who does not have such a developmental disability. Social benefits are pre-authorized by and provided according to the description and financial limits written in an eligible child's Annual Plan. Social benefits may not:

(a) Duplicate benefits and services otherwise available to persons regardless of developmental disability;

(b) Replace normal parental responsibilities for the child's services, education, recreation, and general supervision;

(c) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons 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.

(39) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(40) "Support" means assistance eligible children and their families require, solely because of the effects of developmental disability on the child, to maintain or increase the child's age-appropriate independence, achieve a child's age-appropriate community presence and participation, and to maintain the child in the family home. Support is flexible and subject to change with time and circumstances.

(41) "These Rules" mean the rules in OAR chapter 411, division 305.

Stat. Auth.: ORS 409.050, 410.070 & 417.346
Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2010, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0023
Family Support Services Administration and Operation

(1) FAMILY LEADERSHIP. The CDDP may appoint a Family Support Policy Oversight Group to advise and assist the CDDP in matters related to family support services such as evaluating the effectiveness of family support services, evaluating family satisfaction with family support services, improving availability of resources to meet children's support needs, and developing the plan for management of the direct assistance funds required by OAR 411-305-0090(1). When the CDDP elects to appoint such a group, the CDDP must develop and have available for review brief written descriptions of the group's purpose and scope, how membership is determined, and what process shall be used to resolve concerns or disagreements between the CDDP and the CDDP's Family Support Policy Oversight Group about the provision of family support services.

(2) SERVICES COORDINATOR TRAINING. The CDDP must provide or arrange for services coordinators to receive SPD-approved training needed to provide family support services, including but not limited to:

(a) Accessing community resources, information, and referral services;

(b) Child and family-centered planning processes;

(c) Employer-related supports; and

(d) Individualized budgeting for supports.

(3) 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 direct assistance 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 family home or community. In this capacity, the fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(4) 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 though 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 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 family support services 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 family support services as well as the date the child was placed on the wait list for direct assistance funds.

(B) Records related to receipt and disbursement of direct assistance funds, including type of fund used, expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-305-0140, and documentation of family acceptance or delegation of record keeping responsibilities outlined in this rule;

(C) Incident reports involving CDDP staff;

(D) Assessments used to determine supports required, preferences, and resources;

(E) The child's Annual Plan and reviews;

(F) Services coordinator correspondence;

(G) Services coordinator progress notes documenting case management activities, action plans, 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 family support services 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.

(5) COMPLAINTS AND APPEALS. The CDDP must provide for review of complaints and appeals by or on behalf of children related to family support services as set forth in OAR 411-320-0170(2)(c).

Stat. Auth.: ORS 409.050, 410.070, & 417.346
Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, & 430.610 - 430.695
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2150, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; Renumbered from 411-305-0150, SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0025
Required Family Support Services

(1) The CDDP must provide or arrange for the following services to support all children enrolled in developmental disability and family support case management services.

(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; and

(C) Assistance for families and children (as appropriate for age) to effectively put the child's Annual Plan into practice including help to monitor and improve the quality of personal supports and to assess and revise the child's Annual Plan goals.

(b) INFORMATION AND REFERRAL.

(A) Assistance with development and expansion of community resources required to meet the support needs of children and families;

(B) Assistance for families to find and arrange the resources to provide planned supports; and

(C) Access to information, education, technical assistance, community resources, and parent-to-parent groups.

(c) EMPLOYER-RELATED SUPPORTS.

(A) Fiscal intermediary services in the receipt and accounting of direct assistance 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 for with direct assistance funding.

(d) ACCESS TO FUNDING. Access to direct assistance and immediate access funds when available.

(2) The CDDP must develop and implement a process for informing families about family support services. The CDDP must provide accurate, up-to-date information that must include:

(a) A declaration of the family support services philosophy;

(b) The process for accessing direct assistance and immediate access funds for determining how much assistance with purchasing supports shall be available;

(c) Common processes encountered in using family support services, including how to raise and resolve concerns about family support services;

(d) Clarification of CDDP employee responsibilities as mandatory reporters of child abuse;

(e) A description of family responsibilities in regard to use of public funds;

(f) An explanation of family rights to select and direct the providers, qualified according to OAR 411-305-0140, to provide supports authorized through the eligible child's Annual Plan and purchased with direct assistance funds; and

(g) An assurance that additional information about family support services shall be made available at the family's request. Additional information may include but is not limited to:

(A) A description of the CDDP's organizational structure;

(B) A description of any contractual relationships the CDDP has in place or may establish to accomplish the family support service functions required by rule; and

(C) If applicable, a description of the relationship between the CDDP and the CDDP's Family Support Policy Oversight Group.

(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 - 430.695
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2060, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; Renumbered from 411-305-0070, SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0027
Financial Limits of Family Support Services

(1) In any plan year, the CDDP shall determine the actual amount a family may access from the direct assistance fund consistent with the intent to serve as many children as possible and not to exceed the maximum limits established by SPD. Funds are made available on a first-come, first-served basis unless the CDDP submits an alternative practice approved by SPD. Unique financial limits may apply to individual categories.

(2) Estimates used to establish the limits of financial assistance for specific services in the child's Annual Plan 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 CDDP's own documentation.

(b) The CDDP must establish a process for review and approval of all purchases that exceed the SPD rate guidelines and must monitor authorized Annual Plans for continued cost effectiveness.

Stat. Auth.: ORS 409.050, 410.070, & 417.346
Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, & 430.610 - 430.695
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2090, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; Renumbered from 411-305-0100, SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0030
Eligibility for Family Support Services

(1) NON-DISCRIMINATION. Families of children determined eligible according to section (2) of this rule may not be denied family support 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. A child is eligible for family support services when the child:

(a) Is determined eligible for developmental disability services by the CDDP and enrolled into case management services;

(b) Is under the age of 18; and

(c) Lives in the family home and does not receive other paid in-home services other than State Medicaid Plan personal care services, adoption assistance, or SPD-funded short-term crisis diversion services provided to prevent out-of-home placement.

(3) CONCURRENT ELIGIBILITY. Children are not eligible for family support services 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 - 430.695
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2020, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0050
Family Support Services Enrollment, Duration, and Exit

(1) ENROLLMENT. A child, who meets the eligibility requirements in OAR 411-305-0030(2), is considered enrolled in family support services when:

(a) The child is enrolled in case management services; and

(b) The family has not declined family support services as documented in the child's Annual Plan.

(2) DURATION OF SERVICES. Once a child has entered a CDDP's family support services, 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 child remains eligible for developmental disability services, the child's Annual Plan is developed and kept current, the need for family support services remains, and the child has not entered SPD-funded comprehensive services.

(3) EXIT. A child must leave a CDDP's family support services:

(a) At the written request of the child's parent or guardian to end the service relationship;

(b) At the end of the last day of the month during which the child turns 18;

(c) 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; or

(d) 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 Plan development and monitoring activities and does not respond to the notice of intent to terminate; or

(B) 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 Plan, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with family support 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 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2040, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0080
Family Support Services Annual Plan

(1) The CDDP must provide or arrange for an annual planning process to assist families in determining needs, planning for supports, establishing outcomes, and reviewing and redesigning support strategies for all children eligible for family support services. The CDDP, the child (as appropriate for age), and the child's family must develop a written Annual Plan as a result of the annual planning process within the first 90 days of entry in case management and family support services and annually thereafter as long as the child is enrolled in case management and family support services. The child's Annual Plan must be conducted on forms provided by SPD and must include but not be limited to:

(a) The eligible child's first and last name and the name of the child's parent if different than the child's name or the name of the child's guardian;

(b) A description of the child's support needs, including the reason the support is necessary, and any referrals to information or community resources that meet the child's support needs as described in OAR 411-305-0025(1);

(c) Beginning and end dates of the plan year as well as when specific activities and supports are to begin and end;

(d) Projected direct assistance fund costs, if any, limited to the current fiscal year, with sufficient detail to support estimates;

(e) The types of supports to be purchased with direct assistance funds, including the type of provider;

(f) The proposed schedule of the child's Annual Plan reviews; and

(g) Signatures of the child's services coordinator, the child's parent or guardian, and the child (as appropriate for age).

(2) The child's Annual Plan and records supporting development of each child's Annual Plan must include evidence that:

(a) Family members, the child (as appropriate for age), and others of the family's choosing have participated in the planning process;

(b) Direct assistance funds are used only to purchase goods or services necessary for a child to be supported in the family home;

(c) The services coordinator has assessed the availability of other means for providing the supports before using direct assistance funds and other public, private, formal, and informal resources available to the child have been applied and new resources have been developed whenever possible;

(d) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(e) Informed decisions by the child's parent or guardian regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(f) Education and support for the child and the child's family to recognize and report abuse.

(3) The CDDP may not use direct assistance funds to implement any plan proposed and written as a result of assistance with planning provided by someone other than the child's services coordinator until the child's services coordinator determines that the new plan meets the applicable requirements of sections (1) and (2) of this rule. In such cases, the services coordinator's signature on the plan shall indicate acceptance of the plan as the child's Annual Plan.

(4) The CDDP may not commit direct assistance funds through the child's Annual Plan beyond the current fiscal year.

(5) The services coordinator must obtain and attach a Nursing Care Plan to the child's Annual Plan when direct assistance funds are used to purchase services requiring the education and training of a nurse.

(6) The services coordinator must conduct and document reviews of the child's Annual Plan and resources with families as follows:

(a) At least quarterly, review and reconcile receipts and records of purchased supports authorized by the child's Annual Plan and subsequent Annual Plan documents;

(b) At least annually, and as major activities or purchases are completed:

(A) Evaluate progress toward achieving the purposes of the child's Annual Plan;

(B) Record final direct assistance funds costs;

(C) Note effectiveness of purchases based on services coordinator observation as well as family satisfaction; and

(D) Determine whether changing needs or availability of other resources have altered the family's Annual Plan content needs or for use of direct assistance funds to purchase supports.

(7) The originating CDDP must assist family support recipients when the family and eligible child move to a county outside its area of service by:

(a) Coordinating the application for case management services in the new CDDP; and

(b) Arranging orientation for the child and family to family support services provided by the CDDP of the new county of residence, including transferring the child's file and the child's Annual Plan information, informing the family of how to apply for services in the new CDDP, and coordinating official transition date.

Stat. Auth.: ORS 409.050, 410.070 & 417.346
Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2070, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0090
Managing and Accessing Family Support Funds

(1) The CDDP must develop and implement a written plan for managing access to assistance with purchasing supports through the direct assistance fund using forms and procedures prescribed by SPD which includes but is not limited to:

(a) The number of children anticipated to receive direct assistance funding each year; and

(b) The number of children on the wait list for funding.

(2) The CDDP must review direct assistance fund purchases and obligations at least every 90 days.

(3) DIRECT ASSISTANCE FUNDS. Assistance with the purchase of supports through the direct assistance fund is offered on a first-come, first-served basis consistent with the intent to serve as many children as possible and, unless otherwise approved by SPD on the plan described in section (1) of this rule, as long as direct assistance funds are available. The CDDP must determine the actual amount of funds a family may access per plan year from the direct assistance fund not to exceed the maximum limit established by SPD. Direct assistance funds may be used to purchase one or more of the supports described in OAR 411-305-0120 for children as supported by each child's Annual Plan and supporting expenditure documents.

(4) IMMEDIATE ACCESS FUNDS. The CDDP must utilize the designated percentage of funds established by SPD to address the immediate needs of those children placed on the wait list. The CDDP shall determine the actual amount of funds a family may access per plan year from the immediate access fund not to exceed the maximum limits established by SPD. Immediate access funds may be used to purchase a limited scope of services including:

(a) Respite;

(b) Specialized equipment and supplies; and

(c) Behavior consultation.

(5) Supports for children may not be purchased from direct assistance and immediate access funds concurrently.

Stat. Auth.: ORS 409.050, 410.070 & 417.346
Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2080, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03

411-305-0105
Direct Assistance Funding Wait List

(1) The CDDP must maintain a wait list when the number of children requesting direct assistance funds exceeds the funds available to the CDDP in a fiscal year. Placement on the wait list must be by the date a child is determined eligible for developmental disability services.

(2) The wait list must include the name and date of birth of each eligible child, name of the child's parent or guardian, and assigned place in the order of service. Information from the wait list must be provided to SPD upon request.

(3) Children on the wait list for direct assistance funding may request assistance with a limited scope of services through immediate access funds as described in OAR 411-305-0090(4).

(4) Despite assignment of order of service on the wait list by one CDDP, when a child and family move outside the area of service of the CDDP and direct assistance funds are not immediately available at the new CDDP, the child must be placed on the wait list for funds from the new CDDP as of the date of transfer. Direct assistance funds do not transfer between CDDPs.

Stat. Auth.: ORS 409.050, 410.070, & 417.346
Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2050, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; Renumbered from 411-305-0060, SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0110
Conditions for Direct Assistance Fund Purchases

(1) A CDDP must only use direct assistance funds to assist families to purchase supports for the purpose defined in OAR 411-305-0010(1) and in accordance with the child's Annual Plan that meets the requirements for development and content in accordance with OAR 411-305-0080.

(2) To be authorized and eligible for payment, all supports and services paid for with direct assistance funds must be determined by the services coordinator to be:

(a) Directly related to the eligible child's developmental disability and support needs;

(b) Used only to purchase goods or services necessary for a child to continue to be supported in the family home;

(c) Cost effective;

(d) Not typical for a family to provide a child of the same age; and

(e) Included in the child's approved Annual Plan and support documents or otherwise allowed in this rule.

(3) Goods and services purchased with direct assistance funds to support specific individual children and families must be provided only as social benefits as defined in OAR 411-305-0020.

(4) The CDDP must arrange for supports purchased with direct assistance funds to be provided:

(a) In settings and under purchasing arrangements and conditions that allow the family to freely redirect direct assistance funds to purchase supports and services from another qualified provider.

(A) The CDDP must provide written instruction about the limits and conditions of group services to families who choose to combine direct assistance funds to purchase services and supports from another qualified provider.

(B) Each child's support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and timekeeping for staff working with more than one child.

(C) The CDDP must evaluate combined arrangements that result in creation of provider organizations or general business providers to determine whether license or certification is required under Oregon law for the organization to provide services for children.

(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 411-305-0140 governing provider qualifications.

(5) When direct assistance 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) Direct assistance 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 direct assistance funds unless another arrangement is agreed upon by the CDDP and described in the child's Annual Plan.

(d) The provisions of section (8) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(6) The method and schedule of payment must be specified in written agreements between the CDDP and the child's parent or guardian and must include:

(a) Payment of vendors for authorized purchases and supplies. The CDDP may reimburse families for prior-authorized purchases and supplies agreed upon in the child's Annual Plan with corresponding purchase receipts.

(b) Payment of qualified providers of direct care 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 Plan have been satisfactorily delivered.

(7) The CDDP must inform families in writing of special records and procedures required in OAR 411-305-0160 regarding expenditure of direct assistance funds. During development of the child's Annual 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.

(8) 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 direct assistance 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 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 (5) of this rule and OAR 411-305-0115; 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 direct assistance 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; or

(C) The CDDP may withhold payments to the provider.

(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.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2110, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0115

Using Direct Assistance Funds for Certain Purchases is Prohibited

Direct assistance funds may not be used for:

(1) Services, supplies, or supports that are Illegal, experimental, or determined unsafe for the general public by recognized child and consumer safety agencies;

(2) Services or activities that are carried out in a manner that constitutes abuse;

(3) 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;

(4) Services that restrict a child's freedom of movement by seclusion in a locked room under any condition;

(5) Purchase of family vehicles;

(6) Purchase of service animals or costs associated with the care of service animals;

(7) Health and medical costs that the general public normally must pay, including but not limited to:

(a) Medical 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) Treatment supplies not related to nutrition, incontinence, or infection control.

(8) Ambulance services;

(9) Legal fees including but not limited to the costs of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(10) Vacation costs for transportation, food, shelter, and entertainment that are not strictly required by the child's developmental disability-created need for personal assistance in all home and community settings that would normally be incurred by anyone on vacation, regardless of developmental disability;

(11) Services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(12) 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;

(13) Services, activities, materials, or equipment that are not necessary, cost effective, or do not meet the definition of support or social benefit;

(14) 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;

(15) Services, activities, materials, or equipment that the CDDP determines may be reasonably obtained by the family through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(16) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(17) 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 Plan, refused to cooperate with record keeping required to document use of direct assistance funds, or otherwise knowingly misused public funds associated with family support 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 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2130, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; Renumbered from 411-305-0130, SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0120
Supports Purchased with Direct Assistance Funds

(1) When conditions of purchase in OAR 411-305-0110 are met, and provided purchases are not prohibited under OAR 411-305-0115, direct assistance 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 Plan and available funding:

(a) Specialized consultation including behavior and nursing delegation;

(b) Community inclusion;

(c) Environmental accessibility adaptations;

(d) Family caregiver supports;

(e) Family training;

(f) In-home daily care;

(g) Physical, occupational, and speech and language therapy;

(h) Respite;

(i) Specialized diet;

(j) Specialized equipment and supplies; and

(k) Transportation.

(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.

(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 family support services.

(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 Individualized 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 direct assistance funding when a child requires tasks of nursing care.

(4) COMMUNITY INCLUSION. Community inclusion supports encourage a child to participate in organized group recreation and leisure activities that assist the child to acquire, retain, or improve skills that enhance independence and integration.

(a) Community inclusion supports purchased with direct assistance funds may include:

(A) Cost of individualized provider support required by the child to participate in an organized activity; and

(B) The participation or registration cost of an organized activity that meets the purpose as outlined in section (4) of this rule and includes registration and participation fees up to a maximum of $150 per plan year.

(b) Community inclusion supports exclude:

(A) Supports that replace normal family roles and responsibilities in a child's acquisition and retention of communication, socialization, recreation, and self-help skills;

(B) Supports that replace normal family responsibility for child care while the primary caregiver works or goes to school;

(C) Education and other instructional support available according to the Individuals with Disabilities Education Act;

(D) Substitute care for a child under 12 years of age while the primary caregiver works or goes to school;

(E) Tuition to private schools or payment of programs or services in lieu of school;

(F) Legal fees such as those for setting up trusts or guardianships;

(G) Incentive payments to employers to hire youth with disabilities; and

(H) Private lessons or memberships.

(5) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) Environmental accessibility adaptations include:

(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 evaluate the family home and make plans to modify the family home 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) The CDDP shall authorize environmental accessibility adaptations when:

(A) Related to the child's developmental disability;

(B) Determined to be the most cost effective solution;

(C) Provided in accordance with applicable state or local building codes by licensed contractors. Any modification that impedes egress shall be approved only if a risk assessment demonstrates no safer solution and a safety plan is signed by the child's parent or guardian; and

(D) Authorized in writing by the owner of a rental structure prior to initiation of the work. This does not preclude any reasonable accommodation required under the Americans with Disabilities Act.

(c) For environmental accessibility adaptations that singly or together exceed $5,000, SPD may protect its interest for the entire amount of the adaptations through liens or other legally available means.

(d) 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.

(6) 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) Assistance with development of tools such as job descriptions, contracts, and employment agreements;

(B) Assistance with family costs associated with recruiting, hiring, and directing providers, including advertising and translation services related to the advertising; and

(C) Workplace materials and supplies that may be required for paid caregivers in the family home.

(b) Family caregiver supports exclude application fees and the cost of fingerprinting or other background check processing fee requirements

(7) 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. Family training services must be prior authorized by the CDDP and include:

(a) Counseling services that assist the family with the stresses of having a child with a developmental disability.

(A) To be authorized by the CDDP, the counseling services must:

(i) Be provided by licensed providers including but not limited to:

(I) Psychologists licensed under ORS 675.030;

(II) Professionals licensed to practice medicine under ORS 677.100;

(III) Social workers licensed under ORS 675.530; and

(IV) 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.

(B) 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.

(A) Conferences, workshops, or group trainings must be prior authorized by the CDDP 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.

(B) 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.

(c) Rental or purchase of developmental disability related resource materials including books, DVD, and other media.

(A) To be authorized, the materials must relate to the child's developmental disability.

(B) The purchase of materials is limited to a maximum of $100 per plan year.

(d) Purchase of child and family-centered planning facilitation and follow-up.

(8) IN-HOME DAILY CARE. In-home daily care services include the purchase of direct provider support provided to the child in the family home 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 in the family home during the provision of in-home daily care or, when occasionally out of the family home, immediately available to return when contacted.

(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 — Special diets, monitoring intake and output, and feeding;

(E) Skin care — Dressing changes;

(F) 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;

(G) Assisting the child with appropriate leisure activities to enhance development in and around the family home;

(H) Communication - Assisting the child in communicating, using any means used by the child;

(I) Neurological - Monitoring of seizures, administering medication, and observing status;

(J) Accompanying the child and family to health related appointments; and

(K) Light housekeeping tasks directly related to the child's developmental disability and necessary to maintain a healthy and safe environment for the child.

(b) In-home daily care services must:

(A) Be previously authorized by the CDDP before services begin;

(B) Be based on the assessed service needs of the child consistent with, and documented in, the child's Annual 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) The authorization of hours or level of care not supported by the assessed service needs of the child;

(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.

(9) PHYSICAL, OCCUPATIONAL, AND SPEECH AND LANGUAGE THERAPY. Physical, occupational, and speech and language therapy are services provided by a professional licensed physical therapist under ORS 688.020, occupational therapist under ORS 675.240, or speech and language pathologist under ORS 681.250 as defined and approved for purchase under the approved State Medicaid Plan. Physical, occupational, and speech and language therapy services are available to maintain a child's skills or physical condition when prescribed by a physician and after the service limits of the State Medicaid Plan and private insurance have been reached, either through private or public resources.

(a) Physical, occupational, and speech and language therapy services include assessment, family and provider training, consultation, adaptations, and direct therapy provided by an appropriately licensed or certified therapist.

(b) To be authorized, the services coordinator must document:

(A) Limits identified under the OHP and private insurance have been reached;

(B) Service is part of a therapist's treatment plan as ordered by a physician;

(C) Services provided are defined and approved for purchase under the approved State Medicaid Plan; and

(D) The total number of visits authorized for payment through direct assistance funds.

(c) Physical, occupational, and speech and language therapy services do not include:

(A) Payment for services not prior-authorized by the CDDP;

(B) Therapies or services identified by the school as required to carry out the child's Individualized Education Program;

(C) Therapy services provided outside of the United States; and

(D) Co-payments.

(10) RESPITE. Respite services include short-term care and supervision provided to a child on a periodic or intermittent basis furnished 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 the family home, qualified provider's home, or qualified facility.

(b) The following types of qualified providers may be authorized by the CDDP to provide respite;

(A) Individual respite provider;

(B) Licensed day care center;

(C) Group home;

(D) Foster home; or

(E) Developmental disability-related or therapeutic recreational camp. Respite provided at a developmental disability-related or therapeutic recreational camp is limited to the camp registration fee and costs.

(c) 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;

(E) For more than five days per individual plan year when provided at a specialized camp; or

(F) For vacation travel and lodging expenses.

(11) SPECIALIZED DIET. A specialized diet includes specially prepared food, or purchase of particular types of food, specific to a child's medical condition or diagnosis needed to sustain a child in the family home. A specialized diet is in addition to meals a family would provide.

(a) In order for a specialized diet to be authorized by the services coordinator:

(A) The diet must be ordered by a physician licensed by the Oregon Board of Medical Examiners;

(B) The diet must be periodically monitored by a dietician or physician; and

(C) The foods in the specialized diet must be pre-approved by the CDDP.

(b) Purchased specialized diet services may include:

(A) Registered dietician services when not covered by other resources; and

(B) Specialized diet supplies up to $50 per month.

(c) Specialized diet supports not authorized include:

(A) Special diets and dietician services otherwise available under OHP or other sources;

(B) Restaurant and prepared foods;

(C) Vitamins; and

(D) Food that constitutes a full nutritional regime.

(12) 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) Specialized equipment and supplies may include:

(A) The purchase of specialized equipment and supplies; and

(B) 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) Cost equivalent of toys and activities typically purchased by families of children of the same age; and

(F) Equipment and furnishings of general household use.

(13) TRANSPORTATION. Transportation services include transportation beyond the scope of family responsibility for transporting a child for leisure, recreation, and other non-medical community pursuits provided in order to enable a child to gain access to other community services, activities, and resources as specified in the child's Annual Plan.

(a) Whenever possible, family, neighbors, friends, or community agencies must be utilized to provide transportation services to the child without charge.

(b) Authorization of transportation in the child's Annual Plan must identify the parameters and limits of transportation services for each child.

(c) Transportation services for the child must be provided through the most cost effective means identified and may be purchased through local commercial transportation or mileage reimbursement to a qualified provider.

(d) Transportation services are provided for the child and the child must always be present.

(e) Transportation services exclude:

(A) Transportation to and from school and medical appointments;

(B) Transportation provided by family;

(C) Transportation typically provided by families for children of similar age without disabilities;

(D) Mileage reimbursement in excess of the published federal rate at http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC;

(E) Purchase of any family vehicle;

(F) Vehicle maintenance and repair;

(G) Reimbursement for out-of-state travel expenses;

(H) Ambulance services;

(I) Transportation services that may be obtained through other means such as OHP or other public or private resources available to the child; and

(J) Mileage paid to the provider to arrive at the work site.

(f) Medical transportation may be provided to transport a child from a distant rural community to an urban medical center that is more than 100 miles round trip.

(A) Payment for medical transportation shall be made per mile.

(B) Medical transportation excludes transportation services that may be obtained through other means such as OHP or other public or private resources available to the child.

Stat. Auth.: ORS 409.050, 410.070 & 417.346

Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2120, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0140

Standards for Providers Paid with Direct Assistance Funds

Independent providers, provider organizations, and general business providers paid with direct assistance 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 411-305-0120 must:

(a) Be at least 18 years of age;

(b) Have approval to work based on 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 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 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 (http://exclusions.oig.hhs.gov/); and

(i) If providing transportation services, 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) 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 direct assistance 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 direct assistance 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 family 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) 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;

(f) 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 Programs if vending medical equipment;

(g) A current business license for providers of personal emergency response systems; and

(h) Retail business licenses for vendors and supply companies providing specialized diets.

Stat. Auth.: ORS 409.050, 410.070 & 417.346
Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2140, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0160
Special Record Requirements for Direct Assistance Fund Purchases

The CDDP must develop and implement written policies and procedures concerning use of direct assistance funds to purchase goods and services required for support of children and described in the child's Annual Plan. These policies and procedures must include but are not limited to:

(1) Minimum acceptable records of expenditures:

(a) Itemized invoices and receipts to record purchase of any single item;

(b) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(c) Signed contracts and itemized invoices for any services purchased from independent contractors, provider organizations, and professionals;

(d) Written professional support plans, assessments, and reviews to document acceptable provision of behavior support, physical therapy, occupational therapy, speech and language therapy, nursing, and other professional training and consultation services; and

(e) Pay records, including timesheets signed by both employee and employer, to record employee services.

(2) Procedures for confirming the receipt, and securing the use of, specialized equipment and environmental accessibility adaptations.

(a) The CDDP must record the purpose, final cost, and date of receipt of any specialized equipment purchased for a child.

(b) 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.

(c) The CDDP must ensure that projects for environmental accessibility adaptations involving building renovation or new construction in or around the family home costing $5,000 or more per single instance or cumulatively over several modifications:

(A) Are approved by SPD before work begins and before final payment is made;

(B) Are completed or supervised by a contractor licensed and bonded in Oregon; and

(C) That steps are taken as prescribed by SPD for protection of SPD's interest through liens or other legally available means.

(d) The CDDP must obtain written authorization from the owner of a rental structure before any environmental accessibility adaptations are made to that structure.

(3) Return of purchased goods. Any goods purchased with direct assistance funds that are not used according to the child's Annual Plan or according to an agreement securing the state's use may be immediately recovered.

(4) Failure to furnish written documentation upon written request from DHS, the Oregon Department of Justice Medicaid Fraud Unit, or 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.

Stat. Auth.: ORS 409.050, 410.070 & 417.346
Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2160, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0170
Quality Assurance

The CDDP must participate in statewide quality assurance, service evaluation, and regulation activities as directed by SPD in OAR 411-320-0040.

Stat. Auth.: ORS 409.050, 410.070 & 417.346
Stats. Implemented: ORS 417.340 - 417.355, 427.005, 427.007, 430.610 - 430.695
Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2170, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09

411-305-0180
Variances

(1) Variances 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) Variances do not apply to OAR 411-305-0115 and 411-305-0120.

(3) The CDDP requesting a variance must submit to SPD, a written variance request utilizing 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 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 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 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 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2180, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09

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

Rule Caption: Implement rules for Oregon's Novelty/Toylike Lighter Laws.
Adm. Order No.: OSFM 2-2009(Temp)
Filed with Sec. of State: 5-29-2009
Certified to be Effective: 6-2-09 thru 11-20-09
Notice Publication Date:
Rules Adopted: 837-046-0000, 837-046-0020, 837-046-0040, 837-046-0060, 837-046-0080, 837-046-0100, 837-046-0120, 837-046-0140, 837-046-0160, 837-046-0180
Subject: The purpose of these rules is to implement rules for Oregon's Novelty/Toylike Lighter Laws.
Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-046-0000
Purpose and Scope

(1) The purpose of these rules is to implement the standards, policies and procedures pertaining to the regulation of novelty lighters by the Office of State Fire Marshal (OSFM).

(2) The scope of these rules applies to the implementation of 2009 HB 2365, relating to novelty lighters.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0020
Effective Dates

OAR 837-046-0000 through 837-046-0180 are effective upon the date of filing.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0040
Definitions

For the purpose of these rules, the following definitions apply to OAR 837-046-0000 through 837-046-0180:

(1) "Audio effects" means music, animal sounds and whistles, buzzers, beepers or other noises not pertinent to the flame-producing function of a lighter.

(2) "Authorized Representative of the State Fire Marshal" means an employee of the State Fire Marshal, as well as Assistants to the State Fire Marshal as defined in ORS 476.060.

(3) "Distribute" means to:

(a) Deliver to a person other than the purchaser; or

(b) Provide as part of a commercial promotion or as a prize or premium.

(4) "Importer" means a person who causes a lighter to enter this state from a manufacturing, wholesale, distribution or retail sales point outside this state, for the purpose of selling or distributing the lighter within this state or with the result that the lighter is sold or distributed within this state.

(5) "Lighter" means a handheld device of a type typically used for igniting tobacco products by use of a flame.

(6) "Manufacturer" means a person or business that makes lighters by hand or by machine.

(7) "Misleading design" means a lighter that has a shape that resembles or imitates an object other than a lighter. Misleading design applies to lighters of all types and includes lighters that resemble or imitate:

(a) Cartoon characters, figurines or action figures;
(b) Toys or game pieces;
(c) Musical instruments;
(d) Vehicles;
(e) Animals;
(f) Human body parts;
(g) Food, beverages or food or beverage packages;
(h) Weaponry;
(i) Furniture;
(j) Sports equipment;
(k) Holiday decoration;
(l) Tools; or
(m) Household products.

(8) "Novelty lighter":

(a) Means a lighter that has misleading design, audio effects or visual effects, or that has other features of a type that would reasonably be expected to make the lighter appealing or attractive to a child less than 10 years of age.

(b) Does not mean:

(A) A lighter manufactured before January 1, 1980;

(B) A lighter that has been rendered permanently incapable of producing a flame or otherwise causing combustion; or

(C) A lighter with only logos, decals, decorative artwork or heat-shrinkable sleeves.

(9) "Retail dealer" means a person, other than a manufacturer or wholesale dealer that engages in distributing novelty lighters.

(10) "Sell" means to provide or promise to provide to a wholesale, retail, mail-order or other purchaser in exchange for consideration.

(11) "Visual effect"means flashing lights, color-changing lights and changing images. Visual effect does not mean a continuous LED light used as a flashlight.

(12) "Wholesale dealer" means a person that distributes novelty lighters to a retail dealer or other person for resale.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0060
General

(1) As of June 2, 2009, lighters meeting the definition of novelty lighters may not be sold, offered for sale, distributed in Oregon or manufactured or possessed for the purpose of sale or distribution in Oregon.

(2) Wholesale dealers, importers or retail dealers must comply with:

(a) 2009 HB 2365; and

(b) OAR 837-046-0000 through 837-046-0180.

(3) A list of lighters, classes and types of lighters determined to be novelty lighters is available on the OSFM website or upon request. Photographs of novelty lighters are representative of lighter types, but may not include all prohibited lighters.

(4) Photographs of acceptable lighters are available on the OSFM website or upon request. Photographs of acceptable lighters are examples and do not include all acceptable lighters.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0080
Inspections

The OSFM or an authorized representative may inspect Oregon wholesale dealers, agents, and retailers for compliance with 2009 HB 2365. Inspections include any documents to determine compliance with 2009 HB 2365.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0100
Lighter Review Committee

Requests may be made for a review of a lighter determined to be a novelty lighter by the OSFM. Submit a written request and color photo to the OSFM. The lighter review committee will review the lighter and make a recommendation to the OSFM.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0120
Cooperative Agreements

The OSFM may enter into a cooperative agreement with any state or local agency allowing the agency to act as an authorized representative of the OSFM for enforcement purposes of this division.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0140
Seizure of Non-Compliant Product

The OSFM, an authorized representative, or a law enforcement agency may seize and make subject to forfeiture any lighter described in OAR 837-046-0040 and 2009 HB 2365.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0160
Civil Penalties

(1) The OSFM may impose civil penalties in accordance with ORS 183.745 for any violation of 2009 HB 2365 or OAR 837-046-0000 through 837-046-0180. Refer to the following penalty matrix for penalties established by 2009 HB 2365:

(a) $10,000 if the person is a manufacturer or importer of lighters;

(b) $1,000 if the person is a wholesale dealer of lighters or distributes lighters by means other than distribution directly to consumers;

(c) $500 if the person is:

(A) A retail seller of lighters; or

(B) A person distributing lighters, if the person is other than a manufacturer, importer or wholesale dealer.

(2) Each day a person distributes or sells novelty lighters after being notified of the violation by the OSFM constitutes a separate violation and subjects the person to additional civil penalties.

(3) All monies collected from civil penalties are to be deposited to the State Fire Marshal Fund.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

837-046-0180
Procedures, Hearings and Judicial Review

(1) Hearings are conducted according to ORS 183.413 through 183.470.

(2) The Attorney General may bring action for the OSFM to:

(a) Seek injunctive relief to prevent or end a violation;

(b) Recover civil penalties;

(c) Obtain access for inspections; or

(d) Recover attorney fees and other enforcement costs and disbursements.

Stat. Auth.: 2009 HB 2365
Stats. Implemented: 2009 HB 2365
Hist.: OSFM 2-2009(Temp), f. 5-29-09, cert. ef. 6-2-09 thru 11-20-09

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Department of Transportation
Chapter 731

Rule Caption: Use of federal transportation funds for nonhighway transportation projects and purposes.
Adm. Order No.: DOT 1-2009(Temp)
Filed with Sec. of State: 5-20-2009
Certified to be Effective: 5-20-09 thru 11-16-09
Notice Publication Date:
Rules Adopted: 731-050-0030
Subject: The Oregon Department of Transportation will determine the amount of federal funds available for eligible nonhighway projects and purposes, and annually to distribute an amount of those funds for those projects and purposes.
Rules Coordinator: Lauri Kunze—(503) 986-3171

731-050-0030
Allocation of Funds for Nonhighway Transportation Projects and Purposes

(1) Annually, the Oregon Transportation Commission (Commission) shall determine the amount that will be available for nonhighway transportation projects and purposes from certain federal transportation funds apportioned to the State under the Surface Transportation Program (STP), 23 United States Code (USC) 133 and the Congestion Mitigation and Air Quality Improvement Program (CMAQ), 23 USC 149. The determination of the amount of funds available for nonhighway transportation projects and purposes shall not exceed an amount that would disqualify the State of Oregon from applying for discretionary grants of federal highway funds.

(2) From the amount established in section 1 of this rule, the Commission shall dedicate the first $14 million to any transportation project or purpose as determined by the Commission. The Commission shall approve the distribution of the remaining funds to eligible nonhighway transportation projects and purposes of which an amount no less than ten percent shall be dedicated for projects eligible under the Oregon Department of Transportation Elderly and Disabled Transportation Program.

(3) For the purposes of sections 1 and 2 of this rule, eligible nonhighway transportation projects and purposes include but may not be limited to:

(a) Transportation planning, research and data collection as authorized by 23 USC 505;

(b) Elderly and Disabled Transportation Program as authorized by ORS 391.800;

(c) Bicycle and pedestrian projects as authorized by 23 USC 217;

(d) Transit capital projects as authorized by 23 USC 133 and 23 USC 149;

(e) Transit operating assistance, limited to new or expanded transportation service as authorized by 23 USC 149;

(f) Carpool projects and fringe and corridor parking facilities, as authorized by 23 USC 133.

(4) For the purposes of sections 1 and 2 of this rule certain federal transportation funds means those funds allocated to the State pursuant to the STP, 23 USC 133 and the CMAQ Program, 23 USC 149.

Stat. Auth.: ORS 184.616, 184.619, 366.205, 367.050
Stats. Implemented: 184.616, 184.619, 366.205, 367.010, 367.050
Hist.: DOT 1-2009(Temp), f. & cert. ef. 5-20-09 thru 11-16-09

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

Rule Caption: Proof of Residency or Domicile; Establishing Intent to Remain or Return to Oregon.
Adm. Order No.: DMV 9-2009
Filed with Sec. of State: 5-22-2009
Certified to be Effective: 6-1-09
Notice Publication Date: 3-1-2009
Rules Amended: 735-016-0030, 735-016-0070
Subject: Only a person who is domiciled in or a resident of Oregon qualifies for an Oregon driver license, identification card or vehicle registration in Oregon. To be domiciled in Oregon for these purposes, a person must intend to remain in the state or, if absent, to return to it. ORS 803.355. OAR 735-016-0030 establishes what proof DMV will accept to show that a person is domiciled in Oregon. DMV amended OAR 735-016-0030 to clarify that a true copy of a filed Oregon income tax return rather than the payment of income taxes in Oregon is acceptable as proof of domicile. DMV does not want to inadvertently exclude a person who is domiciled in Oregon and must file an Oregon tax return, but does not make enough money to actually pay Oregon income tax. The rule was further amended to describe when an Oregon tax return is acceptable to DMV as proof of domicile.

OAR 735-016-0070 establishes what documents DMV will accept as proof of residency or domicile. DMV amended OAR 735-016-0070 to clarify when an Oregon income tax return is acceptable as proof of residency or domicile.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-016-0030
Domicile — Establishing Intent to Remain or Return

(1) In order to be domiciled in Oregon, a person whose place of abode is in Oregon must intend to remain in this state or if absent from the state must intend to return to it.

(2) DMV may require proof that the person intends to remain in Oregon. Acceptable proof, under this section, includes, but is not limited to:

(a) Ownership of the person's residence in Oregon, or a lease or rental agreement of 12 months or more in duration;

(b) Permanent employment in Oregon;

(c) A true copy of the Oregon income tax return filed with the Oregon Department of Revenue for the previous tax year, showing the person is a permanent or part-year Oregon resident. For purposes of this subsection, the proof must:

(A) Include a certification by the person that the original return was filed; and

(B) Show the person was an Oregon resident at the end of the tax year if the person was a part-year Oregon resident; or

(d) Payment of residence tuition fees at institutions of higher education in Oregon.

(3) A person who is absent from Oregon but claims to be domiciled in this state may be required to provide proof to DMV that shows the person intends to return to Oregon. Acceptable proof, under this section, must show:

(a) The person has continuously maintained an Oregon residence while absent from Oregon;

(b) The person owns a residence in Oregon;

(c) The person is temporarily residing outside of Oregon (e.g., payment of non-resident tuition while attending a school outside of Oregon, temporary transfer of employment to another state or country, temporary

care of a family member out of state). The person may be required to show they have maintained ties with Oregon, including but not limited to voter registration or maintenance of an Oregon bank account;

(d) The person is a member of the United States Armed Forces, or the member's spouse, partner in a domestic partnership, or a dependent who resides with the member, who lists Oregon residence in his or her military records; or

(e) The person filed an Oregon income tax return with the Oregon Department of Revenue for the previous tax year that shows the person is a permanent or part-year Oregon resident. Acceptable proof under this subsection must:

(A) Be a true copy of the Oregon income tax return filed with the Oregon Department of Revenue and must include a certification by the person that the original return was filed; and

(B) Show the person was an Oregon resident at the end of the tax year if the person was a part-year Oregon resident.

(4) A person who claims to reside at the address of a service provider in Oregon, as defined in OAR 735-010-0008, for purposes of vehicle registration, driver licensing or obtaining an identification card must provide proof as described in section (2) or (3) of this rule.

Stat. Auth.: ORS 184.616, 184.619, 803.350, 803.370, 807.050, 807.062 & 821.080, Sec. 3, Ch. 99, OL 2007

Stats. Implemented: ORS 802.500, 802.520, 803.200, 803.300, 803.325, 803.350, 803.355, 803.360, 803.370, 807.010, 807.040 807.045, 807.050, 807.062, 807.400, 821.080 & 826.033

Hist.: DMV 7-1999, f. & cert. ef. 12-17-99; DMV 24-2001, f. 12-14-01, cert. ef. 1-1-02; DMV 5-2008, f. & cert. ef. 2-4-08; DMV 9-2009, f. 5-22-09, cert. ef. 6-1-09

735-016-0070
Proof of Residency or Domicile

(1) DMV will accept the following as proof of residency or domicile to obtain or renew a driver license, driver permit, identification card or to register or renew a vehicle in Oregon:

(a) A residence address in Oregon where the applicant physically resides which is not a hotel, motel, campground or recreational vehicle park and that is not the address of a service provider as defined in OAR 735-010-0008; or

(b) A true copy of the Oregon income tax return filed with the Oregon Department of Revenue for the previous tax year, showing the person is a permanent or part-year Oregon resident. For purposes of this subsection, the proof must:

(A) Include a certification by the person that the original return was filed with the Oregon Department of Revenue; and

(B) Show the person was an Oregon resident at the end of the tax year if the person was a part-year Oregon resident.

(2) If a person who resides in Oregon is not able to meet the requirements of section (1) of this rule, the person must provide DMV a certification of residency or domicile for an Oregon driver license, driver permit, identification card or vehicle registration. In addition, the person must provide at least two other forms of proof that the person is a resident of or domiciled in Oregon. Acceptable proof, under this section, includes but is not limited to:

(a) Property tax record(s), utility bills, rent receipts, a lease or rental agreement or other document that shows that the individual resides in Oregon;

(b) Enrollment records or other documentation that the person is attending an educational institution maintained by public funds and pays resident tuition fees;

(c) Motel, hotel, campground or recreational park receipts showing that the person currently resides in Oregon and has remained in Oregon for six consecutive months;

(d) A statement, dated within the last 60 days, from a relief agency or shelter that the person receives services in Oregon;

(e) Fuel receipts, motel receipts, or other documents that show the person has lived in Oregon for at least six of the last 12 months.

(f) Documents that show the person has a current bank account at a bank or credit union in Oregon and that the account has been open for 60 days or more;

(g) Any document that shows the person has received public assistance from an agency of the State of Oregon within the last year; or

(h) An Oregon voter registration card.

(3) If a person is domiciled in Oregon but is not currently residing in Oregon is not able to meet the requirements of section (1) or (2) of this rule, the person must complete a certification of residency or domicile for Oregon driver license, driver permit, identification card or vehicle registration. Additionally, the person must provide proof that the person intends to return to Oregon as provided in OAR 735-016-0030(3).

(4) Examples of documentation a business entity may be required to submit in relation to Oregon vehicle registration include but are not limited to:

(a) Property tax records, utility bills, rent receipts, lease agreements or similar documents which show the business entity is currently the occupant of an office or warehouse facility in Oregon along with copies of service records, fuel receipts, garage receipts or other documents that show the vehicle(s) is currently operated in Oregon;

(b) A permit number or other information that shows the person or business holds a permit or other authority issued under ORS Chapter 825 for intrastate transportation;

(c) Storage receipts, repair bills or similar documents that show a vehicle has been left in Oregon; or

(d) Dispatch, delivery, maintenance, tax records, or other documentation that show the business' vehicles are currently housed or dispatched from a location in Oregon or are currently operating in Oregon.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.350, 803.370, 807.050, 807.062 & 821.080

Stats. Implemented: ORS 802.500, 802.520, 803.200, 803.300, 803.325, 803.350, 803.355, 803.360, 803.370, 807.010, 807.040, 807.045, 807.050, 807.062, 807.400, 821.080 & 826.033

Hist.: DMV 7-1999, f. & cert. ef. 12-17-99; DMV 24-2001, f. 12-14-01, cert. ef. 1-1-02; DMV 12-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 9-2009, f. 5-22-09, cert. ef. 6-1-09

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Rule Caption: ODOT has adopted, amended, and repealed administrative rules regarding Oregon Fuels Tax program.
Adm. Order No.: DMV 10-2009
Filed with Sec. of State: 5-22-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 4-1-2009
Rules Adopted: 735-170-0105, 735-170-0115, 735-174-0035, 735-174-0045, 735-176-0017, 735-176-0019, 735-176-0021, 735-176-0022, 735-176-0045
Rules Amended: 735-170-0000, 735-170-0010, 735-170-0020, 735-170-0040, 735-170-0045, 735-170-0050, 735-170-0090, 735-170-0100, 735-170-0110, 735-170-0120, 735-170-0130, 735-170-0140, 735-174-0000, 735-174-0010, 735-174-0020, 735-174-0030, 735-174-0040, 735-176-0000, 735-176-0010, 735-176-0020, 735-176-0030, 735-176-0040
Rules Repealed: 735-170-0030, 735-170-0060, 735-170-0070, 735-170-0080, 735-176-0015, 735-176-0018
Subject: These rules implement legislation enacted by the 2008 Legislative Assembly. Chapter 44, Oregon Laws 2008 amended ORS 319.520 and 319.665 to ensure uniform documentation requirements for retail and non-retail use fuel sales in the state of Oregon. Other changes ensure uniform reporting requirements for all fuel transactions in the state of Oregon, and to correct and clarify rule language for divisions 170, 174, and 176. Fuel tax reports and remittance are due to the Department in the following month (except for quarterly and annual filers) in which the tax is charged and collected from customers. For Use Fuel Sellers and Users the due date is the 20th and for Motor Vehicle Fuel Dealers the due date is the 25th. There has been a longstanding precedent to accept tax reports postmarked by the tax report due date. The Department has further clarified in rule that fuel taxes and accompanying reports are to be received in the Department or its agent by applicable due dates as evidenced by legible United States Postal Service postmarks or cancellation stamps, certified/registered mail receipts or other valid third party evidence of timely remittance.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-170-0000
Definitions

(1) "ODOT Fuels Tax Group" or "Department" means the organizational unit within the Oregon Department of Transportation or its agent that is primarily charged with the administration of ORS 319.010 through 319.880 on behalf of the State of Oregon.

(2) "Ethanol Blended Gasoline" means ethanol has been blended with gasoline and is intended for use in a motor vehicle. This product is defined as motor vehicle fuel and is a taxable product.

(3) "Terminal Position Holder" means a dealer who owns terminal storage inventory in Oregon.

(4) To "Import" means to have ownership title to motor vehicle fuel or aircraft fuel from locations outside of Oregon, at the time it is brought into the State of Oregon by any means of transport, other than motor vehicle fuel brought into Oregon in the fuel tank of a motor vehicle used for the propulsion of the motor vehicle.

(5) "Cause to be Imported" means to have ownership title to motor vehicle fuel or aircraft fuel, at your order, request or solicitation, at the time it is brough into the State of Oregon by any means of transport, other than motor vehicle fuel brought into Oregon in the fuel tank of a motor vehicle used for the propulsion of the motor vehicle.

(6) To "Export" means to have ownership title to motor vehicle fuel or aircraft fuel from locations within Oregon, at the time it is delivered to locations outside Oregon by any means of transport, other than in the fuel tank of a motor vehicle for the purpose of propelling motor vehicle or aircraft except as provided in ORS 319.330.

(7) "Cause to be Exported" means to have ownership title to motor vehicle fuel or aircraft fuel, at your order, request or solicitation, at the time it is exported from the State of Oregon by any means of transport, other than motor vehicle fuel exported from Oregon in the fuel tank of a motor vehicle used for the propulsion of the motor vehicle.

(8) "Ex-Tax" means that the tax is not included in the price of the fuel.

(9) "Invoice" means the receipt or other record of a sale transaction that describes an itemized list of goods shipped specifying the price and terms of sale as defined in OAR 735-170-0010.

(10) "Delivery Tag" means the delivery receipt or other record of a delivery.

(11) "Bill of Lading" means a document issued by the terminal operator that lists goods being shipped and specifies the terms of their transport.

(12) "True Name" means the name that is authorized per Oregon law to conduct business in Oregon.

(13) "Properly Licensed" means that the person or entity "performing the acts of a dealer" is legally licensed under the "true name" and legally authorized to conduct business in Oregon per Oregon law.

(14) "Performing the Acts of a Dealer" means that the dealer is conducting business in Oregon as defined in ORS 319.010(6).

(15) "Best Available Source" means any data or information that can be used to determine tax due including calculated projections or averages based on prior reports or data from other sources as determined by the Department.

(16) "Failure to Report" means any tax report and payment not received by the Department on or before the due date of the next subsequent report.

Stat. Auth.: ORS 184.616, 184.619 & 319.010 - 319.880
Stats. Implemented: ORS 319.010 - 319.430
Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0005; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-170-0010
Records Required

The Department has the authority to prescribe required records under ORS 319.390 and 319.400. Every Oregon dealer, whether licensed or unlicensed, must maintain and keep the following records for at least three years from the date the fuel tax is due:

(1) Stock summary showing monthly totals for the gallons of motor vehicle fuel or aircraft fuel handled for each owned and operated distributing location within the State of Oregon with an analysis as to inventories, receipts, sales, use, transfers, and loss or gain.

(a) An actual physical gallon inventory measurement of motor vehicle fuel and aircraft fuel stocks for each owned and operated distributing location must be taken at the end of each calendar month and preserved for audit purposes.

(b) A record showing all sales and withdrawals of motor vehicle fuel or aircraft fuel from storage. A dealer that withdraws fuel from storage for highway and non-highway use must:

(A) Summarize records into monthly totals and separately show the number of gallons used for highway and non-highway purposes;

(B) Separately show the total number of miles traveled and fuel used for each vehicle;

(C) Separately account for fuel withdrawn from bulk storage and fuel received from other sources;

(2) Purchase journal showing the number of gallons of motor vehicle fuel or aircraft fuel purchased or received each month supported by purchase invoices or other documents.

(3) Sales journal showing the number of gallons of motor vehicle fuel or aircraft fuel sold or distributed each month, supported by sales invoices covering each sale or delivery.

(4) Sales invoice forms must be approved by the Department and must include at least the following information:

(a) Date of sale or delivery;

(b) Point of origin;

(c) Name of dealer making the sale or delivery;

(d) All invoices must separately state and describe to the satisfaction of the Department the various products shipped and must be serially numbered except where other sales invoice controls acceptable to the Department are maintained;

(e) Name and address of the purchaser and delivery point; however, if delivery point is not contained on the invoice, other sales/delivery documents showing delivery point must be provided upon request by the Department.

(f) The gallons of motor vehicle fuel or aircraft fuel sold;

(g) The invoice must clearly show the place and state where the delivery was actually made. Physical delivery address must be kept for audit purposes.

(5) All required records must be summarized into calendar month totals and must be centralized in the accounting office where the periodic tax audit is to be made.

(6) The Department may determine, at its sole discretion, when the auditor for the state must travel outside the State of Oregon to examine the dealer's records. At any time such travel is determined necessary the dealer must reimburse the state for all travel expenses incurred, including transportation, meals and lodging costs.

(7) The Department has the authority to investigate, examine and audit licensed or unlicensed dealers, carriers, brokers, service stations, and other persons who are storing, selling, or distributing motor vehicle fuels or other petroleum products in Oregon. Such investigations, examinations and audits will occur during normal business hours;

(8) Documentation in the following areas must be made readily available to the Department upon request by the Department by the date prescribed by the Department;

(a) Accounts;

(b) Records;

(c) Stocks;

(d) Facilities;

(e) Equipment;

(f) Shipping;

(9) Dealers who fail to make records available for inspection are subject to assessment based on "best available information," collection action, and possible license suspension and revocation.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.370, 319.380, 319.390, 319.400
Hist.: MV 22, f. 2-15-63; Administrative Renumbering 3-1988, Renumbered from 735-011-0055; MV 7-1988, f. & cert. ef. 2-29-88; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-170-0020
Required Tax Report Forms and Report Preparation

(1) Every licensed dealer must prepare a tax report that completely summarizes the number of gallons of motor vehicle fuel or aircraft fuel sold, distributed, or used in the State of Oregon each month with required schedules and detail to fully explain the various entries.

(2) A separate set of forms must be prepared for each taxing jurisdiction administered by the Department on forms provided by the Department.

(3) Every licensed dealer must follow motor vehicle fuel tax reporting instructions and use prepared forms as provided by the Department. Willfull or habitual failure to complete tax reports in the manner prescribed by the Department may result in assessment based on "best available information," collection action, and possible license suspension and revocation.

(4) Computerized report data may be substituted for prescribed forms if it is a reasonable facsimile of the prescribed forms.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.010 - 319.430, 319.990
Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0105; MV 7-1988, f. & cert. ef. 2-29-88; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-170-0040
Tax Report Filing Dates

(1) A licensed dealer must complete a monthly tax report with full payment of taxes which must be received by the Department not later than the 25th of the succeeding calendar month.

(a) Receipt will be considered the date evidenced by a legible United States Postal Service cancellation stamp, certified mail receipt or other third party official certification.

(b) When an official cancellation stamp or certification is not present, the date that the report and payment is actually received by the Department (or its designee) will be used to determine timeliness.

(c) When the due date falls on a Saturday, a Sunday, or any recognized state or federal holiday, receipt of the report and payment must be received on or before the next business day.

(2) Tax reports and payments not received by the Department in a timely fashion will be considered late and subject to interest and penalty as described in ORS 319.180. Any tax report and payment not received by the due date of the next subsequent report constitutes a "failure to report" and is subject to an additional 10% penalty as described in ORS 319.200.

(3) If the report and payment are not received on or before the 25th day of the month a penalty will be assessed pursuant to ORS 319.180 or, if the Department determines that no tax is due, a penalty of $25 will be assessed.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.020, 319.180, 319.190, 319.200
Hist.: MV 22, f. 2-15-63; MV 48, f. 10-5-72, ef. 10-15-72; MV 53, f. 2-20-74, ef. 3-11-74; MV 1-1980(Temp), f. & ef. 1-21-80; MV 6-1980, f. & ef. 4-18-80; MV 11-1982, f. 4-30-82, ef. 5-1-82; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0115; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-170-0045
Motor Vehicle Fuel Tax Waiver of Late Payment Penalties

(1) ORS 319.090(2) and 319.180(4) allows the Department to waive certain penalties.

(2) Any entity or a person may submit a written request for waiver of penalty to the Department.

(3) The penalty under ORS 319.090 and 319.180 may be waived if the taxpayer shows reasonable cause.

(a) A taxpayer who wishes to apply for waiver of the penalty must make an affirmative showing of all facts alleged as a reasonable cause. The written statement must contain a declaration that it is made under penalty of perjury. The statement should be filed with the report or filed with the Department as soon as possible thereafter.

(b) Circumstances that may constitute reasonable cause include, but are not limited to the following:

(A) War, riot, rebellion, acts of God or other disaster; or

(B) Acts or omissions by a third party which were beyond the control of the person; or

(C) The person in good faith took all steps and precautions reasonably necessary to comply with the statute; and

(D) Any other criteria the Department may find to be informative and appropriate.

(4) For purposes of determining the amount of motor vehicle fuel sold, distributed or used where a dealer fails to report as described in ORS 319.200, "best available source" is defined in OAR 735-170-0000.

(5) Penalties described in ORS 319.190 will not be waived. Penalties described in ORS 319.200 are cumulative to penalties described in ORS 319.090, 319.180 and 319.190 and will not be waived.

(6) The following reasons are not acceptable for granting a penalty waiver:

(a) Employee incompetence or inexperience;

(b) Employee turnover;

(c) Misunderstanding or ignorance of law;

(d) Computer failure or error that is not the result of a natural disaster;

(e) Changeover to new accounting processes, software or upgrades;

(f) Change in company operations;

(g) Errors or reliance on the part of third party suppliers or customers.

(7) Penalties for amended reports and audit adjustments will be applied in accordance with applicable statutes. At the discretion of the Department the following criteria may be used to determine waiver of penalty:

(a) Accuracy of previous audits and payment history;

(b) Accuracy of current reports based on Departmental review;

(c) Compliance with previous audit recommendations;

(d) Cooperation in providing requested records in a timely manner;

(e) Any other criteria the Department may find to be informative and appropriate.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stat. Imp.: ORS 319.090, 319.180, 319.200
Hist.: MV 37-1987, f. 12-7-87, ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0745; Renumbered from 735-174-0050 by DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-170-0050
Transactions Which May Be Classed as Export Sales

Transactions that may be classified as export sales consist of:

(1) Motor vehicle fuel and aircraft fuel delivered by an Oregon licensed dealer to a destination outside the state of Oregon where the recipient is licensed in the destination state, country or territory and takes legal title of the fuel is considered an export sale.

(2) Motor vehicle and aircraft fuel leaving Oregon in the fuel tank of a motor vehicle or aircraft used only for the propulsion of the vehicle or aircraft is not an export, except as provided in ORS 319.330.

(3) The export certificate as described in ORS 319.240 is waived.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.240
Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0205; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-170-0090
Exemption Certificates

(1) Every licensed dealer making sales or deliveries to the Armed Forces of the United States for which tax exemption is claimed, must complete an Exemption Certificate Form as prescribed by the Department.

(2) In order to obtain exemption from the tax, the Exemption Certificate must be completed and signed at the time of sale and delivery. Whenever the vendor is other than an Oregon licensed dealer, the Exemption Certificate may be turned over to a dealer for credit and for inclusion with the dealer's monthly tax report. All Exemption Certificates must be kept on file in the dealer's office where the tax audit is to be made.

(3) All claims for tax exemption must be entered on the tax report as prescribed in the current motor vehicle fuel tax reporting instructions as provided by the Department.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.250
Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0255; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-170-0100
Fuel Lost or Destroyed — Tax Exemption Requirements

The following requirements are for claims by Oregon licensed dealers for exemption from the Oregon tax on motor vehicle fuel or aircraft fuel lost or destroyed through transportation and other mishaps prior to the time title to the product passes from the licensed dealer:

(1) Motor vehicle fuel or aircraft fuel lost by a carrier or other person in this state must be included in the taxable distribution section of the monthly tax report. When a carrier or person responsible for lost motor vehicle or aircraft fuel furnishes acceptable documentation of actual loss, credit for the Oregon tax may be taken. Acceptable documentation of the loss, as described in section (2) of this rule, must be submitted to the Department for approval. After approval by the Department, the documents must be filed with the accounting records in the dealer's office where the tax audit is to be made. Credits for approved losses must be reported as prescribed by the Department.

(2) Acceptable documentary proof of loss will include the following:

(a) A signed statement by the driver of the vehicle, or some person having actual knowledge of the loss, stating:

(A) The circumstances surrounding the accident or mishap;

(B) The total quantity of fuel shipped;

(C) The quantity of fuel actually lost or destroyed;

(D) The quantity of fuel salvaged;

(E) The disposition of the salvaged fuel; and

(F) The procedure used in the determination of the exact quantity of fuel lost or destroyed.

(b) A certified copy of the carrier's settlement of claim against the insurance company, if the loss is occasioned by a for-hire or other insured carrier. The details required by subsection (2)(a) of this rule must be supplied; or

(c) A signed statement by a State Police officer or other person witnessing the accident or mishap, that:

(A) Sets out the details of the accident; and

(B) States the quantity of fuel actually lost as nearly as can be determined by the officer or other person. The details required by subsection (2)(a) of this rule must be supplied.

(3) Losses that occur through accident or mishap to the dealer's own equipment must be supported by a signed statement made by the driver of the vehicle or person directly in charge of the equipment at the time of the accident. The statement must include the details required by subsection (2)(a) of this rule. This statement must be filed in the dealer's office where the tax audit is to be made.

(4) A tax exemption cannot be allowed when motor vehicle fuel is lost under the following conditions:

(a) Fuel lost from storage tanks that are directly connected by means of a pipe line to retail service station pumps, or fuel that the licensed dealer no longer retains complete control over; or

(b) Fuel claimed to have been lost from spillage, leaky valves, loose connections, unloading mishaps, leaky or defective storage tanks, or similar circumstances, where the nature of the loss is such that it cannot be positively established that an actual loss did occur and the exact quantity cannot be determined.

(5) In all cases where employers, agents, carriers, or other persons fail to account satisfactorily or completely for motor vehicle fuel and are charged by the dealer with the value of the product, such transactions must be included in the computation of the license tax.

Stat. Auth.: ORS ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.010, 319.020

Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0300; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-170-0105
Performance Bond Requirements

(1) Licensed dealers are required to maintain a bond amount that is twice the estimated montly licensed tax. Twice the dealer's estimated monthly license tax as determined by the Department is computed as follows:

(a) Prior to becoming licensed the required bond amount will be twice the estimated tax based on the estimated taxable gallons stated on the motor vehicle fuel dealer license application;

(b) The Department will periodically review the bond for sufficiency based on an average of the gallons reported by the dealer on a its monthly fuel tax reports;

(c) The Department may notify the dealer at any time to increase or decrease the bond. The dealer may at any time request a bond determination from the Department.

(2) When twice the dealer's estimated monthly tax is less than $1,000 the minimum bond required is $1,000.

(3) If the dealer's motor vehicle fuel dealer license was issued on or before October 23, 1999 and the dealer's estimated montly tax is more than $100,000 the maximum bond is $100,000.

(4) If the dealer's motor vehicle fuel dealer license was issued after October 23, 1999 and twice the dealer's estimated monthly license tax is more than $250,000, the maximum bond is $250,000.

(5) A bond is subject to increase under certain conditions up to a maximum amount of $1 million.

(a) After a bond has been increased for a period of 24 months, a dealer may submit a written request for reduction of the bond.

(b) If the Department determines that conditions for bond reduction have been met, the bond may be reduced to twice the dealer's estimated monthly tax or a maximum of $250,000 regardless of when the motor vehicle fuel dealer license was issued.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.050 - 319.080
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-170-0110
Evidence Demonstrating that a Dealer did not Intend to Avoid Paying Taxes for Purposes of Determining the Bond Amount

(1) The following factors will be taken into consideration for the purposes of determining whether the dealer did not intend to avoid payment of license taxes:

(a) Error on the part of the dealer's financial institution where the dealer can show that such error was not attributable to the dealer;

(b) An Act of God or natural disaster, i.e., earthquake, flood, fire, severe weather conditions;

(c) An act of war or terrorism;

(d) Incapacitation of key personnel responsible for reporting and remitting taxes; or

(e) Other evidence or explanations presented by the dealer demonstrating to the satisfaction of the Department that the dealer's conduct was not intentional or purposely designed to avoid payment of license tax.

(2) If the conduct was due to carelessness, negligence, inattention or disregard of duties on the part of the dealer or someone authorized to act on the dealer's behalf, the Department will not grant a waiver of the bond increase.

(3) The dealer must present a written request for waiver of the bond increase and all related evidence to support the request, to the Department within 30 days of the date of notice of bond increase. The Department will respond to the waiver request within 30 days of receipt.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stat. Implemented: ORS 319.052
Hist.: DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-170-0115
Change in Ownership or Cancellation of License

(1) A licensed dealer must notify the Department in writing of a change in ownership or cancellation of a license as described in ORS 319.125 before the next report is due. Performing the acts of a dealer without being properly licensed may subject the unlicensed dealer to penalties as described in ORS 319.090.

(2) An agent may sign on an individual's behalf when a valid power of attorney or guardianship is in effect.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.125
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-170-0120
Notice of Suspension/Revocation — Method of Delivery

(1) Each licensed dealer must provide the Department, by mail, with current contact information for the purpose of notification of license suspension.

(2) The contact information as described in section (1) of this rule must be a postal address and a telephone contact. An e-mail address is optional.

(3) Not later than the first business day following suspension or revocation of an Oregon Motor Vehicle Fuel dealer license, the Department will serve official notice to licensed dealers as follows:

(a) The Department will telephone fuel suppliers listed on the most recent tax report of the suspended or revoked dealer.

(b) The Department will notify all licensed dealers of the suspension or revocation at the postal address, and e-mail address if available, as provided by each dealer.

(4) Each licensed dealer will notify the Department of any change of address or contact information for the purpose of serving notices of suspension or revocation. The information most recently received by the Department from each licensed dealer will be the information that fulfills the Department's notice requirements as required by law.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.096, 319.102
Hist.: DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-170-0130
Motor Vehicle Fuel Tax Credit of Interest on Tax Overpayments

(1) The Department may allow interest credit for overpayments of motor vehicle fuel tax up to the amount of interest paid for underpayments of tax during any given audit period.

(2) For purposes of ORS 319.180(5)(b) and this rule, "any given audit period" means the time period from the last day of the immediate prior audit period up to the present. If there is no prior audit, "any given audit period" means a period not to exceed three years from the current date.

(3) Any interest payments made on underpayments of tax from a prior audit period will not be:

(a) Considered as interest on overpayments in the current audit period; or

(b) Subject to credit under ORS 319.180(5)(b).

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.180
Hist.: MV 37-1987, f. 12-7-87, ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0755; Renumbered from 735-174-0060 by DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-170-0140
Motor Vehicle Tax Refunds to License Oregon Motor Vehicle Fuel Dealers for Uncollectible Accounts

(1) Licensed dealers may file an amended report for credit of taxes paid attributable to uncollectible accounts pursuant to ORS 319.192 as appropriate to the type of fuel that is to be refunded.

(2) Dealers must follow prepared motor vehicle fuel tax reporting instructions for deductions for uncollectible accounts and provide required supporting documents as prescribed. Failure to provide such required supporting documents constitutes a waiver of all rights to the credit.

(3) Upon review and approval of the Amended Reports, the Department will issue a letter authorizing the credit within 90 days after the date of approval.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.192
Hist.: DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-174-0000
General Provisions for Fuels Tax Refunds

(1) "ODOT Fuels Tax Group" or "Department" means the organizational unit within the Oregon Department of Transportation or its designated agent that is primarily charged with the administration of ORS 319.010 through 319.880 on behalf of the State of Oregon.

(2) Motor Vehicle Fuel — Gasoline. The Oregon law provides that any person who has purchased motor vehicle fuel and who has paid any tax, either directly or indirectly, levied under the provisions of ORS 319.010 through 319.430, shall be entitled to a refund when such motor vehicle fuel is exported from the state (under certain conditions) or is used by the claimant for certain purposes. To obtain the refund, the claim must be filed within the prescribed time limits in ORS 319.290 on forms supplied by the Department. The claim must be accompanied by the original invoices or reasonable facsimiles approved by the Department, showing purchase of the fuel.

(3) Special fuels — Diesel Oil, Propane, etc. Refunds of any tax paid on use fuel shall be processed as prescribed in OAR 735-174-0020(2)(j) and subject to the conditions provided in ORS 319.831 and 319.835.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.880
Stats. Implemented: ORS 319.280, 319.320, 319.831, 319.835
Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 25, f. 8-3-65; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0701; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-174-0010
Tax Refunds on the Use of Gasoline and Other Motor Vehicle Fuels

(1) General Use and Certain Export Claims. Each such refund claim must be made on the current Fuels Tax Refund Claim form as prescribed by the Department for refund claims of motor vehicle fuel for general use or motor vehicle fuel exported in the tank of a motor vehicle when motor vehicle fuel tax is paid to the receiving state or jurisdiction as defined in ORS 319.280 and 319.320.

(2) Aircraft Fuel Use. Each such refund claim must be made on the current Fuels Tax Refund Claim as prescribed by the Department for all refund claims of fuel used in aircraft. The taxes established in ORS 319.020(2) are refundable as provided in ORS 319.330.

(3) Licensed Dealer Claims. Instead of filing refund claims, a licensed dealer in motor vehicle fuel may enter the gallons of motor vehicle fuel used in a refundable manner on forms prescribed by the Department, and include it with the monthly tax report. In doing so, all requirements pertaining to refund claims must be met and subject to limitations in ORS 319.375. Claims based on the export of motor vehicle fuel out of Oregon will be allowed only if the person claiming the refund holds a valid motor vehicle fuel dealer's license, or equivalent, issued by the state, territory, or county to which the motor vehicle fuel is exported and where it is unloaded. The Department may require claimants to submit proof of such a license.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.880
Stats. Implemented: ORS 319.280, 319.330
Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 25, f. 8-3-65; MV 33, f. 9-12-67, ef. 9-13-67; MV 48, f. 10-5-72, ef. 10-15-72; MV 53, f. 2-20-74, ef. 3-11-74; MV 4-1980, f. & ef. 3-4-80; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0706; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-174-0020
Records and Invoice Requirements

(1) A tax refund claimant must retain records to substantiate a claim. Failure of the claimant to maintain required records and provide them for examination by the Department constitutes a waiver of all rights to the refund.

(2) The following rules shall govern records maintained to support refund claims and apply to all fuel maintained in storage other than a fuel can with a capacity of five gallons or less:

(a) The fuel storage tank must be equipped with a properly working metering device or have a consistent method for determining the amount of fuel withdrawn from storage for fuel to be considered for refund. For storage tanks equipped with a metering device, meter readings must be taken and documented each time fuel is dispensed and at the end of each month.

(b) If more than one storage tank is maintained, tanks must be named or labeled and the invoices must be marked, by the supplier, at the time of delivery to identify the storage tank into which the fuel was delivered and indicate the accurate amount of fuel placed in each tank.

(c) Consumption records must be maintained for all bulk storage tanks regardless of the fuel use. All fuel purchases and distributions must be fully accounted for by detailed withdrawal records, to accurately show the manner in which it was used. This includes monthly meter readings and inventory readings.

(A) Consumption records must be submitted with every claim for which fuel is used from a bulk storage tank, which includes both refundable and non-refundable fuel usage (common storage.) The Department will notify the claimant, in writing, if consumption records are not required to be submitted with a claim.

(B) Consumption records must be made available upon request of the Department for fuel used from a bulk storage tank, which includes only refundable or only non-refundable fuel (separate storage.)

(C) The separate storage method is not a sufficient means to determine refundable and non-refundable usage without the support of consumption records.

(d) Any fuel on hand (by actual measurement) should be deducted from a claim and should be reported as an opening inventory on the next claim. Credit for the inventory will be allowed on the next claim if it is postmarked within fifteen months from the postmark of the claim that established the inventory.

(e) Fuel Purchased for Other than Bulk Storage. Motor vehicle fuel purchased in small containers for non-highway use only, should be so identified on the purchase invoice as to the type of container or equipment fueled and include the name or signature of the purchaser.

(f) Fuel purchased at a cardlock. When fuel is purchased at a cardlock and a portion of that fuel is refundable the following conditions must be met:

(A) Cards must be assigned to a specific vehicle and the vehicle plate number must be included on the cardlock statement at the time the statement is produced.

(B) Cards must be assigned to a piece of equipment or group of equipment and that must be indicated on the cardlock statement at the time the statement is produced.

(C) Cards must be assigned to a mobile fuel storage tank that is designated to contain gasoline to fill a group of equipment, and this must be indicated on the cardlock statement at the time the statement is produced. A mobile tank that is fueled at a cardlock is considered to be bulk storage.

(g) Proof of Highway Use. When minimal non-refundable use deduction, as determined by the Department, is made from invoices attached to the claim, the claimant should be prepared to show additional invoices or other proof of purchase of public road fuel upon request of the Department. When no non-refundable use deduction is made, the claimant must include additional invoices or other proof of purchase of public road fuel, upon request of the Department, when filing the claim;

(A) Proof of non-refundable use includes all fuel purchases for all vehicles registered to the claimant.

(B) Proof of non-refundable use does not eliminate the requirements to keep and provide, upon request of the Department, consumption records for fuel used from a bulk storage tank that includes fuel used only in a refundable manner.

(h) Persons claiming a tax refund on motor vehicle fuel exported to another state in the fuel supply tank of a motor vehicle are required to provide the following:

(A) Evidence of payment of tax to another state and information for each vehicle showing the source of all motor vehicle fuel used, the total number of miles traveled, and the miles traveled in each state; and

(B) Evidence satisfactory to the Department of the amount of motor vehicle fuel that was exported.

(i) A person or agency who operates a licensed motor vehicle on and off public highways may claim a refund of the Oregon tax on the fuel used to operate the vehicle as designated in ORS 319.320(1) and 319.320(4). The refund can be approved only if the claimant has maintained and provided the following records:

(A) The total miles operated as established by a working odometer for each licensed motor vehicle, including private passenger cars during the entire claim period; and

(B) The total gallons of fuel used in the vehicle to include both refundable and non-refundable use;

(C) The source of the fuel used in the vehicle to include purchase invoices supporting all fuel handled through bulk storage, as well as all fuel purchased at service stations, or received from other sources; and

(D) Calculation of highway fuel used for each vehicle, determined by calculating the total miles driven divided by the total gallons of fuel used and applying the resulting miles per gallon to total off road miles.

(j) Claims covering the operation of unlicensed motor vehicles entirely over roads or property subject to refund are required to establish the source and number of gallons of motor vehicle fuel used by consumption records.

(k) The claimant must be able to establish to the satisfaction of the Department the amount of fuel used in a refundable manner.

(3) Requirements covering invoices submitted in support of fuel tax refund claims:

(a) Each invoice, or reasonable facsimile approved by the Department, submitted with a claim must be the original issued at the time of purchase or initial billing.

(b) Each invoice must show the following:

(A) Month, day, and year of sale;

(B) Name and complete address of seller (city and state);

(C) Purchaser's name (Cash, boat number, etc., will not qualify);

(D) Kind of fuel and number of gallons purchased;

(E) Price per gallon purchased and dollar amount extended.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.880
Stats. Implemented: ORS 319.280
Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 25, f. 8-3-65; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0716; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-174-0030
Rules and Special Requirements for Fuel Tax Refunds

(1) Signatures Required on Refund Claims:

(a) Individuals must sign their own claims;

(b) A partnership claim may be signed by any one of the partners;

(c) Claims by business firms or corporations must be signed by an authorized agent;

(d) Accountants and other persons assisting in preparation of claims must also sign in the space provided.

(e) An agent may sign on an individual's behalf when a valid power of attorney or guardianship is in effect.

(f) An executor of a person's estate may sign and make a claim for refund of fuels tax when a current letter of transfer to an estate as prescribed by the Department is provided with the refund claim.

(2) Normally the "Buyer and User" is the person entitled to the refund and is the person or firm named on the invoice. Claims should be made out in the same name as that shown on the invoices. If it is desired to have a claim paid in a name differing from that shown on the purchase invoice, a letter of authorization as prescribed by the Department must be attached and signed by the person to whom the invoice was issued.

(3) Power take-off fuel use in motor vehicles as described in ORS 319.280:

(a) The refund formula in ORS 319.280(2)(b) does not apply to garbage trucks with power take-off that operates only a dump box, hoist, or other type of lift;

(b) Claims must be accompanied by valid purchase invoices to cover the total gallons of motor vehicle fuel purchased. Claimant must also maintain records to show the total gallons of motor vehicle fuel used in each vehicle and the total miles operated by each vehicle. Service station purchase invoices should identify each vehicle by showing the vehicle license plate number;

(c) When motor vehicle fuel is drawn from the claimant's bulk storage, a detailed record must be kept of all withdrawals, together with beginning and ending inventories, so that a complete accounting may be made of all fuel handled;

(d) A summary, showing beginning inventory, receipts, withdrawals, loss or gain, and ending inventory, is to be shown on the claim form in the space provided;

(e) Claimants who operate petroleum delivery trucks must maintain records to show the total gallons of petroleum products pumped by each vehicle using power take-off equipment, together with supporting delivery meter readings;

(f) Each such refund claim must be made on the current Fuels Tax Refund Claim form as prescribed by the Department. This will be in addition to schedules or work sheets required for other refundable use or equipment.

(4) Auxiliary Engines. Fuel used in an auxiliary engine mounted on a licensed motor vehicle (ready mix concrete, refrigeration or air conditioning units, etc.), is considered refundable use if motor vehicle fuel for the auxiliary engine is supplied from a fuel tank, other than the fuel tank that supplies the engine propelling the vehicle. Estimates of refundable use do not qualify for refund. When separate fuel tanks are used, a record of the gallons of fuel delivered into each tank must be kept and purchase invoices covering both tanks must accompany the claim. Motor vehicle fuel used in the operation of an auxiliary engine, mounted on a licensed motor vehicle, supplied from the fuel tank that propels the vehicle, is only considered refundable use if a metering device approved by the Department is used. The metering device must separately measure gallons of fuel used only by the auxiliary engine.

(5) Use or disposition of fuel which is not subject to refund:

(a) Fuel sold, lost, destroyed, stolen, or given away;

(b) Fuel used with respect to which payment of tax to the State of Oregon has not been verified;

(c) Fuel used to operate motor vehicles upon public highways with certain exceptions;

(d) Fuel used to operate licensed motor vehicles where complete mileage and fuel records required by law and administrative rule are not maintained;

(e) Motor vehicle fuel used in snowmobiles or other unlicensed motor vehicles, unless operated on private land.

(f) Fuel used while a vehicle is idling.

Stat. Auth.: ORS 184.616, 184.619 & 319.010 - 319.880
Stats. Implemented: ORS 319.280
Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 26, f. 12-8-65; MV 42, f. 8-15-69; MV 45, f. 8-12-70, ef. 9-11-70; MV 53, f. 2-20-74, ef. 3-11-74; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0725; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-174-0035
Additional Information to Substantiate a Refund Claim

(1) The Department will give a claimant written notice of the need to provide any additional records available as further proof of the validity of the refund claim. The Department will also give a claimant written notice in advance of records that will be required to be maintained and provided to the Department that are not specifically mentioned in statute or administrative rule.

(2) If the claimant cannot, or refuses to, provide the information required by the Department, the right to the refund is waived.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.880
Stats. Implemented: ORS 319.280
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-174-0040
Tax Refunds on Use of Gasoline and Other Motor Vehicle Fuels in Motor Boats

(1) The refund of tax on fuel used in motor boats is limited to fuel used for commercial purposes.

(2) Marked invoices and consumption records, if fueled from a bulk tank, are required to support such claims as prescribed in Administrative Rule 735-174-0020. Invoices must be marked by the supplier at the time of sale with the boat license number if the fuel is placed directly into the fuel tank of the boat.

(3) The Department considers the use of fuel in motor boats for commercial purposes to include the following:

(a) Commercial fishing.

(A) A valid commercial fishing license number must be provided and active for the refund period.

(B) A valid boat license number must be provided and active for the refund period. It must be registered to the name of the claimant or a copy of a completed rental agreement must be provided.

(b) Charter boat operations.

(A) A valid commercial charter boat license number must be provided and active for the refund period.

(B) A valid boat license number must be provided and active for the refund period. It must be registered to the name of the claimant or a copy of a completed rental agreement must be provided.

(c) Log pond operations.

(d) Mail boat operations.

(e) Tourist boat operations.

(f) Any other type of operation that the Department may determine to be commercial use based on the documentary evidence provided by the claimant.

Stat. Auth.: ORS 184.616, 184.619 & 319.280
Stats. Implemented: ORS 319.280
Hist.: MV 20-1985, f. 12-30-85, ef. 1-1-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0735; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-174-0045
Tax Refunds for Use of Gasoline and Other Motor Vehicle Fuels in Aircraft

(1) The refund of tax on gasoline used in aircraft is limited to the person who purchased and used the fuel in an aircraft.

(2) If the aircraft is fueled from a bulk tank, marked invoices and consumption records must support refund claims as prescribed in Administrative Rule 735-174-0020.

(3) A valid tail number must be provided and active for the refund period. It must be registered to the name of the claimant or a copy of a completed rental agreement must be provided.

(4) The valid pilot's license number of the claimant must be provided with the claim. A copy of the pilot's license must be provided upon request of the Department.

Stat. Auth.: ORS 184.616, 184.619 & 319.010 - 319.880
Stats. Implemented: ORS 319.280
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-176-0000
Definitions

(1) "Bulk Facility" means a fixed storage location for which the primary purpose is the distribution of fuel by truck to the customers location. Dispensing fuel at the bulk facility into a vehicle or container is not prohibited, but may be subject to tax.

(2) "Cardlock Statement" means the printed detail of customer purchases using a cardlock card. Each statement shall contain:

(a) The card issuers name and address;

(b) The customers name and address; and

(c) The transaction activity detailed by card number.

(3) "Electronic Invoice" means the data captured when using a cardlock card for a fuel purchase. The electronic invoice shall contain the same information as in "Invoice." Commonly, a series of electronic invoices will be printed in a periodic cardlock customer statement.

(4) "Emblem" means the document issued by the Department, which allows the licensed user to purchase fuel with the Oregon use fuel tax deferred. Emblems are issued for a specific vehicle and renewed annually.

(5) "Fleet Fueling" means a mobile retail fueling operation where the licensed seller places fuel into the tank of a vehicle or equipment at various locations. Any sales made without collecting Oregon tax are subject to invoice requirements in ORS 319.671.

(6) "Incidentally Operated" means the vehicle or equipment is primarily designed to be operated off road but is allowed up to five (5) miles on-road travel starting from the location the vehicle was garaged or parked the previous day. If in excess of these miles, all on-road use is subject to tax.

(7) "Invoice" means the receipt or other record of an individual transaction, completed at the time of the sale. An invoice shall contain the following:

(a) Seller's name and address;

(b) Full date of sale;

(c) Fuel types;

(d) Gallons sold;

(e) The amount of Oregon use fuel tax collected, if any (shown separately from total purchase amount);

(f) if tax was collected for fuel sold into the fuel tank of a vehicle over 26,000 pounds the invoice/receipt must contain:

(A) Oregon Motor Carrier Transportation Division issued plate number; or

(B) Oregon Motor Carrier Transportation Division weight receipt number; or

(C) Oregon Motor Carrier Transportation Division pass number

(g) If exempt, the reason for exemption as allowed by ORS 319.671.

(8) "Non-retail Facility," as defined in ORS 319.520(11), means an unattended facility where use fuels are dispensed through a card activated fuel dispensing device to non-retail customers.

(9) "ODOT Fuels Tax Group" or "Department" means the organizational unit within the Oregon Department of Transportation or its agent that is primarily charged by the Department with the administration of ORS 319.010 through 319.880 on behalf of the state of Oregon.

(10) "Retail Facility" means a fueling operation that does not qualify as a non-retail facility. Unattended facilities that are not capable of generating an electronic invoice are considered retail facilities.

(11) "User" or "User of Fuel in a Motor Vehicle" as used in ORS 319.510 through 319.880 and OAR chapter 735, division 176, means a person as defined in ORS 319.520(12) who uses fuel in a motor vehicle as defined in ORS 319.520(15). "User" or "user of fuel in a motor vehicle" includes, but is not limited to, a lessor who allows a motor vehicle to operate on the highways of this state and allows the lessee to use fuel in that motor vehicle.

Stat. Auth.: ORS 184.616, 184.619 & 319.510 - 319.880
Stats. Implemented: ORS 319.510 - 319.880
Hist.: MV 22, f. 2-15-63; MV 4-1980, f. & ef. 3-4-80; MV 24-1981, f. 10-30-81, ef. 11-1-81; MV 3-1982, f. & ef. 1-4-82; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-012-0010; DMV 3-2004, f. & cert. ef. 1-15-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-176-0010
Use Fuel Seller Licensing Requirements

(1) Seller License. Persons who sell fuel for use in a motor vehicle are required to be licensed. They must maintain records of fuel manufactured, purchased, handled, and distributed or sold and must preserve them for three years. Sellers of fuel who do not sell for use in a motor vehicle are not required to be licensed. They must, however, maintain records of fuel manufactured, purchased, handled, and distributed or sold and must preserve them for three years from the date of sale and make them available to the Department upon request.

(2) Bond amounts for licensed sellers will be two times the estimated monthly tax liability as determined by the Department.

(a) For new licensees, the bond amount shall be determined by volume sold by prior owner or similar sellers in the area.

(b) In the event there is no reliable data on which to estimate the bond, the seller will post $1,000 bond or deposit, subject to annual review and adjustment.

(3) If a deposit other than cash is made, the bond or security on deposit shall have the Department of Transportation listed as an owner.

Stat. Auth.: ORS 184.616, 184.619 & 319.510 - 319.880
Stats. Implemented: ORS 319.621, 319.665 & 319.697
Hist.: MV 22, f. 2-15-63; MV 24, f. 8-22-63, ef. 9-2-63; MV 48, f. 10-5-72, ef. 10-15-72; MV 4-1980, f. & ef. 3-4-80; MV 23-1981, f. 10-30-81, ef. 11-1-81; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-012-0010; MV 49-1989, f. 11-16-89, cert. ef. 1-1-90; DMV 3-2004, f. & cert. ef. 1-15-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-176-0017
Use Fuel Seller Reporting Requirements

(1) Fuel is presumed used on road when sold. Failure to account for non-taxed sales with complete documentation completed at the time of sale, may result in the assessment of tax on the gallons of fuel and penalty and interest on the tax that has not been reported and remitted.

(2) Every seller must prepare a tax report that completely summarizes the gallons of use fuel sold, distributed, or used during the report period. Schedules are required for each type of operation. Total taxable gallons from each schedule will be carried to the appropriate line on the front page of the seller report for computation of the tax, penalty and interest as applicable.

(3) "Shall report and remit" means a complete seller report, with all required schedules on forms prescribed by the Department and full remittance of tax must be received by the Department or its designated agent, not later than the 20th of the succeeding calendar month.

(a) Receipt will be considered the date evidenced by a legible United States Postal Service cancellation stamp, certified mail receipt or other third party official certification.

(b) When an official cancellation stamp certification is not present, the date that the report and payment is actually received by the Department (or its designee) will be used to determine timeliness.

(c) When the due date falls on a Saturday, a Sunday, or any recognized state or federal holiday, receipt of the the report and payment must be received by the Department on or before the next business day.

(d) A credit of 4% of the tax is available if the licensee reports and remits on time.

(e) The full tax amount will be charged when a failure to file assessment is made.

(f) A seller will be deemed to have failed to file a report when:

(A) The report has not been filed by the next report due date if the seller is a monthly filer; or within 45 days of the due date if the seller is a quarterly or annual filer; or

(B) The Department has requested that a report be filed by a specified date and the report is not received by the specified date.

(4) An agent may sign on an individuals behalf when a valid power of attorney or guardianship is in effect.

(5) Collecting Tax on Sales.

(a) Persons who sell fuel into the fuel tank of motor vehicles, except for sellers of fuel at non-retail facilities as defined in ORS 319.520(11), shall collect the Oregon tax at the time of sale except for sales into:

(A) Vehicles displaying a valid ODOT Motor Carrier Transportation Division weight receipt or pass;

(i) An invoice is required for sales into the fuel tank of motor vehicles with a combined weight in excess of 26,000 pounds where the tax was collected at the time of sale.

(ii) Invoice must contain information described in 735-176-0000(7).

(B) Vehicles displaying a valid use fuel vehicle emblem issued by the Department;

(C) Vehicles displaying a United States Government license plate or the registration plate for state or local government owned vehicle issued registration pursuant to ORS 805.040 or a school bus or school activity vehicle issued registration pursuant to ORS 805.050;

(D) Farm tractors or other agricultural implements only incidentally operated on the highway as defined in ORS 319.520(10); and

(E) Cans, barrels, or containers other than the fuel supply tank of a motor vehicle.

(b) If the tax is not collected, pursuant to the exception under subsection (5)(a) of this rule, the seller shall show on the sales invoice:

(A) The U.S. Government plate number.

(B) The registration plate number for a government owned vehicle issued registration pursuant to ORS 805.040 or a school bus or school activity vehicle issued registration pursuant to ORS 805.050;

(C) The ODOT Motor Carrier Transportation Division weight receipt or pass number;

(D) ODOT use fuel emblem number; or

(E) Description of equipment or container when delivered into farm equipment, can or barrel.

(c) Suppliers may collect tax on deliveries into the bulk tank of an end user at the customer's request.

(A) Collection of tax may not occur when the purchaser will be subsequently selling the fuel into the fuel receptacle of a motor vehicle that propels the vehicle on the roads.

(B) Collection of tax at a users request does not necessarily relieve the user of the need to be licensed and report.

(6) A seller, identified by ORS 319.520(13)(b), who sells fuel at non-retail facilities in Oregon and does not collect the tax from a purchaser whose account is owned by the seller, must retain written certification signed by the purchaser on forms provided by the Department that the use of the fuel is tax deferred or exempt from the tax imposed under ORS 319.530.

(a) "Certifies to the Seller" means the customer completes and signs the "Certification of Oregon Use Fuel Exempt Tax Status" form as provided by the Department . The seller is responsible for collecting and remitting the tax until the signed and dated exemption certificate is received from the customer. The form will contain:

(A) The name and address of the Seller;

(B) The name, address, account number and signature of the purchaser;

(C) The reason that the use fuel tax should not be collected by the seller;

(D) A list of vehicles and cards; and

(E) A statement from the purchaser that for all use fuel purchased at Oregon non-retail facilities on account with the seller, such fuel will be used only for purposes that are tax deferred or exempt from use fuel taxation under ORS 319.510 through 319.880.

(b) A seller may not sell use fuel without the tax until a valid exemption certificate is completed, signed and returned to the seller; and

(c) The customer provides the identifying information for each cardlock card to qualify the tax deferred status

(7) Sellers, identified by ORS 319.520(13), who do not operate non-retail facilities in Oregon but who own the accounts of purchasers who purchase fuel at Oregon non-retail facilites, must be licensed with the Department and are required to comply with all of the provisions of ORS 319.510 through 319.880 and this rule.

(8) When a cardlock card is used at a retail facility, the retail operator may deduct those sales from the taxable sales. The owner of the card reader will provide the retail operator with the network statement verifying the gallons sold through the reader.

(9) A seller, identified by ORS 319.520(13), who sells at non-retail facilities in Oregon and does not collect the tax from a purchaser whose account is not owned by the seller, must provide, upon request of the Department the account number of the purchaser and the name and address of the non-retail seller who owns the account.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.510 - 319.990
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-176-0019
Use Fuel Seller Record Keeping Requirements

(1) Record Requirements. Every seller of fuel for use in a motor vehicle shall maintain and keep records for a period of three years from the due date of the report or three years from the date the report is filed, whichever is later, as follows:

(a) A purchase journal or other record of fuel received supported by purchase invoices and bills of lading showing delivery location for all use fuel purchases;

(b) A record of all bulk fuel sales, and transfers;

(c) A physical inventory of bulk fuel storage shall be recorded by the end of business on the last day of each calendar month and preserved for audit purposes. Tank inventory readings may be electronic tank monitor readings or physical stick inventory readings;

(d) Pump meter readings are to be taken by the end of business on the last day of the month and retained for audit purposes. Physical pump meter readings (or non-resettable electronic readings) will be taken for all dispensers of use fuel operated by the Seller at a location; and

(e) Invoices upon which tax collections are recorded shall be kept separate and apart from other sales invoices.

(f) Source documents for tank inventory and pump meter readings for audit purposes (whether manual or electronic readings) shall be retained.

(g) Copies of customer invoices (paper or electronic) for audit purposes shall be kept. Non-retail sellers will also retain fuel network statements to support customer invoices.

(h) Copies of exemption certificates that include a list of cards and vehicles if cardlock cards are issued must be kept.

(2) Required records will be summarized by calendar month and must be centralized in the state of Oregon at the office where the periodic tax audit is to be made.

(3) The Department may determine, at its sole discretion, when the auditor for the state must travel outside the State of Oregon to examine the licensee's records. At any time such travel is determined necessary the licensee must reimburse the state for all travel expenses incurred, including transportation, meals and lodging costs.

(4) Sellers must make documentation readily available to the Department upon request by the Department by the date prescribed by the Department.

(5) Sellers who fail to provide records for review are subject to assessment based on "best available information" collection action, and possible license suspension and revocation.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.510 - 319.990
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-176-0020
Use Fuel User Licensing Requirements

(1) License Requirements.

(a) Persons who use fuel as defined in ORS 319.520(12) in a motor vehicle, except those excluded in ORS 319.550 must first apply for and obtain a user license and a vehicle emblem for each vehicle;

(b) User licenses are subject to bonding as specified in subsection (4) of this section;

(c) Emblems are issued for specific vehicles on an annual basis; and

(d) ORS 319.611(1) imposes a penalty of 25 percent of the tax for using fuel without first obtaining a valid license and vehicle emblem.

(2) Other users required to be licensed and report vehicle operations and fuel usage include:

(a) Users of vehicles over 26,000 Gross Vehicle Weight Rating when any of the miles operated in Oregon are not subject to weight mile tax;

(b) Oregon state agencies;

(c) Oregon counties;

(d) Oregon cities;

(e) Rural fire protection districts;

(f) School districts;

(g) Special districts; and

(h) Other users as notified by the Department.

(3) Nonresidents in this state a total of 30 days or less during the calendar year are not required to be licensed if, for all fuel used in a motor vehicle in this state, the nonresident pays to a seller, at the time of the sale, the tax provided in ORS 319.530.

(4) Bond amounts are limited as shown in ORS 319.570. Bonds for licensed users will be two times the estimated monthly tax liability as determined by the Department.

(a) In the event there is no reliable data on which to estimate the bond, the user will post $100 bond or deposit, subject to annual review and adjustment.

(b) If a deposit other than cash is made, the bond or security on deposit shall have the Department of Transportation listed as an owner.

(5) An emblem is required to be displayed on the vehicle for which it was issued when purchasing fuel for the vehicle. An emblem is considered to be displayed in a conspicuous place if it is readily accessible and presented to the station attendant at the time of fueling, or the cardlock card issuer upon request and at the time the account is set up, or when requested by the supplier. Emblems are not required when a licensed user fuels only from a bulk tank, owned by the licensed user.

(6) The Department may refuse to cancel a user license when such cancellation is requested by the user, if the user is required to report. Effective cancellation dates may be set by the Department if the user does not return emblems. If emblem(s) is not returned at the request of the Department, then the user shall file reports throughout the year in which the emblem will expire.

(7) Responsibilities of the User:

(a) List all use fuel vehicles on application and user report;

(b) Retain emblem with the vehicle;

(c) Retain fueling and mileage records by vehicle;

(d) Notify the Department of any changes in vehicles;

(e) Cancel license in writing if the license is no longer needed; and

(f) Return emblems when license is canceled or revoked.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550 - 319.690
Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 48, f. 10-5-72, ef. 10-15-72; MV 4-1980, f. & ef. 3-4-80; Administrative Renumbering 3-1988, Renumbered from 735-012-0036; MV 49-1989, f. 11-16-89, cert. ef. 1-1-90; DMV 3-2004, f. & cert. ef. 1-15-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-176-0021
Use Fuel User Record Keeping Requirements

(1) Record Requirements. Every user of fuel must maintain and keep the following records:

(a) A purchase journal or other record of fuel received supported by purchase invoices. If Oregon tax is included in the purchase price, a copy of the invoice must be provided with the user report to receive tax-paid fuel credit;

(b) A record of the number of miles traveled over Oregon highways. In the absence of affirmative evidence all fuel will be presumed to have been used on Oregon roads;

(c) If fuel is purchased in bulk, a stock summary of fuel handled during each month with an analysis as to inventories, receipts, sales, use, transfers, and loss or gain;

(d) If fuel is stored in bulk, a physical inventory shall be taken at the end of each month and preserved for audit purposes. Consumption records

will be retained by the user and made available to the Department upon request by the Department;

(e) All required records shall be kept within the state of Oregon and preserved for a period of three years from the due date of the report or three years from the date the report is filed, whichever is later, and provided to the Department as required for examination;

(f) A User with one use fuel vehicle with a light weight of less than 8,000 pounds, as verified by a method approved by the Department, may, in lieu of the requiremnts detailed in section (1)(a) through (1)(e) of this rule, keep an accurate record of Oregon miles driven. Tax for this User is calculated using a reasonable mile per gallon (as determined by the Department using industry standards) applied to Oregon miles traveled.

(2) Required records will be summarized by calendar month and must be centralized in the state of Oregon at the office where the periodic tax audit is to be made.

(3) At the discretion of the Department, if at any time the auditor for the state travels outside the state of Oregon to examine company records, the company must reimburse the state for travel expenses, including transportation, meals, and lodging costs incurred by the auditor, based on actual cost to the state.

(4) Users must make documentation readily available to the Department upon request of the Department by the date prescribed by the Department.

(5) A user who fails to provide records for review is subject to assessment based on "best available information," collection action, and possible license suspension and revocation.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550, 319.690, 319.692, 319.697
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-176-0022
Use Fuel User Reporting Requirements

(1) Every user of fuel, except for users described in 735-176-0022(3)(a)(A) must prepare a tax report which completely summarizes the miles driven and fuel used during the report period. Schedules must be included with the tax report as well as remittance for tax due.

(2) "Shall file with the Department" means a complete user report with all required schedules and full remittance are received by the Department or its designated agent, on or before the 20th of the month following the end of the reporting period. If the 20th falls on a Saturday, a Sunday or a recognized state or federal holiday, the report will be considered timely filed if received by the next business day.

(3) Tax Reports:

(a) Every licensed user of fuel who operates a vehicle which is subject to the Use Fuel Tax Law is required to file a monthly report of miles operated and fuel used, except that:

(A) Licensed users who operate one vehicle of less than 8,000 pounds light weight may file an annual report provided they do not operate any other use fuel vehicles. This report is due by March 1st, of the year following the year of report.

(B) Users with a monthly tax obligation of less than $300 may be authorized by the Department to file quarterly reports; and

(b) Tax report due dates are as follows:

(A) Monthly reports are due on 20th day of next calendar month;

(B) Quarterly tax reports:

(i) First Calendar Quarter reports are due April 20

(ii) Second Calendar Quarter reports are due July 20

(iii) Third Calendar Quarter reports are due October 20

(iv) Fourth Calendar Quarter reports are due January 20

(C) Annual reports are due January 20 of the following year.

(c) A vehicle operations schedule will be completed for miles driven for each vehicle. A deduction is allowed for the following:

(A) Miles reported to Motor Carrier Transportation Division. Include miles driven in Oregon on which you also reported and paid weight mile tax;

(B) Miles driven outside Oregon where tax has been paid to the other jurisdiction and proof is provided. Retain mileage records;

(C) Miles driven off-road. Retain mileage records;

(D) For qualifying school districts and education service districts, bus miles driven to transport students, and in support of student transportation, such as driver training, fueling, maintenance and similar activities as approved by the Department are tax refundable. Bus charter miles driven and school district vehicles not used to transport students are subject to tax.

(d) A schedule of fuel purchases and usage will be completed for fuel used during the report period, from all sources. If the fuel source includes bulk fuel, consumption records are required to be maintained.

(e) Licensed users who have paid any Oregon tax on fuel purchased from Oregon sellers of fuel must detail such purchases in the fuel schedule of the tax report form and treat such transactions as credits against their total tax liability. Credit may be taken for tax paid on gallons up to the amount of gallons used during the report period. Any additional credit can be taken on future reports as the tax paid fuel is used.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550, 319.690, 319.692, 319.697, 319.831, 319.820
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-176-0030
Use Fuel Tax Waiver of Late Payment Penalties

(1) ORS 319.694(2) allows the Department to waive penalties for late payment of use fuel tax.

(2) An entity or a person may submit a written request for waiver of late payment penalties to the Department.

(3) The penalty under ORS 319.694 may be waived if the taxpayer shows reasonable cause for delay in filing the report or paying the tax.

(a) A taxpayer who wishes to apply for waiver of the penalty established by ORS 319.694(2) for failure to file a report or pay a tax must make an affirmative showing of all facts alleged as a reasonable cause for the failure to file the report or pay the tax on time in a written statement containing a declaration that it is made under penalty of perjury. The statement should be filed with the report or filed with the Department as soon as possible thereafter.

(b) Circumstances that may constitute reasonable cause include, but are not limited to, the following:

(A) War, riot, rebellion, acts of God or other disaster which rendered it impossible to make the filing or payment or which made delay unavoidable in making the filing or payment; or

(B) Acts or omissions by a third party which were beyond the control of the person making the filing or payment and which made delay unavoidable in making the filing or payment; or

(C) The person took in good faith all steps and precautions reasonably necessary to ensure the timeliness of the filing or payment, and

(D) Any other criteria the Department may find to be informative and appropriate.

(c) The calculation of the penalty will be shown on all adjustments. If the person requests a waiver and it is granted, the amount waived will also be shown.

(d) The following reasons are not acceptable for granting penalty waiver;

(A) Employee incompetence or inexperience;

(B) Employee turnover;

(C) Misunderstanding or ignorance of law;

(D) Computer failure or error that is not the result of a natural disaster;

(E) Changover to new accounting processes, software or upgrades;

(F) Change in company operations; or

(G) Errors or reliance on the part of third party suppliers or customers.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.694
Hist.: MV 37-1987, f. 12-7-87, ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-012-0045; DMV 3-2004, f. & cert. ef. 1-15-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-010-0040
Use Fuel Tax Credit of Interest on Tax Overpayments

(1) The Department may allow interest credit for overpayments of use fuel tax up to the amount of interest paid for underpayments of tax during any given audit period.

(2) For purpose of ORS 319.694(3)(b) and this rule, "any given audit period" means the time period from the last day of the immediate prior audit period up to the present. If there is no prior audit, "any given audit period" shall mean a period not to exceed three years prior to the current date.

(3) Any interest payments made on underpayments of tax from a prior audit period shall not be:

(a) Considered as interest on overpayments in the current audit period; or

(b) Subject to credit under ORS 319.694(3)(b).

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.694
Hist.: MV 10-1984, f. 6-29-84, ef. 7-1-84; MV 9-1985, f. & ef. 8-1-85; MV 5-1986, f. & ef. 3-3-86; MV 20-1987, f. 9-21-87, ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-032-0040; MV 44-1989, f. & cert. ef. 10-16-89; MV15-1990, f. 8-30-90, cert. ef. 9-1-90; MV 12-1992, f. & cert. ef. 10-16-92; DMV 16-1998, f. 12-17-98, cert. ef. 1-1-99; DMV 20-2001, f. & cert. ef. 10-18-01; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

735-176-0045
Refunds and Credits of Use Fuel Tax

(1) Refunds of use fuel are allowed in the following circumstances:

(a) Fuel is used in another state and is also taxed by that state (proof of payment of tax to other state is required);

(b) Fuel is used off-road in a licensed vehicle (mileage records are required);

(c) Fuel is used in a qualifying government vehicle (federal, state, county, city);

(d) Fuel is used in qualifying student transportation;

(e) Fuel is used by a rural fire district;

(f) Fuel is used by a qualifying special district; and

(g) Refunds are limited to fuel purchased within 15 months of the date of the claim; application for refund is made on the form prescribed by the Department.

(2) An erroneous collection occurs when the seller has the information to correctly and completely document a tax deferred sale at the time of the transaction, but the seller collected the tax in error.

(a) Erroneous collection claims are filed with the fuel supplier/seller and must be made within 3 years of the date of purchase.

(b) Erroneous collections may occur in non-retail sales.

(c) Erroneous collections do not occur in retail sales with the exception of fleet fueling operations.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.694
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09

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Landscape Architect Board
Chapter 804

Rule Caption: Adoption of the Board's 2009–2011 Operating Budget with a spending limit of $315,082.
Adm. Order No.: LAB 1-2009
Filed with Sec. of State: 6-15-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 804-001-0002
Subject: This Administrative Rule revision will adopt the 2009–2011 biennial budget of the Board with a spending limit of $315.082.00. The March 2009 Board newsletter's lead article discusses the Board's deliberation on this budget. The newsletter is posted on the Board's website. A public hearing was held June 5, 2009. There are neither no new fees nor any fee increases. Individuals may view a copy of the budget on the Board's web page or may request a copy of the budget by contacting the Board staff.
Rules Coordinator: Susanna Knight—(503) 589-0093

804-001-0002
Biennial Budget

Pursuant to the provisions of ORS 182.462, following a public hearing held June 5, 2009, the Board adopts by reference the Oregon Landscape Architects Board 2009–11 biennial budget of $315,182 covering the period July 1, 2009, through June 30, 2011. The Board Administrator, with the approval of the Board, will amend budgeted accounts as necessary, within the approved budget of $315,182, for the effective operation of the Board. The Board will not exceed the approved budget amount without amending this rule, notifying all registrants, and holding a public hearing. Copies of the budget are available from the Board's office.

Stat. Auth.: ORS 671.415, 182.462 & 670.310
Stats. Implemented: ORS 671.415 & 1999 OL Ch. 1084
Hist.: LAB 1-1997(Temp), f. & cert. ef. 9-3-97; LAB 1-1998, f. & cert. ef. 2-5-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2005, f. & cert. ef. 5-18-05; LAB 2-2007, f. 5-22-07, cert. ef. 7-1-07; LAB 1-2009, f. 6-15-09, cert. ef. 7-1-09

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Landscape Contractors Board
Chapter 808

Rule Caption: Clarifies the definition of an irrigation system.
Adm. Order No.: LCB 3-2009
Filed with Sec. of State: 6-1-2009
Certified to be Effective: 6-1-09
Notice Publication Date: 4-1-2009
Rules Amended: 808-002-0480
Subject: 808-002-0480 — Clarifies the definition of irrigation system.
Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909, ext. 223

808-002-0480
Irrigation Systems

"Irrigation systems" as used in ORS 671.520(1)(c):

(1) Includes, but are not limited to, assemblies of station or master valves, piping, sprinklers, nozzles, emitters, filters, or controllers and the positioning and piping of pumps; that are installed for the purpose of watering lawns, trees, shrubs or nursery stock.

(2) If an irrigation system is connected to a water supply that is used for multiple purposes, the irrigation system begins immediately downstream of a backflow device (if required) or any shut-off valve installed at the point of connection in the water supply line separating the irrigation system from the other functions of the water supply.

(3) Irrigation systems do not include systems used to irrigate agricultural products including nursery stock grown for sale or for pastures used for the grazing or raising of animals unless done in conjunction with a landscape job.

(4) For the purpose of this rule, a shut-off valve is any valve installed solely for the purpose of isolating all functions of an irrigation system from the supply source and a station or master valve is a valve installed for the purpose of distributing a controlled amount of water to the other components of the irrigation system.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.520
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 3-2006, f. & cert. ef. 8-2-06; LCB 3-2009, f. & cert. ef. 6-1-09

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Rule Caption: Adopt 2009–2011 budget; increases fees; requirement for license card replacement.
Adm. Order No.: LCB 4-2009
Filed with Sec. of State: 6-1-2009
Certified to be Effective: 7-1-09
Notice Publication Date: 5-1-2009
Rules Amended: 808-001-0008, 808-003-0045, 808-003-0100, 808-003-0105, 808-003-0130
Subject: 808-001-0008 — adopts 2009-2011 budget.

808-003-0045 — deletes a license card being issued at no cost.

808-003-0100 — clarifies the responsibility of the landscape construction professional or landscape contracting business to continuously maintain the licensing requirements or be suspended, revoked and/or penalties may be assessed.

808-003-0105 — adopts requirement that a new license card be required if specific information is changed.

808-003-0130 — Increases fees; adds new fees for new license cards and reinstatement of suspended licenses.
Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909, ext. 223

808-001-0008
Operating Budget

Pursuant to ORS 182.462, the Board adopts the budget, for the biennium beginning July 1, 2009 and ending June 30, 2011, as approved at the Regular Board Meeting held May 29, 2009. The Board Administrator will amend budgeted accounts as necessary, within the approved budget for the effective operation of the Board. Copies of the budget are available at the Board's office.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 182.462
Hist.: LCB 3-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 3-2005, f. & cert. ef. 6-1-05; LCB 1-2006, f. 3-27-06, cert. ef. 4-1-06; LCB 2-2007, f. & cert. ef. 5-16-07; LCB 4-2009, f. 6-1-09 cert. ef. 7-1-09

808-003-0045
Change to Limited Licenses

(1) Landscape construction professionals holding limited licenses may add to the phase of landscaping work they perform by taking and passing additional sections of the exam. Licensees shall submit the required fees and a written request to take the additional sections of the exam.

(2) The following sections must be taken and passed to hold a standard landscape license:

(a) General license holders must take Laws, Rules and Business Practice, General A, General B, General C, and General D;

(b) Sod & Seed license holders must take General A, General B, General C, and General D.

(c) Tree license holders must take General A, General B, General C, and General D.

(3) Holders of a General license, Sod & Seed license or a Tree license must take and pass the irrigation and Backflow Prevention sections of the landscape examination to become licensed to perform irrigation work and install backflow prevention devices.

(4) Probationary license holders may obtain removal from probationary status by:

(a) Demonstrating one or more of the following after the date of obtaining the probationary license:

(A) Completion of 24 months or more of employment with an actively licensed landscape contracting business under the direct supervision of a non-probationary licensed landscape construction professional,

(B) Completion of 24 months or more as an owner or employee of an actively licensed landscape contracting business providing supervision as described in ORS 671.540 (15) or 671.565(1)(b) for a period of 24 months where the landscaping work performed on any landscape job by the landscape contracting business did not exceed $15,000 and where the landscape contracting business filed and maintained with the board a bond, letter of credit or deposit in the amount of $15,000, or

(C) Completion of 24 months or more as an actively licensed construction contractor under ORS Chapter 701.

(b) Submitting a written request to the board for removal of the probationary status.

(5) A landscape contracting business shall notify the agency in writing (regular mail, fax or email) within ten (10) days after the date a landscape contracting business' phase of license changes:

(a) Because the license phase of an owner or employee who is the licensed landscape construction professional and phase basis of the business, changes; or

(b) Because the landscape construction professional ceases to own or be employed by the business, and

(c) The business for which this licensee worked must immediately stop performing those phases of work until they have an owner or employee who is licensed to perform those phases of work.

(6) A landscape construction professional shall notify the agency in writing within ten (10) days of the date of departure of the individual license holder for a business who leaves the employ or ceases to be an owner of the business, and

(7) The landscape contracting business shall not advertise to perform or perform services for which it is not licensed.

Stat. Auth.: ORS 183 & 671
Stats. Implemented: ORS 671.560
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. & ef. 2-1-88; Renumbered from 808-010-0022; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 8-2008, f. & cert. ef. 9-5-08; LCB 9-2008, f. 9-29-08, cert. ef. 10-1-08; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 4-2009, f. 6-1-09 cert. ef. 7-1-09

808-003-0100
Licenses

(1) A landscape construction professional license or landscape contracting business license and its identifying license number will be issued to one individual or entity only. Other individuals or entities shall not be included in that license, but each shall be separately licensed and shall separately meet the licensing requirements. No entity may perform work subject to ORS Chapter 671 through the use of another individual's or entity's license.

(2) The Board adopts the form "Independent Contractor Certification Statement," as required by ORS 671.565.

(3) If an entity licensed as a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or joint venture seeks to change to another type of entity and a new Employer Identification Number is required, the former landscape contracting business license will be terminated. The new entity must license anew.

(4) Landscape construction professional licenses shall be issued in the name of the individual.

(5) Landscape contracting business licenses shall be issued as follows:

(a) A sole proprietorship shall be issued in the name of the sole proprietor;

(b) A sole proprietorship using an assumed business name(s) shall be issued in both the name of the individual and assumed business name(s);

(c) A partnership shall be issued in the name(s) of the partners;

(d) A partnership using an assumed business name shall be issued in the name of the partners and the assumed business name(s);

(e) A corporation shall be issued in the corporate name;

(f) A limited liability company shall be issued in the limited liability company name.

(6) It is the responsibility of the landscape construction professional or landscape contracting business that holds a license with the State Landscape Contractors Board to continuously maintain the licensing requirements. This includes, but is not limited to the bond, insurance and continuing education requirements. If the licensing requirements are not continuously maintained, the license may be suspended, revoked and/or penalties may be assessed.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.560, 671.610 & 671.997
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0030; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 2-2002, f. & cert. ef. 5-24-02; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 4-2009, f. 6-1-09 cert. ef. 7-1-09

808-003-0105
License Cards

(1) A license card issued to a landscape contracting business is valid for the term for which it is issued only if the following conditions are met throughout the license period:

(a) The business has a licensed landscape construction professional as an owner or as an employee at all times; and

(b) The surety bond remains in effect and undiminished by payment of Landscape Contractors Board final orders; and

(c) The insurance required by ORS 671.565 remains in effect; and

(d) If the licensee is a sole proprietorship, survival of the sole proprietorship; or

(e) If the licensee is a partnership or limited liability partnership, no change in the composition of that partnership, by death or otherwise; or

(f) If the licensee is a corporation or limited liability company, survival of that corporation or limited liability company, including compliance with all applicable laws governing corporations or limited liability companies.

(2) If a license is no longer valid, the agency may require the return of the license and pocket card(s).

(3) No person shall advertise or otherwise hold out to the public that person's services as a landscape contracting business unless that person holds an active license, nor shall any person claim by advertising or by any other means to be licensed, bonded, insured, or licensed unless that person holds an active license.

(4) A new license card is required if any of the following occur:

(a) The landscape contracting business employer status changes (becomes exempt or nonexempt);

(b) The landscape contracting business' bond, irrevocable letter of credit or deposit amount changes;

(c) The landscape contracting business name changes;

(d) The landscape construction professional's name changes; or

(e) The landscape contracting business and/or landscape construction professional's phase of license changes.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.560 & 671.565
Hist.: LCB 2-2002, f. & cert. ef. 5-24-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 4-2009, f. 6-1-09 cert. ef. 7-1-09

808-003-0130
Fees

(1) Initial license or renewal of active license

(a) Landscape contracting business, $260.

(b) Landscape construction professional, $95.

(2) Renewal of inactive license

(a) Landscape contracting business, $260.

(b) Landscape construction professional, $95.

(3) Late penalty fee:

(a) Landscape contracting business, $35.

(b) Landscape construction professional, $35.

(4) Landscape Construction Professional License Application fee: $100.

(5) Landscape Contracting Business License Application fee: $150.

(6) Probationary Landscape Construction Professional License Application: $75.

(7) Owner or Managing Employee Application fee: $60.

(8) Request from license holder for a replacement license card: $20.

(9) License card as required by OAR 808-003-0105(4): $20.

10) Reinstatement of suspended license: $30.

(11) If a landscape construction professional license expires, the amount to be paid for reinstatement equals the required fee for each year of lapse (up to two years) plus a late penalty fee for each year.

(12) If a Landscape contracting business license expires, and the Landscape contracting business has continuously maintained its bond, irrevocable letter of credit or deposit together with required liability insur-

ance, the amount to be paid for reinstatement equals the required fee for each year of expiration (up to two years) plus a late penalty fee for each year. The reinstatement will be retroactive to the expiration date.

(13) If a Landscape contracting business license expires, and no bond, irrevocable letter of credit or deposit, or required liability insurance, has been in effect during the interim, the amount to be paid for reinstatement equals the required fee for each year of expiration (up to two years) plus a late penalty fee for each year. The reinstatement date will be the date the required fee and documentation are received in the board office.

(14) Payments received after board deadlines, including, but not limited to payments for renewals, applications and civil penalties will be considered late and penalties shall be assessed.

(15) The board may waive the late fee if:

(a) The properly completed renewal form and correct fee are received by the agency prior to the expiration date and all other renewal requirements are met within one month after the expiration date; or

(b) The licensee's failure to meet the renewal date was caused entirely or in part by a board error or omission.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.595, 671.650 & 671.660
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1983(Temp), f. 10-14-83, ef. 10-15-83; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0035; LCB 3-1988(Temp), f. 4-11-88, cert. ef. 5-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LCB 1-1989(Temp), f. 5-16-89, cert. ef. 7-1-89; LCB 2-1989, f. & cert. ef. 7-24-89; LSCB 1-1995, f. & cert. ef. 2-2-95; LSCB 1-1997(Temp), f. & cert. ef. 6-10-97; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-2002, f. & cert. ef. 7-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 5-2004, f. & cert. ef. 10-4-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08; LCB 9-2008, f. 9-29-08, cert. ef. 10-1-08; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 4-2009, f. 6-1-09 cert. ef. 7-1-09

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Rule Caption: Requires liability insurance to be continuously in effect during the license period.
Adm. Order No.: LCB 5-2009(Temp)
Filed with Sec. of State: 6-3-2009
Certified to be Effective: 6-3-09 thru 11-30-09
Notice Publication Date:
Rules Amended: 808-003-0095
Subject: Requires a landscape contracting business to continuously have in effective liability insurance coverage during the licensing period.
Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909, ext. 223

808-003-0095
Liability Insurance

(1) An applicant for the landscape contracting business license or renewal shall submit a "Certificate of Insurance" from an insurance company authorized to do business in Oregon, as required by ORS 671.565 and will continue to meet those insurance requirements for as long as the applicant is licensed. The certificate shall include the name of the insurance company, policy number, and coverage amount, and may also include the agent's name, and agent's telephone number and state that the Oregon Landscape Contractors Board is the certificate holder.

(2) This certificate constitutes satisfactory evidence of insurance and is in lieu of any other evidence of insurance.

(3) A landscape contracting business must continuously have in effect public liability, personal injury and property damage insurance during the licensing period to maintain an active license.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.565
Hist.: LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 5-2009(Temp), f. 6-3-09 cert. ef. 6-3-09 thru 11-30-09

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Oregon Board of Dentistry
Chapter 818

Rule Caption: Amends Oregon Board of Dentistry rules regarding Fees.
Adm. Order No.: OBD 1-2009(Temp)
Filed with Sec. of State: 6-11-2009
Certified to be Effective: 7-1-09 thru 11-1-09
Notice Publication Date:
Rules Amended: 818-001-0087
Subject: The Board of Dentistry is amending OAR 818-001-0087, Fees, to update fees that were currently changed with the passage of SB 5517 by the Oregon Legislature and become effective July 1, 2009.
Rules Coordinator: Sharon Ingram—(971) 673-3200

818-001-0087
Fees

(1) The Board adopts the following fees:
(a) Biennial License Fees:
(A) Dental — $225;
(B) Dental — retired — $0;
(C) Dental Faculty — $210;
(D) Volunteer Dentist — $0;
(E) Dental Hygiene — $115;
(F) Dental Hygiene — retired — $0;
(G) Volunteer Dental Hygienist — $0.
(b) Biennial Permits, Endorsements or Certificates:
(A) Anesthesia Class 1 Permit (Nitrous Oxide) — $40;
(B) Anesthesia Class 2 Permit (Conscious Sedation) — $75;
(C) Anesthesia Class 3 Permit (Deep Sedation) — $75;
(D) Anesthesia Class 4 Permit (General Anesthesia) — $140;
(E) Radiology — $75;
(F) Expanded Function Dental Assistant — $50;
(G) Expanded Function Orthodontic Assistant — $50;
(H) Instructor Permits — $40;
(I) Dental Hygiene, Limited Access Permit — $50;
(J) Dental Hygiene Restorative Functions Endorsement — $50;
(K) Restorative Functions Dental Assistant — $50;
(L) Anesthesia Dental Assistant — $50.
(c) Applications for Licensure:
(A) Dental – General and Specialty — $345;
(B) Dental Faculty — $305;
(C) Dental Hygiene — $180;
(D) Licensure Without Further Examination — Dental and Dental Hygiene — $790.
(d) Examinations:
(A) Jurisprudence — $0;
(B) Dental Specialty:
(i) $750 at the time of application; and
(ii) If only one candidate applies for the exam, an additional $1,250 due ten days prior to the scheduled exam date;
(iii) If two candidates apply for the exam, an additional $250 (per candidate) due ten days prior to the scheduled exam date;
(iv) If three or more candidates apply for the exam, no additional fee will be required.
(e) Duplicate Wall Certificates — $50.

(2) Fees must be paid at the time of application and are not refundable.

(3) The Board shall not refund moneys under $5.01 received in excess of amounts due or to which the Board has no legal interest unless the person who made the payment or the person's legal representative requests a refund in writing within one year of payment to the Board.

Stat. Auth.: ORS 679 & 680
Stats. Implemented: ORS 293.445, 679.060, 679.115, 679.120, 680.050, 680.075, 680.200 & 680.205
Hist.: DE 6-1985(Temp), f. & ef. 9-20-85; DE 3-1986, f. & ef. 3-31-86; DE 1-1987, f. & ef. 10-7-87; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, corrected by DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-001-0085; DE 2-1989(Temp), f. & cert. ef. 11-30-89; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; DE 1-1991(Temp), f. 8-5-91, cert. ef. 8-15-91; DE 2-1991, f. & cert. ef. 12-31-91; DE 1-1992(Temp), f. & cert. ef. 6-24-92; DE 2-1993, f. & cert. ef. 7-13-93; OBD 1-1998, f. & cert. ef. 6-8-98; OBD 3-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction, 8-2-99; OBD 5-2000, f. 6-22-00, cert. ef. 7-1-00; OBD 8-2001, f. & cert. ef. 1-8-01; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05; OBD 2-2007, f. 4-26-07, cert. ef. 5-1-07; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 1-2009(Temp), f. 6-11-09, cert. e. 7-1-09 thru 11-1-09

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Oregon Health Licensing Agency
Chapter 331

Rule Caption: Makes technical adjustments, clarifies application documentation, fingerprint and background checks, and strengthens identification requirements for licensure.
Adm. Order No.: HLA 1-2009
Filed with Sec. of State: 6-1-2009
Certified to be Effective: 6-1-09
Notice Publication Date: 2-1-2009
Rules Adopted: 331-030-0004, 331-030-0025, 331-030-0040
Rules Amended: 331-001-0000, 331-001-0010, 331-010-0000, 331-010-0020, 331-010-0030, 331-010-0040, 331-020-0030, 331-020-

0040, 331-020-0060, 331-020-0070, 331-030-0000, 331-030-0010, 331-030-0020

Rules Ren. & Amend: 331-030-0030 to 331-020-0080

Subject: Temporary rules were filed on December 1, 2008 and were effective until April 30, 2009. Public hearing was held on March 2, 2009, at which time testimony was taken and considered by the agency. Permanent rules were scheduled to be filed April 30, 2009, to align with the expiration date of the temporary rules. However, further agency review and public comment from stakeholders regarding identification requirements required the agency to postpone filing the permanent rules.

Permanent administrative rules address requirements for completion of a fingerprint and criminal background check to determine fitness of individuals applying for an authorization issued or renewed by the agency, pursuant to ORS 676.612. Amendments pertain to application requirements and procedures for issuing and renewing authorizations to practice and requirements for notifying the agency of any changes in licensing information. Rules clarify requirements for acceptable documentation and personal identification of applicants to strengthen applicant licensure qualification criteria. Changes are to mitigate use of false identification and/or misrepresentation of personal information, to reduce potential agency liability and secure license issuance and renewal procedures. New requirements for submitting an "Affidavit of Licensure."

The agency is adopting rules pertaining to licensing for out-of-state practitioners/professionals during a declared emergency situation to remedy potential shortages in Oregon.

Other technical amendments to agency rules streamline notice of proposed rulemaking, update adoption of model rules of procedure, clarify definitions used in agency rules, align rules pertaining to refund of payments, and fees for public records and publications with requirements under the Oregon Accounting Manual, and correct ORS citations and agency name resulting from 2003 Session Laws.

Rules Coordinator: Samantha Patnode—(503) 373-1917

331-001-0000
Notice of Proposed Rulemaking

(1) Prior to the adoption, amendment or repeal of any rule, the Oregon Health Licensing Agency shall give notice of its intended action;

(a) In the manner established by rule adopted by the agency under ORS 183.341(4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(b) In the Secretary of State's bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(c) By delivery of notice to persons on the agency mailing list, at least 28 days before the effective date of the rule, pursuant to ORS 183.335;

(d) By delivery of notice to certain legislators, at least 49 days before the effective date of the rule, pursuant to ORS 183.335;

(2) To the Associated Press and Capitol Building Press Room, and other members of the media who have requested notification;

(3) To persons, organizations, or publications, where the agency determines that such persons, organizations, or publications, would have an interest in the subject matter of the proposal based on applicability to each agency program, board or council.

(4) Delivery of notice of an intended action under subsection (1)(a), (c) and (d) of this section shall be in accordance with ORS 183.335(2)(e). Delivery of notice of an intended action under subsection (1)(b), (2) and (3) of this section may be provided by regular U.S. Postal Service mail, electronic mail, facsimile transmission, or other delivery of printed copy.

(5) A copy of proposed rules and permanently filed rules shall be posted on the agency's Web site, and program mini-sites accessed at http://www.oregon.gov/OHLA/index.shtml and http://www.oregon.gov/OHLA/Laws_and_Rules.shtml.

(6) Persons may obtain a printed copy of rules or related documents upon written request and payment of appropriate fee for copies of agency documents as specified in OAR 331-010-0030.

(7) The agency may update the mailing list established pursuant to ORS 183.335(8) annually by requesting persons to confirm that they wish to remain on the mailing list. If a person does not respond to a request for confirmation within 28 days of the date the agency sends the request, the agency will remove the person from the mailing list. Any person removed from the mailing list will be immediately returned to the mailing list upon request, if the person provides a mailing address to which notice may be sent.

Stat. Auth.: ORS 183, 676.605, 676.615
Stats. Implemented: ORS 183, 676.605, 676.615
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-001-0010
Model Rules of Procedure

Pursuant to ORS 183.341, the Oregon Health Licensing Agency adopts the Model Rules of Procedures as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act as amended and effective January 1, 2008.

Stat. Auth.: ORS 183 & 676.605
Stats. Implemented: ORS 183 & 676.605
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-010-0000
Definitions

Unless the context requires otherwise, the following definitions shall apply to OAR Chapter 331.

(1) "Agency" means the Oregon Health Licensing Agency.

(2) "Authorization" means the official document, i.e. certificate, license, permit or registration, issued by the agency, for any program administered under ORS 676.606, as prima facie evidence of the right to practice in accordance with the laws and rules of the regulatory programs administered by the agency.

(3) "Director" means, pursuant to ORS 676.610, the individual who has sole responsibility for the administrative, fiscal, human resource and regulatory functions of the agency.

(4) "Oregon Health Licensing Agency " means the agency assigned to carry out the administrative, programmatic and daily operations, and regulatory functions of the Boards, Councils and Programs listed in ORS 676.606.

(5) "Practitioner" means the individual issued a certificate, license, permit or registration by the agency who has received authorization within their defined field of practice.

(6) "Program" means the office and staff designated to carry out the daily functions of the Body Piercing Licensing Program as defined in ORS 690.500 to 690.570; or as the context requires, "program" may also be used to refer to the collective boards, councils and programs administered by the agency.

(7) "Regulatory authority" means a recognized governing body of a city, county, state or country that has been charged with the responsibility for overseeing the administration and regulation of an occupation or profession.

Stat. Auth.: ORS 676.615
Stats. Implemented: ORS 676.606, 676.615
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-010-0020
Refund of Payments

(1) The Oregon Health Licensing Agency will not refund any payment, which includes fees, penalties or other charges, unless the agency is in error. Information not known by the agency because the authorization holder or payer supplied the incorrect information is not considered an error.

(2) The agency will comply with ORS 291 and 293 and the Oregon Accounting Manual regarding administration of public funds pertaining to assessment of fees, charges and refunding monies.

(3) Application fees will not be refunded. The agency will retain the application fee if an applicant withdraws the application for a certificate, license, permit, or registration before the issuance of the authorization, or fails to complete the application process.

(4) The agency may refund fees paid for a scheduled examination on a case-by-case basis. In making its determination, the agency will consider an applicant's individual set of circumstances when the applicant fails to appear for a scheduled examination.

(5) The agency will not refund fees paid for agency scheduled diversion or infection control standards training if the applicant fails to appear and complete the prescribed training; however, the fees may be applied toward any civil fine imposed for violations of laws or rules.

(6) The agency shall determine, on a case-by-case basis, the individual set of circumstances noted in subsections (4) and (5) of this rule, such as a medical emergency, personal hardship or unforeseen event that impedes the individual from appearing for an agency-scheduled examination or training. The agency may request documentation from the individual to validate the circumstance cited and may refund the fees or reschedule an examination or training as appropriate.

Stat. Auth.: ORS 30.701, 293.445, 676.625
Stats. Implemented: ORS 30.701, 293.445, 676.625
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-010-0030
Fees for Public Records and Publications

(1) All requests for copies of public records pertaining to the Oregon Health Licensing Agency, or any program it administers, shall be submitted in writing, electronic mail, or by completion of an electronic form provided by the agency. Requests are subject to disclosure according to the Public Records Law, ORS 192.410 to 192.505, and rules adopted thereunder.

(2) The agency may charge a fee reasonably calculated to reimburse the agency for costs of providing and conveying copies of public records. Fees shall not exceed the cost of locating, compiling, making available for inspection, preparing copy in paper, audio, computer disk, and delivering public records. All estimated fees and charges must be paid before public records will be made available for inspection or copies provided.

(3) The agency shall notify a requestor of the estimated costs of making records available for inspection or providing copies of records to the requestor. If the estimated costs exceed $25, the agency shall provide written notice and shall not act further to respond to the request unless and until the requestor confirms that the requestor wants the agency to proceed with making the public records available.

(4) Charges to the general public shall be payable in cash, cashier's check, money order, or credit card. Payment by personal check for copies of official documents is not accepted.

(5) The agency shall charge 25¢ per page for the first 20 pages and 15¢ per page thereafter to recover the costs of photocopying and normal and reasonable staff time to locate, separate, photocopy and return document(s) to file and to prepare/mail public record(s) to requestors. If, for operational or other reasons, the agency uses the services of an outside facility or contractor to photocopy requested records, the agency shall charge the actual costs incurred.

(a) "Page" refers to the number of copies produced. Staff will not reduce the copy size or otherwise manipulate records in order to fit additional records on a page, unless staff concludes that it would be the most effective use of their time. Consistent with ORS 192.240, all copies will be double-sided. A double-sided copy will be charged as two single pages.

(6) "Normal and reasonable" staff time is 20 minutes or less per request:

(a) Additional charges for staff time may be made when responding to record requests that require more than the "normal and reasonable" time for responding to routine record requests. Staff time shall be charged at the agency's staff hourly rate.

(b) These charges are for staff time in excess of 10 minutes spent locating, compiling, sorting and reviewing records to prepare them for inspection, as well as all time required to separate or remove exempt information or to supervise inspection of documents. The agency shall not charge for time spent in determining the application of the provisions of ORS 192.410 to 192.505.

(7) Charges for regular agency publications and media requests, such as computer disks, video cassettes, audio tapes or other types of public record formats, shall be available upon request and a price list shall be published on the agency Web site annually.

(8) The agency may charge individuals actual postage costs for mailing of records. When mailing voluminous records or responding to special requests, the agency shall charge for staff time required to prepare the records for mailing, in addition to actual postage.

(9) The agency shall charge $27 per hour, with a $7.50 minimum, for staff time required to fill public record requests that require electronic reproduction. Charges include time spent locating, downloading, formatting, copying and transferring records to media. Charges for reproduction media are available upon request.

(10) Due to the threat of computer viruses, the agency will not permit individuals to provide diskettes for electronic reproduction of computer records.

Stat. Auth.: ORS 197.410 - 192.505, 676.625
Stats. Implemented: ORS 197.410 - 192.505, 676.625
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-010-0040
Notification Requirements

Notification of a change in any authorization holder's licensing information must be submitted within 30 calendar days of the change to the agency by written notice given in person at the agency office, by regular U.S. Postal Service, facsimile transmission, Web-based interactive data collection or electronic mail. A change in information includes, but is not limited to the following:

(1) Authorization holders:

(a) Name — first or last. Approved documentation is required, such as marriage certificate, divorce decree, court judgment documents, or other agency approved documentation;

(b) Residential or mailing address;

(c) Area code and telephone number;

(d) Employment status; or

(e) Work location.

(2) Facility license holders:

(a) Facility name or Assumed Business Name as filed with Secretary of State, Corporations Division under 648.007;

(b) Business telephone number, including area code;

(c) General hours of operation;

(d) Address change resulting from city or U.S. Postal Service action; or

(e) Closure or sale of business facility or practice.

(3) Independent contract registration holders:

(a) Facility name, physical address, telephone number and license number;

(b) General hours of operation;

(c) Changing permanent work location;

(d) Performing services at multiple licensed facilities on a permanent or temporary basis;

(e) Ceasing to operate as an independent contractor before expiration of the registration to avoid late renewal payment if reactivation may occur within one year of the expiration date.

Stat. Auth.: ORS 676.615
Stats. Implemented: ORS 676.615
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-020-0030
Inquiries; Filing a Complaint

(1) An individual may contact the Oregon Health Licensing Agency to inquire on the licensing record, status or employment of a person issued an authorization by the agency, or to comment on any issue concerning an individual regulated by the agency.

(2) Complaints against individuals practicing in one of the professions listed in ORS 676.606, may be filed with the agency. The complaint may be made on forms provided by the agency, which includes the following information:

(a) The name, address and telephone number of the person making the complaint;

(b) The name of the person or facility against which the complaint is being made;

(c) A concise description of the charge against the person or facility listing the date, time and circumstances of the alleged violation; and

(d) The signature of the person making the complaint.

Stat. Auth.: ORS 183, 676.605, 676.606
Stats. Implemented: ORS 183, 676.605, 676.606
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-020-0040
Complaint Processing and Investigation

Pursuant to ORS 676.608, complaints filed with the Oregon Health Licensing Agency will be handled as follows:

(1) The agency will determine if the complaint is related to a profession or occupation regulated and administered by the agency and the complaint falls within authority delegated to the agency by statute.

(2) The agency investigator(s):

(a) Will review the information and as applicable, interview parties and witnesses, and examine physical evidence relating to the complaint;

(b) Will advise on whether an authorization holder or other individual practiced within the acceptable standards of the particular program;

(c) May attempt to informally resolve the matter;

(d) Will make recommendations for agency action.

(3) After receiving advice from the investigator(s), the agency will determine what action will be taken in accordance with ORS 676.608.

Stat. Auth.: ORS 183, 676.605, 676.608,676.615
Stats. Implemented: ORS 183, 676.605, 676.608, 676.615
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-020-0060
Civil Penalty Considerations

(1) Pursuant to ORS 676.992, any person who violates any provision of law or rules of a regulated profession administered by the Oregon Health Licensing Agency and listed in ORS 676.606, may incur, in addition to any other penalty provided by law, a civil penalty in an amount not to exceed $5,000 for each violation.

(2) In establishing the amount of the penalty for each violation, the agency will consider and evaluate each case on an individual basis. The agency will consider, but not be limited to factors listed in ORS 676.992, in determining the amount of the penalty.

Stat. Auth.: ORS 676.615, 676.992
Stats. Implemented: ORS 676.615, 676.992
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-020-0070
Discipline

(1) The Oregon Health Licensing Agency may discipline authorization holders for violations of laws and rules, in accordance with ORS 676.612 and 676.992.

(2) Failure to cooperate with the agency or its agent is unprofessional conduct and is subject to disciplinary sanctions, which may include suspension or revocation and refuse to issue or renew or place on probation and assessment of civil penalties. Failure to cooperate with the agency or its agent includes, but is not limited to, the following:

(a) Failing to provide information within the specified time allotted and as requested by the agency;

(b) Failing to temporarily surrender custody of original client records to the agency upon request, which includes treatment charts, models, health histories, billing documents, correspondence and memoranda;

(c) Interference, use of threats or harassment which delays or obstructs any person in providing evidence in any investigation, contested case, or other legal action instituted by the agency;

(d) Interference, use of threats or harassment which delays or obstructs the agency in carrying out its functions under individual programs administered and regulated by the agency as listed in ORS 676.606 and rules adopted thereunder; or

(e) Deceiving or attempting to deceive the agency regarding any matter under investigation including altering or destroying any records.

(3) The agency, at its discretion, may require supplemental training in an appropriate area of study as determined by the agency, board or council, as a disciplinary sanction. Supplemental training may be in addition to assessment of a monetary penalty or the agency, board or council may waive or reduce a penalty, in cases requiring supplemental training.

Stat. Auth.: ORS 676.607, 676.612, 676.992
Stats. Implemented: ORS 676.607, 676.612, 676.992
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-020-0080
Sanctions

(1) CHILD SUPPORT IN ARREARS: In accordance with ORS 25.750 to 25.783, the Oregon Health Licensing Agency will provide the Support Enforcement Division of the Department of Justice with authorization information which may be electronically cross-matched with Support Enforcement Division's records for persons under order of judgment to pay monthly child support and who are in arrears according to ORS 25.750(a), (b), and/or (c).

(2) The agency will suspend the authorization, if the Support Enforcement Division or the district attorney identifies the authorization holder as being in arrears with respect to any judgment or order requiring the payment of child support and that the case is being enforced under the provisions of ORS 25.080.

(3) Pursuant to ORS 25.750 to 25.785, the agency will notify the authorization holder of the suspension status and refer the person to the Support Enforcement Division or the district attorney for resolution.

(4) Upon notification by the Support Enforcement Division or district attorney and receipt of a release notice that the conditions resulting in the suspension no longer exist, the agency will reinstate the authorization upon compliance with all qualifications for renewal or reactivation.

(5) DEFAULT TAX FILING OR PAYMENT: In accordance with ORS 305.385, upon request the agency will provide the Department of Revenue with authorization information to determine if the holder has neglected or refused to file any return or to pay any tax without filing a petition with the department as stated in ORS 305.385(4)(a).

(6) The agency will propose to take action against an authorization holder identified by the Department of Revenue. If the agency proposes to refuse to issue, renew or suspend an authorization, opportunity for hearing will be accorded as provided in ORS 183.413 to 183.470 for contested cases.

(7) Upon notification by the department and receipt of a notice of release issued by the department that the authorization holder is in good standing with respect to any returns due and taxes payable to the department as of the date of the notice of release, the agency will renew, reactivate or release from suspension the authorization upon compliance with any qualifications for renewal or reactivation.

Stat. Auth.: ORS 25.080, 25.750 - 25.785, 183.310 - 183.470, 305.385, 348.393 - 348.399, 676.606, 676.612, 676.615
Stats. Implemented: ORS 25.080, 25.750 - 25.783, 183.310 - 183.470, 305.385, 348.393 - 348.399, 676.612 Hist.: HLO 1-2004, f. & cert. ef. 2-13-04
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; Renumbered from 331-030-0030, HLA 1-2009, f. & cert. ef. 6-1-09

331-030-0000
Application Requirements

(1) An applicant who has been the subject of any disciplinary action, including the imposition of a civil or criminal penalty, is not considered qualified for an Oregon authorization to practice until the Oregon Health Licensing Agency determines the scope, applicability and finality of the disciplinary action as it relates to the applicant's fitness to be issued an authorization to practice or use a professional title under a program listed in ORS 676.606. The disciplinary record may include, but not be limited to, actions imposed from the following:

(a) An Oregon health professional regulatory board as defined in ORS 676.160;

(b) A regulatory authority in Oregon or another state;

(c) A regulatory authority in another country or territory.

(2) Pursuant to ORS 181.534, 676.612 and OAR 331-030-005, the agency may require an applicant to complete a fingerprint check through the Oregon Department of Oregon State Police. The agency may also conduct a criminal background check of convictions to determine whether the applicant has been convicted of a crime that may affect the applicant's fitness to practice in accordance with ORS 670.280.

(3) Material misrepresentation or material errors of fact on an application for or renewal of an authorization are grounds for disqualification of examination, refusal to issue or revocation of the authorization. Refer to ORS 676.612.

(4) Application for an authorization issued for any program administered by the agency under ORS 676.606 shall be made on forms prescribed and furnished by the agency.

(5) To be accepted and processed, an application must contain:

(a) Applicant's current name, address and telephone number;

(b) Applicant's date of birth;

(c) Applicant's signature and date of application;

(d) Applicant's Social Security or Individual Taxpayer Identification number.

(e) Applicant's ethnicity (optional);

(f) Applicant's gender (optional);

(g) Disclosure of any active or inactive disciplinary action, voluntary resignation of a certificate, license, permit or registration or sanction related to authorization imposed upon the applicant by any state or country regulatory authority;

(h) Disclosure of any active or inactive certificate, license, permit or registration issued by Oregon or another state;

(i) Payment for the exact amount of required fees; and

(j) All additional information required by the particular Board, Council or Program for which application is made.

(6) Applicants must list their Social Security or Individual Taxpayer Identification number on a form prescribed by the agency at the time of initial application and renewal for certification, licensure, permit or registration. The authority for this requirement is ORS 25.785, 305.385, 42 USC § 405(c)(2)(C)(i), and 42 USC § 666(a)(13).

(7) Failure to provide the Social Security or Individual Taxpayer Identification number will be a basis to refuse to accept the application or to issue an authorization. This information will be used for child support enforcement and tax administration purposes, unless the applicant authorizes other uses of the number. The authority for this requirement is ORS 25.785, 305.385, 42 USC § 405(c)(2)(C)(i), and 42 USC § 666(a)(13).

(8) Upon request by the agency an applicant must provide two forms of acceptable original identification issued by a federal, state or local government agency of the United States. The agency will consider other forms of identification if the procedures used in issuing the identification are sufficient to prove the applicant's identity and the identification contains security features that are sufficient to prevent alteration or counterfeiting. Acceptable identification includes, but is not limited to:

(a) An original or certified copy of birth certificate issued by a U.S. Territorial government or the government of a state or political subdivision of a state of the United States. OHLA will not accept a hospital-issued birth certificate, hospital card or birth registration or baptismal certificate.

(b) United States passport, not expired more than five years.

(c) United States passport card, not expired more than five years.

(d) U.S. Territory passport not expired more than five years.

(e) Tribal ID card from a federally recognized tribe located in Oregon or a federally recognized tribe with an Oregon affiliation if OHLA determines:

(A) The procedures used in issuing the card are sufficient to prove the applicant's identity; and

(B) The card contains security features that are sufficient to prevent alteration or counterfeiting of the card.

(f) Certificate of Citizenship (N560 and N561).

(g) Certificate of Naturalization (N550, N570 and N578).

(h) U.S. Citizen Identification Card (I-197 and I-179).

(i) U.S. Military documents including:

(A) Military or Armed Forces ID card;

(B) Military Common Access Card; or

(C) U.S. Uniform Services ID and Privileges card (DD1173 and DD1173-1).

(j) Resident Alien card

(k) Permanent Resident card (I-551).

(l) Out-of-state, District of Columbia, U.S. Territorial government or, instruction permit or identification card, that contains the applicant's photograph, not expired more than one year unless hole-punched or marked "Not Valid as ID."

(m) Valid Oregon driver license, temporary driver license, instruction permit, or identification card. For the purposes of this subsection, OHLA will not accept a driver license that was issued without a photograph.

(n) Oregon Concealed Weapon Permit/Concealed Handgun License, not expired more than one year.

(o) Social Security card or other documentation issued by the Social Security Administration.

(9) OHLA will not accept a document as proof of identity and date of birth if OHLA has reason to believe the document is not valid. The agency may request an applicant present additional documentary proof of identity if the document presented does not establish the applicant's identity to the satisfaction of OHLA.

(10) At least one form of identification provided from the approved list in subsection (8) of this rule must be photographic.

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

Stat. Auth.: ORS 25.785, 305.385, 42 USC § 405(C)(2)(C)(i), and 42 USC § 666(a)(13), 670.280, 676.605 & 676.615

Stats. Implemented: ORS 25.785, 305.385, 42 USC § 405(C)(2)(C)(i), 42 USC § 666(a)(13), 670.280, 676.605 & 676.615

Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 12-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; HLA 1-2009, f. & cert. ef. 6-1-09

331-030-0004

Fingerprinting, State and Nationwide Criminal Background Checks, Fitness Determinations

(1) The Oregon Health Licensing Agency may conduct and require completion of a fingerprint and criminal background check to determine fitness of individuals applying for an authorization issued or renewed by the agency. These will be provided on prescribed forms provided by the agency. At the discretion of the agency, background checks may be conducted for any of the programs administered by the agency pursuant to ORS 676.606.

(2) Fingerprints may be obtained at a law enforcement office or at a private service acceptable to the agency. The agency will forward fingerprints to the Department of Oregon State Police for checks against state and national data sources. Any original fingerprint cards will subsequently be destroyed by the department.

NOTE: An applicant must pay the department any fees assessed for conducting the fingerprint service. An applicant must arrange for the report of the fingerprint check to be mailed directly to the Oregon Health Licensing Agency, Regulatory Operations Division.

(3) These rules are to be applied when evaluating the criminal history of all licensees and applicants listed in paragraph (1) of this section, and conducting fitness determinations based upon such history. The fact that the applicant has cleared the criminal history check does not guarantee the granting of an authorization.

(4) Except as otherwise provided in section (1), in making the fitness determination the agency shall consider:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's right to practice in any present or proposed position, services, and employment, that is authorized upon the issuance or renewal of the certificate, license, permit or registration; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, certificate, license, permit or registration. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the subject individual at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime:

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) A recommendation of an employer.

(5) The agency may require fingerprints of any authorization holders or applicant listed in paragraph (1) of this section, who is the subject of a complaint or investigation, under authority of ORS 676.612(3)(c), for the purpose of requesting a state or nationwide criminal records background check.

(6) All background checks shall be requested to include available state and national data, unless obtaining one or the other is an acceptable alternative.

(7) Additional information required. In order to conduct the Oregon and national criminal history check and fitness determination, the agency may require additional information from the authorization holder or applicant as necessary. Information requested may include but is not limited to, proof of identity; residential history; names used while living at each residence; or additional criminal, judicial or other background information.

(8) All Oregon and national criminal history checks, confidentiality, and dissemination of information received, shall be in accordance to and as applicable with ORS 181.534 through 181.560 and OAR 257, division 10.

(9) The agency will permit the individual for whom a fingerprint-based criminal records check was conducted, to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

(10) The agency shall determine whether an individual is fit to be granted, hold or renew an authorization, listed in paragraph (1) of this section, based on the criminal records background check, or any false statements made by the individual regarding criminal history of the individual, or any refusal to submit or consent to a criminal records check including fingerprint identification, and any other pertinent information obtained as a part of an investigation. If an individual is determined to be unfit, then the individual may not be granted an authorization. The agency may make fitness determinations conditional upon applicant's acceptance of probation, conditions, or limitations, or other restrictions placed upon the authorization.

(11) The agency may also consider any arrests and court records that may be indicative of a person's inability to perform as an authorization holder with care and safety to the public.

(12) If the agency determines an applicant or authorization holder is unfit, the individual is entitled to a contested case process pursuant to ORS 183. Challenges to the accuracy or completeness of information provided by the Oregon State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.

(13) If the applicant discontinues the application process or fails to cooperate with the criminal history background check the agency considers the application incomplete.

Stat. Auth.: ORS 25.785, 305.385, 42 USC § 405(C)(2)(C)(i), 42 USC § 666(a)(13), 670.280, 676.605, 676.615

Stats. Implemented: ORS 25.785, 305.385, 42 USC § 405(C)(2)(C)(i), 42 USC § 666(a)(13), 670.280, 676.605, 676.615

Hist.: HLA 1-2009, f. & cert. ef. 6-1-09

331-030-0010

Procedure for Issuing and Renewing Certificates, Licenses and Registrations

(1) Subject to ORS 676.612, authorizations issued by the Oregon Health Licensing Agency will be issued to qualified applicants after conducting fitness determinations and upon compliance with all requirements established by rules adopted by the agency.

(2) With the exception of temporary or demonstration permits, all authorizations will expire on the last day of the month, two years from the date the authorization was issued.

(3) The authorization will state the holder's name, address, authorization number, expiration date and bear the signature of the holder. The authorization will be mailed to the place of residence or mailing address recorded on the application and may substantiated through acceptable identification listed in OAR 331-030-0000.

(4) The agency may mail notice of expiration to the authorization holder, sending the notice to the last known address on file. The authorization holder is responsible for submitting a timely application for renewal whether or not a renewal form was mailed by the agency.

(5) Application for renewal shall be made in advance of the expiration date, and shall be submitted together with the required fee(s) and documentation, as the individual program stipulates for renewal. Payment must be postmarked or received by the agency during regular business hours on or before the expiration date. An authorization may be renewed using the agency's online renewal system accessed at http://www.oregon.gov/OHLA/onlinerenewals.shtml.

(6) An application for renewal and payment received by the agency or postmarked after the expiration date may be assessed delinquent renewal fee(s) according to requirements stipulated in each individual program's rules for certificate, license or registration renewal.

(7) Notwithstanding subsection (1) of this rule, the agency may vary the renewal date of an authorization by giving the applicant written notice of the renewal date being assigned and by making prorated adjustments to the renewal fee.

Stat. Auth.: ORS 676.605 & 676.615
Stats. Implemented: ORS 676.605 & 676.615
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 12-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; HLA 1-2009, f. & cert. ef. 6-1-09

331-030-0020
Authorization; Replacements

(1) An individual shall not display a sign or in any way advertise or purport to be an authorization holder or to be engaged in practice, or use a professional title, without first obtaining an authorization in the manner required according to statute and rules of a program administered by the Oregon Health Licensing Agency under ORS 676.606.

(2) The agency shall issue only one original authorization.

(3) The possession or posting of more than one of the same current authorization (original or replacement) is prohibited.

(4) All authorization holders must have immediate access to photographic identification as listed in OAR 331-030-0000 whenever performing services or open for business Authorization holders must provide agency representatives with the appropriate identification immediately upon request.

(5) If for any reason a person is mistakenly issued a document that contains a material error and superseded by a corrected document, the agency has the authority to demand surrender of the incorrect authorization document issued by the agency. The individual must surrender the document requested within the time determined by the agency.

(6) The agency may issue a replacement authorization document, if:

(a) A written request for a replacement is submitted to the agency which contains the authorization holder's name, authorization number, address, telephone number, employment information, and a statement attesting that the original authorization has been lost, stolen or destroyed;

(b) The authorization is valid, current and not expired, suspended or revoked;

(c) Payment of the replacement fee accompanies the request;

(d) The authorization holder is not subject to any outstanding civil penalties or other disciplinary action.

Stat. Auth.: ORS 675.410, 676.605, 676.615, 690.015, 680.505, 687.415, 690.355, 694.025, 688.805, 700.020
Stats. Implemented: ORS 675.410, 676.605, 676.615, 690.015, 680.505, 687.415, 690.355, 694.025, 688.805, 700.020
Hist.: HLO 1-2004, f. & cert. ef. 2-13-04; HLA 1-2009, f. & cert. ef. 6-1-09

331-030-0025
Emergency Response

Practice in Oregon by out-of-state authorization holders in the event of an emergency:

(1) In the event of a disaster or emergency declared by the Governor of Oregon, the Oregon Health Licensing Agency shall allow authorization holders who are licensed in another state, performing services in a field of professional practice regulated by the agency under ORS 676.606, to practice in Oregon under special provisions during the period of the declared disaster or emergency, subject to such limitations and conditions as the Governor may prescribe.

(2) The out-of-state authorization holder must submit the following information to the agency:

(a) Verification of a permanent, current, and unrestricted authorization to practice in another state which is not the subject of a pending investigation or disciplinary action by a state board, or another state or federal agency; and

(b) Current federal or state photo identification, i.e., driver license or passport.

(3) The authorization holder shall provide the agency documentation demonstrating a request to provide services by an agency recognized public health organization, Emergency Medical Service (EMS) agency, county, state or federal entity, or has otherwise made arrangements to provide services within the practitioner's scope of professional practice in Oregon as the result of the declaration of a disaster or emergency.

(4) The authorization holder may not practice in Oregon under the special disaster or emergency provisions beyond the termination date of the declared disaster or emergency as prescribed by the Governor. Practice in Oregon beyond the termination date of the declared disaster or emergency requires licensure through the Oregon Health Licensing Agency.

Stat. Auth.: ORS 676.606, 676.612, 676.615
Stats. Implemented: ORS 676.606, 676.612, 676.615
Hist.: HLA 1-2009, f. & cert. ef. 6-1-09

331-030-0040
Affidavit of Licensure

(1) "Affidavit of Licensure" means an original document or other approved means of verifying an authorization to practice (certification, licensure or registration) status and history, including information disclosing all unresolved or outstanding penalties and/or disciplinary actions. The agency shall determine the method used to verify an applicant's authorization to practice using one or more of the following:

(a) An applicant shall arrange for the originating regulatory authority to forward directly to the agency a current and original "Affidavit of Licensure" document, signed by an authorized representative of the regulatory authority and affixed with an official seal or stamp to the document. The document is issued and signed by the regulatory authority in the state which issued the authorization with an official seal or stamp affixed to the document; it is not the certificate, license or registration form issued which authorizes the holder to practice. The applicant is responsible for payment of any service fee the originating state may assess for producing the affidavit.

(b) The agency may verify an applicant's authorization to practice in another state through accessing the regulatory entity's Web site and using on-line licensing verification systems to validate information required to determine an applicant's qualifications and fitness to practice in a program administered under ORS 676.606. The agency will assess a charge for obtaining a verification of licensure from another state by means of computer based data system.

(c) The document may be electronically transmitted to the agency from the originating state. The applicant is responsible for payment of any service fee the originating state may assess for producing the affidavit.

(2) An Affidavit of Licensure document hand delivered or mailed by the applicant and not mailed directly or transmitted through an approved means to the agency from the originating state will invalidate qualification for certification, scheduling and examination.

NOTE: The Affidavit of Licensure may be referred to as a "Verification of Licensure" or "License Verification" by other regulatory entities. Both terms have the same purpose in disclosing an applicant's licensing status and history.

Stat. Auth.: ORS 676.606, 676.612, 676.615
Stats. Implemented: ORS 676.606, 676.612, 676.615
Hist.: HLA 1-2009, f. & cert. ef. 6-1-09

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Oregon Health Licensing Agency, Board of Cosmetology
Chapter 817

Rule Caption: Makes technical adjustments, clarify licensing requirements, strengthen identification requirements, and delete interpreter assisted examinations.
Adm. Order No.: BOC 1-2009
Filed with Sec. of State: 6-1-2009
Certified to be Effective: 6-1-09
Notice Publication Date: 2-1-2009
Rules Amended: 817-005-0005, 817-010-0101, 817-020-0015, 817-030-0005, 817-030-0015, 817-030-0020, 817-030-0040, 817-030-0045, 817-030-0065, 817-035-0010, 817-035-0030, 817-035-0050, 817-035-0070, 817-035-0090, 817-035-0110
Rules Repealed: 817-030-0100
Rules Ren. & Amend: 817-020-0005 to 817-020-0006, 817-020-0011 to 817-020-0006, 817-020-0012 to 817-020-0006
Subject: Temporary rules were filed on December 1, 2008 and were effective until April 30, 2009. Public hearing was held on March 2, 2009, at which time testimony was taken and considered by the agency. Permanent rules were scheduled to be filed on April 30, 2009, to align with the expiration of the temporary rules. However, further agency review and public comment from stakeholders regarding identification requirements required the agency to postpone filing the permanent rules.

Permanent rules are being file to synchronize with agency rules regarding application and identification requirements.

• Division 005 and 020 amendments make technical adjustments to the definition of epidermis and correct specific citations, clarify infection control measures for foot spa equipment, and links board rules with overarching agency rules.

• Division 020 amendments reorganize several rule sections and clarify requirements regarding facility licensure pertaining to qualification for licensing and operations, licensing a facility with-

in a residence, compliance with inspections and investigations, and changes in legal status of facility ownership.

• Division 030 amendments pertain to application, qualification and examination requirements for issuing and renewing authorizations to practice by the agency. Rules clarify requirements acceptable documentation and personal identification of applicants to strengthen applicant licensure qualification criteria. Changes include deleting provisions for use of interpreter assisted examinations to secure the use of the national examination contractor. Amendments specify under what conditions the Oregon Laws and Rules examination is required.

• Division 035 amendments make technical wording adjustments regarding issuance and renewal of certificates, licenses and/or registration for practitioners, facility owners and independent contractors. Amendments require practitioners that working under a Certificate of Identification, pass the Oregon Laws and Rules examination or complete the agency's Safety and Infection Control class every two years as a condition of renewal. Provisions link with overarching agency rules regarding notification requirements.

Rules Coordinator: Samantha Patnode—(503) 373-1917

817-005-0005
Definitions

The following definitions apply to OAR chapter 817, divisions 1 through 120.

(1) "Acceptable" means satisfactory or adequate; fulfilling the needs or requirements of a specified rule or provision.

(2) "Adequate ventilation" means ventilation by natural or mechanical methods which removes or exhausts fumes, vapors, or dust to prevent hazardous conditions from occurring in accordance with OAR 437, Division 2 and/or to allow the free flow of air in a room in proportion to the size of the room and the capacity of the room.

(3) "Affidavit of Licensure" means an original document verifying licensing history and status, including information disclosing all unresolved or outstanding penalties and/or disciplinary actions. The document is issued and signed by the regulatory authority in the state which issued the license with an official seal or stamp affixed to the document; it is not the certificate or license form issued which authorizes the holder to practice. Refer to OAR 331-030-0040

(4) "Agency" means the Oregon Health Licensing Agency. The agency is responsible for the budget, personnel, performance-based outcomes, consumer protection, fee collection, mediation, complaint resolution, discipline, rulemaking and record keeping.

(5) "Approved" means accepted by the Agency, Board of Cosmetology or to the appropriate entity.

(6) "Article" means those items which compliment services provided in the practice of barbering, hair design, esthetics or nail technology, including but not limited to neck-strips, neck dusters, towels or linens, and cloth or plastic capes.

(7) "Barbering" has the definition set forth in ORS chapter 690.005.

(8) "Board" means, pursuant to ORS 690.155 and 690.165, the entity that determines practice standards, education and training, and provides consultation to the agency on all disciplinary actions in accordance with ORS 690.167.

(9) "Career school" means, pursuant to ORS 345.010, an establishment licensed under ORS chapter 345, to teach barbering, hair design, esthetics or nail technology, or any combination thereof.

(10) "Certificate" means the document authorizing the holder to perform services in a field of practice, i.e. barbering, hair design, esthetics or nail technology (see, respectively, sections (7), (26), (33) and (44) of this rule).

(11) "Certificate of Identification" means authorization allowing a practitioner to perform services of barbering hair design, esthetics or nail technology outside of a licensed facility and in a client's residence or place of business.

(12) "Chemical service" means the use of any product which restructures or removes hair or changes the shape or appearance of skin, hair or nails.

(13) "Clean" means the absence of soil or dirt, or the removal of soil or dirt by washing, sweeping, clearing away, or any other appropriate method used as a preliminary process in rendering a sanitary condition as defined in subsection (57) of this rule.

(14) "Cleanable" means a surface that can be made clean as defined in subsection (13) of this rule.

(15) "Common area" means an area of a facility which is used by all practitioners performing services, including, but not limited to reception areas, dispensing areas, sinks, shampoo bowls, hair dryers and hair dryer areas, and employee lounge areas.

(16) "Communicable disease or condition" means diseases or conditions diagnosed by a licensed physician as being contagious or transmittable which include but are not limited to the following:

(a) Chickenpox;
(b) Diphtheria;
(c) Measles;
(d) Meningococcal Disease;
(e) Mumps;
(f) Pertussis (whooping cough);
(g) Plague;
(h) Poison oak;
(i) Rubella;
(j) Scabies;
(k) Staphylococcal skin infection (boils, infected wounds);
(l) Streptococcal infections (Strep throat);
(m) Tinea (ring worm);
(n) Tuberculosis.

(17) "Demonstration permit" means an authorization as defined in ORS 690.005 to practice on a limited basis for a maximum of 30 consecutive days.

(18) "Dermis" means the underlying or inner layer of the skin; the layer below the epidermis; the corium or true skin, including papillary layer, capillaries, tactile corpuscles, melanin (pigment), subcutaneous tissue, adipose or subcutis tissue, arteries and lymphatics.

(19) "Director" means the individual who is responsible for the performance of the agency as defined in ORS 676.610. The director appoints all subordinate officers and employees to carry out the duties of the agency.

(20) "Disinfect" means to use a process to destroy harmful organisms, including bacteria, viruses, germs and fungi.

(21) "Dispensing area" means an area having non-porous surfaces and a sink with hot and cold running water where service preparations are conducted, such as mixing of chemicals, cleaning of tools and equipment, disposing of residues and rinsing parts of the body exposed to chemicals.

(22) "Disposable towels" means single-use paper towels or roller-type cloth towels furnished by laundries.

(23) "EPA" means Environmental Protection Agency, a branch of the Federal Government, which approves and registers chemical compounds and agents.

(24) "Epidermis" means the outermost and protective covering of the skin. The epidermis is nonvascular but has many small nerve endings and varies in thickness from 1/200 to 1/20 inch. The epidermis is made up of the stratum corneum (horny layer), stratum lucidum (clear transparent layer), stratum granulosum (grandular layer), stratum spinosum (spinous layer), and stratum germinativum (basal layer).

(25) "Equipment" means those items needed to run a facility which includes but is not limited to waiting chairs, barber or style chairs, shampoo chairs, cabinets, sinks, shampoo bowls, stationary dryers, pedi bins or whirlpool foot spas, paraffin wax containers, and nail technology tables.

(26) "Esthetics" has the definition set forth in ORS 690.005.

(27) "Ethical" means conforming to professional standards of conduct in all occupational practices and in accordance with OAR 817, division 120.

(28) "Exfoliate or exfoliation" means the process of sloughing off, removing, or peeling dead skin cells of the epidermis.

(29) "Facility" has the definition set forth in ORS 690.005.

(30) "Field of practice" means any of these disciplines: barbering, hair design, esthetics and/or nail technology.

(31) "Fire retardant container" means an air-tight metal or other approved container recognized by a national testing lab for the use of disposing of chemical waste or storing linens with chemical residue.

(32) "Fraud" means the intentional act of deceiving or cheating; a willful violation (refer to ORS 646 "Trade Regulations and Practice").

(33) "Hair design" has the definition set forth in ORS 690.005, which includes the braiding of hair.

(34) "High-level disinfectant" means a chemical agent, which has demonstrated tuberculocidal activity and is registered with the EPA.

(35) "Incompetency" means performance from which it may be concluded that the person either lacks or did not employ the knowledge and skill necessary to practice in an acceptable manner.

(36) "Independent Contractor" means an individual defined in ORS 690.005 who qualifies for a recognized business status under the provisions of ORS 670.600.

(37) "License" has the definition set forth in ORS 690.005.

(38) "Licensed health care facility" means a facility as defined by ORS 442.015 (16), such as a hospital, special inpatient care facility, rehabilitation center, center for the treatment of alcoholism or drug abuse, assisted living care or nursing facility, or psychiatric hospital, which is licensed by a state regulatory agency or local governmental unit for the purpose of providing health care services.

(39) "Low-level disinfectant" means a chemical agent which has demonstrated bactericidal, germicidal, fungicidal, and limited virucidal activity and is registered with EPA.

(40) "Manicuring" means services performed upon the nails of the hands as part of nail technology defined in ORS 690.005.

(41) "Manipulating" means, as referred to in ORS 690.005 articulation or massage, pressure, friction, stroking, tapping or kneading by manual or mechanical means, with or without lubricants such as salts, powders, liquids or creams, for the purpose of providing skin care.

(42) "Materials and supplies" means those items which complement the use of tools, including but not limited to hair tints, bleaches, permanent wave solutions, tonics, hair oils, shampoos, rinses, disinfectants, and chemicals.

(43) "Misconduct" means performing in an unethical, unprofessional or dishonest manner; or, acts involving violence against persons.

(44) "Nail Technology" has the definition set forth in ORS 690.005, which includes the following:

(a) The application and removal of artificial nails;

(b) The application of mini-art work, etching or imprinting on nails.

(45) "Negligence" means failure to exercise care in the safety and sanitary methods relating to ORS chapter 690.

(46) "Non-absorbent" means incapable of absorbing or entrapping water or other liquids.

(47) "Official transcript" means an original document certified by the career school indicating hours and types of course work, examinations and scores that the student has completed, which has been mailed by USPS or other recognized mail service provider directly to the agency by the career school in a sealed envelope, or authorized transcript transmitted directly to the agency in a manner approved by the board.

(48) "Pedicuring" means services performed upon the nails of the feet as part of nail technology defined in ORS 690.005.

(49) "Permit" means either a demonstration permit as defined in subsection (17) or a temporary facility permit as defined in subsection (63) of this rule.

(50) "Practitioner" means any person whom the agency has certified to perform services on the public in any field of practice as defined in subsection (30) of this rule.

(51) "Premises" means the entire area of the facility, licensed by the agency and designated as a facility.

(52) "Probation" means continuation of certification, licensure, registration and/or permit under conditions set by the agency.

(53) "Public view" means open to view and easy for the public to see.

(54) "Reasonably accessible" means not more than three minutes travel time from any work location.

(55) "Reciprocity" means that an applicant, holding an active certificate or license in another state, meets the applicable qualifications and requirements pertaining to minimum competency through satisfactory completion of a national written and practical examination recognized and/or approved by the Board.

(56) "Registration" means an authorization to practice in barbering, hair design, esthetics and/or nail technology as an independent contractor.

(57) "Sanitary" means free of agents of infection, disease, or infestation by insects and vermin and free of soil, dust, or foreign material; referring to cleanliness.

(58) "Sanitized" means rendered free of soil, dust, foreign material, and agents of disease or infestation by insects or vermin through the use of effective cleaning.

(59) "Sanitizing container" means a receptacle, holding a disinfecting agent, which is large and deep enough to submerge the tool(s) or implement(s) or portion(s) thereof, which are to be disinfected.

(60) "Sharp edged or pointed, non-electrical tools and implements" means those items which may on occasion pierce or cut the skin and draw blood, includes razors, cuticle nippers, cuticle pushers, nail clippers, tweezers, comedone extractors, shears, and metal nail files.

(61) "Soiled" means an article that has been used and has not been cleaned or disinfected before use on the next client.

(62) "Suspend" means, as used in ORS 690.075, to place a certificate, license, registration and/or permit in an inactive status for an unspecified period of time.

(63) "Temporary facility permit" means an authorization as defined in ORS 690.005, not to exceed 30 consecutive days.

(64) "Tools and implements" means all portable articles and instruments, which the practitioner can carry to use in the performance of services on clients, including but not limited to combs, shears, clippers and yoyettes.

(65) "Work area" means an area where services are performed and preparations are conducted including but not limited to shampoo area, work stations and dispensing area.

Stat. Auth.: ORS 690.165 & 690.205(1)
Stats. Implemented: ORS 690.165 & 690.105(1)
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1982, f. & ef. 1-29-82; BH 2-1982, f. & ef. 3-31-82; BH 1-1983(Temp), f. & ef. 10-4-83; BH 4-1984, f. & ef. 12-7-84; Renumbered from 817-010-0002; BH 1-1988, f. & cert. ef. 7-1-88; 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 2-1996, f. 6-28-96, cert. ef. 7-1-96; BH 1-1997, f. 7-22-97, cert. ef. 8-1-97; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; 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 1-2002, f. 5-31-02 cert. ef. 6-1-02; 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 1-2009, f. & cert. ef. 6-1-09

817-010-0101
Equipment

(1) The surface of all equipment, including but not limited to backbars shall be of cleanable non-absorbent material. This requirement does not apply to the reception area of a facility where services are not performed.

(2) Shampoo bowls and sinks shall be clean and free of hair and residue.

(3) All equipment shall be clean and in good repair.

(4) A high-level disinfectant or bleach solution, used according to the manufacturer's instructions, shall be used to disinfect surfaces contaminated by blood or bodily fluids.

(5) All areas of foot spa equipment shall be cleaned and disinfected with a high-level disinfectant after use on each client, including removal of safety drain screens and clearing all debris from the filtration system.

Stat. Auth.: ORS 676.605, 690.165 & 690.205
Stats. Implemented: ORS 676.605, 690.165 & 690.205
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BOC 4-2001(Temp), f. & cert. ef. 11-1-01 thru 4-29-02; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 1-2009, f. & cert. ef. 6-1-09

817-020-0006
Facility Licensing and Operational Requirements

Pursuant to ORS 690.055 a facility license must be obtained when operating a business establishment, providing services in one or more fields of practice defined in ORS 690.005.

(1) Subject to ORS 676.612, a facility license may be issued if the applicant:

(a) Is at least 18 years of age, if the applicant is a natural person, and meets requirements of ORS 690.055;

(b) Has registered as required by Secretary of State, Corporations Division pursuant to ORS 648.007, an "Assumed Business Name" (ABN) defined under ORS 648.005 prior to applying for a facility license, and submits with facility application a current copy of the ABN filing.;

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to Secretary of States, Corporations Division under ORS 648.005 through 648.990.

(c) Files an application on prescribed forms with the agency and pays the required application and license fees. If the facility is owned by a corporation, the application must state the name of and the form must be signed by the corporate officer;

(d) Complies with all applicable administrative rules and regulations of the Board and other state agencies regarding health, safety, and infection control standards;

(e) Complies with the specifications for building, fire and plumbing codes as specified in OAR 817-010-007, and complies with ventilation, exit and fire standards established by the Department of Consumer and Business, Building Codes Division and Office of the State Fire Marshal;

(f) Provide a map or directions to the facility if it is located in a rural or isolated area; and

(g) Attests that the application information is correct.

(2) License holders must comply with the notification requirements of OAR 331-010-0040.

(3) Facility license holders offering services within the licensed premises, other than those regulated under ORS 690.005, such as massage, tanning, tattooing or body piercing, shall ensure compliance with appropriate licensing laws and regulations if required.

(4) Client services referred to in subsection (3) of this rule, must have a treatment area that is separated by a permanent, solid barrier, private or screened from the entrance, waiting area or other treatment areas when cosmetology services regulated under ORS 690.005 are being performed to ensure client privacy and prevent contact with chemical or other air-borne irritants. This does not pertain to sale of products.

(5) Any location where services are performed solely by independent contractors, who are registered by the agency, must be licensed as a facility.

(6) The cleanliness and sanitary condition of any shared or common area used by or provided for separately licensed facilities or independent contractors located at one premises is the responsibility of each license or registration holder at that premises.

(7) All facility license holders and independent contractor registration holders located at one premises will be cited for violations of rules or regulations found in the shared or common area of a facility, unless a contractual agreement exists that indicates specific responsibility for the cleanliness of a shared or common area within the premises.

(8) Facility License — Residence.

(9) In addition to the requirements of this rule, applicants for a facility license located within a residence shall have an identifying house number or a sign that is easily visible from the street and indicates the location of the facility. The license holder shall:

(a) Comply with all applicable regulations of OAR chapter 817, division 010, including maintaining equipment the Board requires for all facilities;

(b) Provide an entrance to the facility that is separate from the entrance to residential living areas; and

(c) Maintain separation between the residential living area and facility by solid walls extending from floor to ceiling, with connection doors kept closed during hours of facility operations and serving clients as required in ORS 60.205.

(10) Inspections and Investigations:

(a) Pursuant to ORS 676.608 or 690.225, a facility owner or license holder shall allow the agency's representative to inspect the facility or conduct an investigation. Obstructing or hindering the normal progress of an investigation or the inspection, threatening or exerting physical harm, or enabling another individual or employee to impede an investigation or inspection may result in disciplinary action.

(b) License holders must contact the agency in writing to make arrangements for an inspection if the agency has been unable to perform an inspection after one year because the facility was closed.

Stat. Auth.: ORS 676.605, 690.055 & 690.165, 690.205, 690.225
Stats. Implemented: ORS 676.605, 690.055 & 690.165, 690.205, 690.225
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; 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; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; Renumbered from 817-020-0005, 817-020-0011, 817-020-0012, BOC 1-2009, f. & cert. ef. 6-1-09

817-020-0015
Requirements for Changing Facility Ownership and Location

(1) The facility license is issued to a designated owner or legal entity for the specific physical location where business is conducted. The license is not transferable from person-to-person or from business-to business.

(2) A facility owner or license holder shall meet the requirements of a new facility and submit a new facility application and required fees when any of the following conditions exist:

(a) A facility is purchased from the current or previous owner, partnership or corporation;

(b) There is a change in the legal ownership, partnership or holding of a facility regulated under ORS 690 and OAR 817, such as a partner or co-owner being added or removed from the existing facility license. This includes a change in the ownership status due to death or divorce of facility owner or a spouse listed as a co-owner on the agency's records. :

(c) An existing facility moves or relocates to a new physical address.

(3) Facility license holders who close a business regulated under ORS 690 and OAR 817 shall inform the agency in writing within 30 calendar days of the closure of the facility and before reopening the facility while the license is still current.

Stat. Auth.: ORS 690.055 & 690.165
Stats. Implemented: ORS 690.055 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 2-1996, f. 6-28-96, cert. ef. 7-1-96; Renumbered from 817-020-0025 & 817-020-0030; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2009, f. & cert. ef. 6-1-09

817-030-0005
Qualification and Training Requirements

To obtain an Oregon certificate in one or more fields of practice, individuals must complete required application documentation prescribed by the agency under OAR 331-030-0000 and 817-030-0015 provide satisfactory evidence of meeting certification requirements, which includes qualifying criteria listed in one of the following certification pathways, and submit payment of required fees.

CERTIFICATION PATHWAY ONE

(1) Graduate from Oregon Licensed Career School: Applicants must meet the education and training requirements in effect at the time of application. Applicants shall complete and pass courses required by the Oregon Department of Education, Private Career Schools, in one or more of the following educational programs offered through an Oregon licensed career school, and must also pass a written and practical examination approved or recognized by the Board of Cosmetology in accordance with OAR 817-030-0040:

(a) Hair design — 1,450 hour course;

(b) Barbering — 1,100 hour course;

(c) Esthetics — 250 hour course;

(d) Nail technology — 350 hour course;

(e) Mandatory completion of a 150 hour safety and infection control course and a 100 hour career development course in addition to any one or more of the approved programs listed in (a) through (d) of this rule. The Board recognizes a final practical examination, prescribed by the Department of Education, Private Career Schools in collaboration with the Board, which establishes standard examination criteria and testing protocols, as its qualifying practical certification examination. Authorized Oregon licensed career school personnel conduct the practical examination.

CERTIFICATION PATHWAY TWO

(2) Non-Credentialed Applicants from Another State or Country: Applicants who have completed schooling requirements established by a regulatory authority in another state or country must submit all required application documentation (OAR 817-030-0015) to the agency for evaluation to determine qualification and fitness to practice. Approved applicants will be required to take the Oregon qualifying written and practical examination (OAR 817-030-0040) if the following criteria apply:

(a) Certification or licensure in another state or country was not attained;

(b) Reciprocity requirements listed in subsection (3) of this rule have not been met.

CERTIFICATION PATHWAY THREE

(3) Oregon Certification by Reciprocity: The Board recognizes at its discretion other states', and countries', equivalent education, examination and licensing requirements. To be certified in one or more a field of practice, applicants are required to meet OAR 817-030-0015(1) and the following criteria:

(a) The applicant shall arrange for Affidavit of Licensure as defined in OAR 331-030-0040 be provided to the Agency. The applicant is responsible for payment of any service fee the originating state may assess for producing the affidavit.

(b) Completion of a state-approved board examination for certification/licensure and graduation from a licensed cosmetology school.

(c) Completion of the Oregon Laws and Rules examination.

(4) Applicants holding current certification/licensure from out-of-state who do not qualify for Oregon certification by means of reciprocity as specified in subsection (3) of this rule must complete and pass the qualifying examination(s) required in OAR chapter 817, division 030.

Stat. Auth.: ORS 690.035, 690.046 & 690.165
Stats. Implemented: ORS 690.035, 690.046 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1981, f. & ef. 10-1-81; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; 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 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09

817-030-0015
Practitioner Application Requirements

(1) Applicants must meet all of the requirements of OAR 331-030-0000 in addition to the provisions of this rule. Before being authorized to take an examination at any of the agency approved testing locations, the completed application documentation must be on file with the agency and eligibility for examination established. Refer to OAR 817-030-0020.

(2) Applicants must provide, or cause to be delivered to the agency, prescribed documentation verifying training and/or licensure, according to one of the qualification pathways listed under. OAR 817-030-0005:.

(a) Official transcript/Oregon Career School: completed official transcript, issued by an Oregon licensed career school of barbering, hair design, esthetics or nail technology, and completed original official transcript of practical examination, signed by the authorized school personnel proctoring the Board sanctioned examination, certifying that criteria for the practical examination was met and that the applicant satisfactorily demonstrated minimum competencies established by the Department of Education, Private Career Schools, in collaboration with the Board.

(b) Out-of-state non-credentialed: documentation of schooling and/or training experience, including official transcript from the licensed school mailed or transmitted directly to the agency from the originating state's regulatory authority, work study or apprenticeship records.

(c) Reciprocity: The applicant shall arrange for Affidavit of Licensure as defined in OAR 331-030-0040 be provided to the Agency. The applicant is responsible for payment of any service fee the originating state may assess for producing the affidavit.

(3) Application documentation required for an examination and certification must be submitted to the Oregon Health Licensing Agency in English. If documents require translation, a copy of the official document(s), in the original language, must be submitted with the written translation in English.

Stat. Auth.: ORS 676.615, 690.035 & 690.165
Stats. Implemented: ORS 676.615, 690.035 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1981, f. & ef. 10-1-81; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 1-1992, f. 6-1-92, cert. ef. 7-1-92; Renumbered from 817-030-0010; 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; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2001(Temp), f. 1-31-01, cert. ef. 2-1-01 thru 7-29-01; BOC 3-2001, f. 3-30-01, cert. ef. 4-1-01; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09

817-030-0020
Examination Requirements

(1) The agency will conduct examinations for certification. A schedule of examination dates and times shall be available upon request. The agency reserves the right to alter or adjust examination dates, times and locations as it deems necessary to meet emergency situations and will notify applicants and schools in advance whenever possible.

(2) Applicants may request special examination accommodation according to requirements of OAR 817-030-0080. Special examinations will be scheduled at a date and time determined by the Oregon Health Licensing Agency Director.

(3) Applicants will qualify for examination upon compliance with relevant provisions of OAR 331-030-0000, 817-030-0005 and 817-030-0015. Applicants will not be allowed to take the examination until all requirements for examination have been met. If documentation is incomplete or incorrect, applicants will not be allowed to sit for the examination.

(4) An applicant must meet identification requirements listed under OAR 331-030-0000.

Stat. Auth.: ORS 676.615, 690.065 & 690.165
Stats. Implemented: ORS 676.615, 690.065 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; 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 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 2-2008, f. 9-15-08 cert. ef. 10-1-08; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09

817-030-0040
Type of Examination

(1) The written examination consists of the following sections: Oregon Laws and Rules, Barbering, Hair Design, Esthetics and Nail Technology. Examinations test the applicant's knowledge of the following subjects:

(a) The basic principals of safety and infection control;

(b) The safety and infection control rules of the Board of Cosmetology;

(c) Chemical use and storage;

(d) Diseases and disorders;

(e) Equipment and tools/implements;

(f) Licensure requirements and regulations;

(g) Standards of practice;

(h) Definitions; and

(i) Practical applications and procedures.

(2) Each section will be scored individually. The passing score for each section is 75 percent or better.

(3) The Board will establish by policy a maximum examination time allowance for each examination section, listed in section (1) of this rule. Maximum examination time allowances shall be published and included in the application for certification packet, posted in the agency Web site and made available upon request.

(4) The examination may be administered using a computerized testing system with touch screen functionality for selecting the candidate's response to multiple-choice question.

(5) The examination is administered in English only, unless an agency approved testing contractor or vendor provides the examination in languages other than English. Examination candidates may be electronically monitored during the course of testing.

(6) The practical examination is a final examination conducted at an Oregon licensed career school of barbering, hair design, esthetics or nail technology, administered at the direction of and in accordance with criteria established by the Department of Education, Private Career Schools. The examination must be documented according to provisions set forth by the Department of Education, Private Career Schools. The Board of Cosmetology recognizes and sanctions the practical examination conducted by licensed career schools in accordance with the Department of Education's criteria and protocols, as its practical competency examination.

(7) In collaboration with the Department of Education, Private Career Schools, the Board or designated staff may periodically review any career school's practical examination procedures and conduct to determine compliance with Department of Education's criteria and to maintain Board recognition of the practical examination.

Stat. Auth.: ORS 676.615, 690.065 & 690.165
Stats. Implemented: ORS 676.615, 690.065 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1983(Temp), f. & ef. 10-4-83; BH 1-1984, f. & ef. 2-13-84; BH 4-1984, f. & ef. 12-7-84; BH 2-1990, f. & cert. ef. 10-29-90; Renumbered from 817-030-0060; 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; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2002, f. 5-31-02 cert. ef. 6-1-02; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09

817-030-0045
Sections Which the Applicant Must Pass

(1) An applicant who is a graduate of an Oregon Licensed Career School or applying for certification based on equivalency according to OAR 817-030-0005(1) and (2) must pass the Oregon Laws and Rules section of the examination and one or more of the following fields of practice:

(a) Barbering;

(b) Hair Design;

(c) Esthetics;

(d) Nail Technology.

(2) An applicant who is applying for certification through reciprocity according to OAR 817-030-0005(3) must pass the Oregon Laws and Rules section of the examination

(3) Applicants failing to successfully complete the examination process and thus failing to obtain a certificate within two years from the date of their most recent examination attempt, will be required to:

(a) Reapply for examination according to OAR 817-030-0015;

(b) Pay the application, examination and original certificate fees; and

(c) Retake all written and practical examination sections qualified for, regardless of a previously passing score.

(4) Applicants for certification who fail any part of the examination may apply to retake the failed section(s) twice before being required to obtain recertification of training through an Oregon career school licensed under ORS 345.010 to 345.450.

Stat. Auth.: ORS 676.615, 690.065 & 690.165
Stats. Implemented: ORS 676.615, 690.065 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 2-1990, f. & cert. ef. 10-29-90; 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 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09

817-030-0065
Procedure if the Applicant Fails

(1) Failed sections of the examination may be retaken at the next available date and time, determined by the agency, as scheduling allows. Retaking a failed examination requires registration and payment of the required fees.

(2) Opportunity to review failed sections of the examination, are provided at the conclusion of each examination question/answer selection, or immediately following conclusion of the entire examination. Review of failed examination sections at a later time or date is prohibited.

(3) Applicants retaking the examination must meet the requirements under OAR 331-030-0000 and 817-030-0020.

Stat. Auth.: ORS 690.065 & 690.165
Stats. Implemented: ORS 690.065 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 1-1983(Temp), f. & ef. 10-4-83; BH 1-1984, f. & ef. 2-13-84; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; 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 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09

817-035-0010
Issuance and Renewal of Certificates, Licenses and/or Registrations

(1) Individuals will be subject to the provisions of ORS 690.046, 690.055, 690.057, 690.085 and OAR 331-030-0010 for issuance and renewal of certificates, licenses and registrations.

(2) An applicant whose renewal payment is received by the agency, or is postmarked, after the expiration date will be assessed a delinquency (late) fee, as specified in ORS 690.085 and OAR 817-040-0003.

(3) Practitioners who fail to renew a certificate within two years from the expiration date must reapply and meet requirements of ORS 690.085 and OAR 331-030-0000.

(4) Independent contractors who fail to renew their registration within one year from the date of expiration must meet the requirements of OAR 817-035-0070.

(5) The agency, at its discretion, may also request that authorization holders provide their Social Security number at the time of application for renewal.

(6) Renewal — Practitioner Certificates. When renewing a certificate, applicants must provide the following information to the agency:

(a) Name and current residential or mailing address;

(b) Certificate number and expiration date;

(c) Residence area code and telephone number;

(d) Selection of field(s) of practice for renewal to maintain active certification;

(e) The name, address, telephone number and facility license or independent contractor registration number where services are being performed, or other work location where service is performed;

(7) Renewal — Independent Contractor Registration. When renewing an independent contractor registration, applicants must provide the following information to the agency:

(a) Independent contractor registration number and expiration date;

(b) A copy of any change to the "Assumed Business Name" filed with the Secretary of State, Corporation Division. Refer to OAR 331-010-0040 and 817-035-0070;

(c) Name, address and license number of facility where working under lease agreement, or business mailing address;

(d) Residential address;

(e) Business area code and telephone number; and

(f) Information regarding whether actively engaged in performing services within a field(s) of practice.

(8) Renewal — Facility Licenses. When renewing a facility license, applicants will be subject to requirements of ORS 690.085. Applicants must provide the following information to the agency at the time of renewal;

(a) Facility license number and expiration date;

(b) Name and place of business, or business mailing address;

(c) Business area code and telephone number; and

(d) A copy of any change to the "Assumed Business Name" filed with the Secretary of State, Corporation Division. Refer to OAR 331-010-0040 and 817-020-0006;

(e) Whether regulated services outside the scope of ORS 690.005 to 690.235 are being performed within the premises of the facility. Such services include but are not limited to electrology, tanning, ear and body piercing, or tattooing, i.e. permanent makeup.

Stat. Auth.: ORS 676.605, 676.615, 690.085 & 690.165
Stats. Implemented: ORS 676.605, 676.615, 690.085 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 2-1994(Temp), f. 2-15-94, cert. ef. 3-1-94 thru 8-28-94; Renumbered from 817-040-0008, BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; Renumbered from 817-040-0015, BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; 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 1-2009, f. & cert. ef. 6-1-09

817-035-0030
Document Issuance

(1) Subject to ORS 690.048 and OAR 331-030-0010, the agency will issue an individual a certificate authorizing the holder to practice barbering, hair design, esthetics or nail technology upon passage of the qualifying examination(s) required in OAR 817-030-0045 and payment of the required fees for each field of practice.

(2) Certificate, license and registration holders are subject to provisions of OAR 331-030-0010 regarding issuance and renewal of an authorization, and to provisions of OAR 331-030-0020 regarding authorization to practice and requirements for issuance of a replacement authorization.

Stat. Auth.: ORS 676.615, 690.048, 690.123 & 690.165
Stats. Implemented: ORS 676.615, 690.048, 690.123 & 690.165
Hist.: BH 1-1988, f. & cert. ef. 7-1-88; BH 2-1990, f. & cert. ef. 10-29-90; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; Renumbered from 817-030-0095; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; 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 3-2008(Temp), f. 11-28-08, cert. ef. 12-1-08 thru 4-30-09; Administrative correction 5-20-09; BOC 1-2009, f. & cert. ef. 6-1-09

817-035-0050
Application and Criteria for Certificate of Identification

(1) Pursuant to ORS 690.123, a practitioner who provides services outside of a licensed facility must hold a certificate of identification.

(2) The applicant for a certificate of identification must:

(a) Submit a completed application prescribed by the agency, indicating applicant's name, current residential address (and mailing address if applicable), telephone number, and certificate number;

(b) Pay required application, examination and certificate of identification fees;

(c) Pass the Oregon Laws and Rules examination. Completion of the examination is not required if the applicant passed the Oregon Laws & Rules examination within two years before the date of application for a certificate of identification.

(d) Has registered as required by Secretary of State, Corporations Division pursuant to ORS 648.007, an "Assumed Business Name" (ABN) defined under ORS 648.005 prior to applying for a certificate of identification, and submits with certificate of identification application a current copy of the ABN filing.;

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to Secretary of States, Corporations Division under ORS 648.005 through 648.990.

(3) Subject to ORS 676.612 and OAR 331-030-0000, upon qualification, the agency will issue a certificate of identification indicating the fields of practice the practitioner is certified to perform outside of a licensed facility.

(4) The certificate of identification is issued as a separate document from the certificate authorizing the holder to perform services, for a period of two years and expires on the last date of the month two years from the date all qualifications were met.

(5) A certificate of identification may be renewed upon submission of an application for renewal, payment of required fees and passage of the Oregon Laws and Rules examination or completion of the agency's Safety & Infection Control class.

(6) A holder of a certificate of identification shall:

(a) Provide each client with the agency's name, address and telephone number, for comment on any of the services received or on any of the sanitary procedures followed while performing services;

(b) Display the practitioner's certificate number and certificate of identification number on all advertising when soliciting business;

(c) Comply with the Board's health, safety, and infection control rules and regulations; . and

(d) Be subject to random audit to verify compliance with safety, infection control and licensing requirements.

(7) The certificate of identification may be suspended or revoked by the Board if the certificate holder:

(a) Practices or performs services at the practitioner's residence when the residence is not licensed as a facility under OAR 817-020-0005;

(b) Practices or performs services on clients other than those who either reside at or are employed at the residence, office or business where services are provided; or

(c) Both practices and resides outside the state of Oregon.

(8) The certificate of identification may be suspended or revoked by the agency if the Board has taken action to refuse to issue or renew, or has suspended or revoked the practitioner's certificate.

Stat. Auth.: ORS 676.615, 690.048, 690.123 & 690.165
Stats. Implemented: ORS 676.615, 690.048, 690.123 & 690.165
Hist.: BH 4-1984, f. & cert. 12-7-84; BH 1-1988, f. & cert. ef. 7-1-88; 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, f. & cert. ef. 7-1-94; Renumbered from 817-020-0040; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 2-2008, f. 9-15-08 cert. ef. 10-1-08; BOC 1-2009, f. & cert. ef. 6-1-09

817-035-0070
Independent Contractor Registration Eligibility

An independent contractor registration may be issued if the applicant:

(1) Holds a current, valid practitioner's certificate;

(2) Is at least 18 years of age as required in ORS 690.057;

(3) Meets the criteria for independent contractor status in accordance with ORS 690.035, 690.057, 670.600, and 657.040;

(4) Applies on forms provided by the agency and pays the required application and registration fees;

(5) Has registered as required by Secretary of State, Corporations Division pursuant to ORS 648.007, an "Assumed Business Name" (ABN) defined under ORS 648.005 prior to applying for a independent contractor registration, and submits with independent contractor application a current copy of the ABN filing.;

NOTE: ABN is not required if business includes the real and true name of each owner. Refer to Secretary of States, Corporations Division under ORS 648.005 through 648.990.

(6) Complies with all applicable rules and regulations of the Board and other state agencies; and

(7) Attests that application information is correct.

Stat. Auth.: ORS 676.615, 690.055, 690.057 & 690.165
Stats. Implemented: ORS 676.615, 690.055, 690.057 & 690.165

Hist.: BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2009, f. & cert. ef. 6-1-09

817-035-0090
Independent Contractor Registration Criteria

(1) An independent contractor registration may be issued upon qualification according to the provisions of OAR 331-030-0000 and 817-035-0070.

(2) An independent contractor registration will be evidence of the practitioner's qualification to work independent of a facility license holder. The registration is transferable between work locations, provided the agency is given notification as stated in OAR 331-010-0040 (3).

(3) Independent contractors must:

(a) Be subject to all of the Board's health, safety, and infection control rules and regulations;

(b) Allow the agency's enforcement officer to inspect all working areas when open for business;

(c) Abstain from obstructing or hindering the normal progress of the inspection, threatening or exerting physical harm, or enabling another individual to impede the inspection process;

(d) Contact the agency in writing to make arrangements for an inspection if after one year the agency has not performed an inspection;

(e) Post the registration and retain a copy of the current inspection certificate as stated in OAR 817-035-0110; and

(f) Comply with notification requirements of OAR 331-010-0040.

Stat. Auth.: ORS 676.615, 690.055, 690.057, 690.085, 690.095, 690.165, 690.225
Stats. Implemented: ORS 676.615, 690.055, 690.057, 690.085, 690.095, 690.165 & 690.225
Hist.: BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2009, f. & cert. ef. 6-1-09

817-035-0110
Posting Requirements

Certificate, license, permit and registration holders are subject to the requirements of OAR 331-030-0020 in addition to the following posting requirements:

(1) Facility licenses must be posted in public view.

(2) Independent contractor registrations must be posted at the registration holder's workstation in public view.

(3) Practitioner certificates must be posted in public view. The practitioner's address printed on the certificate may be blocked from public view.

(4) Demonstration and temporary authorizations must be posted in public view.

(5) Certification of identification holders must show the authorization to practice upon request of the client.

(6) Holders of a facility license or an independent contractor registration must maintain the most recent inspection certificate on the facility premises or at the designated work station and allow access to the record upon request by the agency's inspector or representative.

Stat. Auth.: ORS 676.615, 690.095 & 690.165
Stats. Implemented: ORS 676.615, 690.095 & 690.165
Hist.: BH 2-1978, f. & ef. 11-29-78; BH 4-1984, f. & ef. 12-7-84; Renumbered from 817-010-0120; BH 1-1988, f. & cert. ef. 7-1-88; BH 3-1994, f. 6-23-94, cert. ef. 7-1-94; Renumbered from 817-020-0013; BH 1-1996, f. 5-31-96, cert. ef. 7-1-96; BBH 1-1998, f. 6-24-98, cert. ef. 6-30-98; BOC 1-2000, f. 5-12-00, cert. ef. 5-15-00; BOC 1-2004, f. 6-29-04, cert. ef. 7-1-04; BOC 1-2006, f. & cert. ef. 3-15-06; BOC 1-2009, f. & cert. ef. 6-1-09

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Oregon Investment Council
Chapter 171

Rule Caption: Repeal of Divestiture Rule.
Adm. Order No.: OIC 1-2009
Filed with Sec. of State: 6-10-2009
Certified to be Effective: 6-10-09
Notice Publication Date: 11-1-2008
Rules Repealed: 171-010-0000, 171-010-0005, 171-010-0010, 171-010-0015, 171-010-0020, 171-010-0025, 171-010-0030, 171-010-0035, 171-010-0040, 171-010-0045
Subject: These rules date from 1987 and pertain to divestiture of investments of state moneys in business firms and financial institutions with close ties to South Africa and Namibia. The related ORS have been repealed, therefore the rules are no longer needed.
Rules Coordinator: Sally Wood—(503) 378-4990

Oregon Public Employees Retirement System
Chapter 459

Rule Caption: New rule sets forth criteria for terminating PERS membership.
Adm. Order No.: PERS 6-2009
Filed with Sec. of State: 6-3-2009
Certified to be Effective: 6-3-09
Notice Publication Date: 5-1-2009
Rules Adopted: 459-010-0300
Subject: ORS 238.618 allows the Board to terminate or deny membership to any employee whose participation in the system would jeopardize the plan's status as a qualified retirement plan. Under federal law, a plan qualification occurs when the plan is not administered (does not operate) in accordance with the plan document.

At its March 13, 2009 meeting, the PERS Board terminated the membership of a person who failed to comply with the return-to-work requirements of ORS 238.078(2). That statute requires a retired member, as a precondition to returning to public employment, to repay in a lump sum of all the retirement benefits received if the member returns to that employment within the six-month period following retirement and exceeds the allowable hourly limitations within that period. This was the first circumstance of the PERS Board exercising its authority under ORS 238.618, but staff reported at that time that there were additional members in the same circumstance.

This rule allows the PERS Executive Director to terminate membership only if the member chose a total lump sum option, exceeded the allowed hourly limitations within six months after returning to work, and refuses to re-retire in compliance with those limitations, which would otherwise remedy the plan breach.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-010-0300
Involuntary Termination of Membership

(1) Under ORS 238.618, the Board may terminate a member's membership when the member's participation in the system would cause the system or the Public Employee's Retirement Fund to lose its tax qualified status.

(2) The Director is delegated the authority provided under ORS 238.618 to terminate a member's membership in the Public Employee's Retirement System under the following circumstances:

(a) The member retired and elected the total lump sum option under ORS 238.305(3);

(b) The member exceeded the return to work limitations in ORS 238.078(2) and OAR 459-017-0060(5) in the six month period following the member's effective retirement date; and

(c) The member refuses to re-retire in compliance with those return to work limitations.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.618
Hist.: PERS 6-2009, f. & cert. ef. 6-3-09

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Oregon University System, Oregon State University
Chapter 576

Rule Caption: Faculty Records Rule.
Adm. Order No.: OSU 1-2009(Temp)
Filed with Sec. of State: 6-9-2009
Certified to be Effective: 6-9-09 thru 12-4-09
Notice Publication Date:
Rules Adopted: 576-003-0000, 576-003-0005, 576-003-0010, 576-003-0020, 576-003-0040, 576-003-0050, 576-003-0060, 576-003-0070, 576-003-0080, 576-003-0090, 576-003-0100, 576-003-0110, 576-003-0120
Subject: This Faculty Records Rule ensures the continued confidentiality of faculty personnel records, which is provided for under ORS 351.065. The rule is modeled after the Oregon State Board of higher Education Faculty Records Rule, which Oregon State university has relied upon to protect faculty records for approximately 30 years. Because of ambiguities in the language of ORS 351.065, Oregon State University, out of an abundance of caution, is adopt-

ing this independent Faculty Records Rule to ensure continued confidentiality.

Rules Coordinator: Barbara Melton—(541) 737-6262

576-003-0000
Definitions

(1) "Personal Records" means records containing information kept by Oregon State University concerning a faculty member and furnished by the faculty member or by others, including, but not limited to, information as to discipline, counseling, membership activity, other behavioral records, professional preparation and experience, professional performance (e.g., assignment and workload, quality of teaching, research and service to the institution), personnel data relating to such matters as promotions, tenure, leaves, retirement credits and the like and professional activities external to the institution, including, but not necessarily limited to, awards, recognition, research activities and travel.

(2) For purposes of compliance with ORS 351.065, "records of academic achievement" shall mean the record of credits earned toward a degree or in postdoctoral work and/or certificate(s), diploma(s), license(s) and degree(s) received.

Stat. Auth.: ORS 351.065 & 351.070
Stats. Implemented: ORS 351.065
Hist.: OSU 1-2009(Temp), f. & cert. ef. 6-9-09 thru 12-4-09

576-003-0005
Limitation on Records to Be Maintained

Only records that are demonstrably and substantially relevant to the educational and related purposes of Oregon State University shall be generated and maintained.

Stat. Auth.: ORS 351.065 & 351.070
Stats. Implemented: ORS 351.065
Hist.: OSU 1-2009(Temp), f. & cert. ef. 6-9-09 thru 12-4-09

576-003-0010
Restrictions on Soliciting or Accepting Confidential Information Relating to Employed Faculty

When evaluating employed faculty members, Oregon State University shall not solicit or accept letters, documents or other materials, given orally or in written form, from individuals or groups who wish their identity kept anonymous or the information they provide kept confidential, except for student evaluations made or received pursuant to OAR 576-003-0070(5).

Stat. Auth.: ORS 351.065 & 351.070
Stats. Implemented: ORS 351.065
Hist.: OSU 1-2009(Temp), f. & cert. ef. 6-9-09 thru 12-4-09

576-003-0020
Certain Information Not Required to Be Given by Faculty Members

No faculty member shall be required to give, but may voluntarily provide, information as to race, religion, sex, political affiliation or preferences, except such information that may be required by state statute, federal law or valid federal rules, regulations or orders. Where the faculty member is asked for such self-designation for any purpose (including federal requests for information), the request shall state the purpose of the inquiry and shall inform the individual of any right to decline to respond that may be applicable.

Stat. Auth.: ORS 351.065 & 351.070
Stats. Implemented: ORS 351.065
Hist.: OSU 1-2009(Temp), f. & cert. ef. 6-9-09 thru 12-4-09

576-003-0040
Locations and Custody of Faculty Records

Official faculty personal records shall be kept in locations central to the department that maintains them. Custody shall be assigned to designated personnel specifically charged with maintaining the confidentiality and security of the records in accordance with applicable Oregon State University rules and polices. Oregon State University shall not maintain more than three files relating to the evaluation of a faculty member, except that Oregon State University may maintain one additional confidential file in excess of three existing files that shall contain only material excised from other records as permitted by OAR 576-003-0070. Evaluation files are those referred to in ORS 351.065 as "designated" or "authorized."

Stat. Auth.: ORS 351.065 & 351.070
Stats. Implemented: ORS 351.065
Hist.: OSU 1-2009(Temp), f. & cert. ef. 6-9-09 thru 12-4-09

576-003-0050
Release of and Access to Faculty Records

(1) Appropriate information about the faculty member may be released on request and without the faculty member's consent. Such information shall be limited to:

(a) Directory information, that is, information generally needed in identifying or locating a named faculty member including such information as is readily found in published documents such as institutional catalogs;

(b) Objective evidence of a faculty member's academic achievement, limited to information as to the number of credits earned toward a degree or in postdoctoral work, and certificate(s), diploma(s), license(s) and degree(s) received;

(c) Salary information and the record of terms or conditions of employment;

(d) Records tabulated from students' classroom survey evaluations, on a finding by the president that privacy rights in an adequate educational environment would not suffer by disclosure.

(2) All information in the faculty member's personal record file, apart from that identified in section (1) of this rule, shall be considered personal and subject to restricted access as set forth in OAR 576-003-0060 through 576-003-0120.

Stat. Auth.: ORS 351.065 & 351.070
Stats. Implemented: ORS 351.065
Hist.: OSU 1-2009(Temp), f. & cert. ef. 6-9-09 thru 12-4-09

576-003-0060
Confidential Records — Restrictions on Release

(1) Personal records designated as subject to restricted access in accordance with authority granted in ORS 351.065 shall be available only to the faculty member who is the subject of the records as provided for in OAR 576-003-0070 through 576-003-0100 and to Oregon State University personnel, such as faculty, administrators, students and others serving on committees or in other official capacities. Such personnel shall have a demonstrably legitimate need to review the records in order to fulfill their official, professional responsibilities as defined in relevant Oregon State University rules or policies. These records may not be released to any other person or agency without the faculty member's written consent, unless on receipt of a valid subpoena or other court order or process or as required by state statute, federal law or valid federal or state rules, regulations or orders.

(2) Oregon State University shall appear in court through the Department of Justice when appropriate to test the validity of a subpoena or other court order or process relating to release of faculty records when validity is in question.

Stat. Auth.: ORS 351.065 & 351.070
Stats. Implemented: ORS 351.065
Hist.: OSU 1-2009(Temp), f. & cert. ef. 6-9-09 thru 12-4-09

576-003-0070
Access to Files by Faculty Members

(1) Faculty members shall be allowed full access to their own personal files and personal records kept by Oregon State University, except as provided in sections (2) and (3) of this rule.

(2) Letters and other information submitted in confidence to Oregon State University prior to July 1, 1975, shall be maintained in the evaluation files permitted by OAR 576-003-0040. However, if a faculty member requests access to such letters and other information pertaining to the faculty member, the anonymity of the contributors of letters and other information obtained prior to July 1, 1975, shall be protected. The full text shall be made available to the faculty member except those portions of the text that would serve to identify the contributor, which shall be excised by a faculty committee created pursuant to institutional rules. The excised portions of the documents may be retained in the confidential file permitted by 576-003-0040.

(3) Confidential letters and other information received by Oregon State University after July 1, 1975, prior to the employment of a faculty member, shall be placed in evaluation files relating to the faculty member. If the applicant is not employed, the confidential information submitted concerning the applicant shall remain confidential. If an applicant who is employed requests access to personal files, the anonymity of the contributors of confidential preemployment letters and other preemployment information shall be protected. The full text shall be made available, except that those portions of the text that would serve to identify the contributor shall be excised and may be retained in the confidential file permitted by OAR 576-003-0040.

(4) Any evaluation received by telephone shall be documented in each of the faculty member's evaluation files by means of a written summary of the conversation with the names of the conversants identified.

(5) If Oregon State University solicits or accepts student survey evaluations of the classroom or laboratory performance of a faculty member, the survey evaluations shall be conducted anonymously. Reports tabulated from student evaluations shall be placed in the evaluation files defined in OAR 576-003-0040. Survey instruments from which evaluation data are obtained shall be delivered to the faculty member. No other evaluative material shall be accepted from students unless the students are first clear-

ly informed that the faculty member will have access to such material and that the anonymity of the student cannot be preserved.

Stat. Auth.: ORS 351.065 & 351.070
Stats. Implemented: ORS 351.065
Hist.: OSU 1-2009(Temp), f. & cert. ef. 6-9-09 thru 12-4-09

576-003-0080
Entry into File of Comments, Explanations, and Rebuttals

(1) The relevant Oregon State University officials shall, upon request, offer the faculty member opportunity to enter into the evaluation file a rebuttal, refutation, or explanation of any observations contained therein.

(2) On a faculty member's request, an appropriate faculty committee shall examine the faculty member's file to verify that all statements therein have been provided. If not, the committee shall require that the information be made available.

(3) On a faculty member's request, the faculty committee shall examine the confidential file to verify that it contains only those excised portions provided in OAR 576-003-0070. The committee shall have the authority to require that any other material be removed from the confidential file.

(4) A copy of the periodic, regular written evaluation of the faculty member containing or having attached to it a statement to the effect that the faculty member may discuss the evaluative statement with the evaluating administrator, shall be given the faculty member. A copy of the evaluative statement, signed by the faculty member signifying receipt of a copy thereof, shall be placed in the faculty member's evaluation file. The faculty member may enter into the evaluation file such comments, explanations, or rebuttals as desired. A copy of such comments, explanations or rebuttals made by the faculty member shall be attached to each copy of the evaluative statement retained by Oregon State University.

Stat. Auth.: ORS 351.065 & 351.070
Stats. Implemented: ORS 351.065
Hist.: OSU 1-2009(Temp), f. & cert. ef. 6-9-09 thru 12-4-09

576-003-0090
Retention of Evaluative Materials Concerning Candidates for Possible Employment

(1) If an individual is not employed, it is expected that the evaluative materials brought together by the Oregon State university as it evaluates an individual's qualifications in connection with possible employment will be retained as long as may be necessary to respond to affirmative action investigations and investigations of any claimed violation of the civil rights of any person in connection with employment. Thereafter, they will be disposed of in a manner designed to assure confidentiality, in accordance with rules of the State Archivist.

(2) When federal rules or orders require certain personal records to be compiled before the employment of a faculty member and retained thereafter, such records pertaining to persons not employed that have been obtained with the promise of confidentiality will be closed to all persons except as required by federal rules or orders.

Stat. Auth.: ORS 351.065 & 351.070
Stats. Implemented: ORS 351.065
Hist.: OSU 1-2009(Temp), f. & cert. ef. 6-9-09 thru 12-4-09

576-003-0100
Availability to Faculty Members of Objective Information Concerning Categories of Staff

A faculty member who feels adversely affected by a personnel action or lack thereof may request from the appropriate OSU administrator objective or quantitative information contained in limited access files concerning personnel actions affecting categories of faculty members, where such actions appear to have relevance to the requesting faculty member. Such information may include, but is not limited to, assignment, load, and list of publications. Such information may not include any evaluative statements concerning other faculty members or the requesting faculty member if the faculty member is not otherwise entitled to the information.

Stat. Auth.: ORS 351.065 & 351.070
Stats. Implemented: ORS 351.065
Hist.: OSU 1-2009(Temp), f. & cert. ef. 6-9-09 thru 12-4-09

576-003-0110
Availability of Faculty Records for Research Purposes

Oregon State University may make information about the faculty member available for research purposes, but shall adequately conceal the identity of the faculty member whose personal data or information are being included in the research. If the confidentiality of faculty records would be jeopardized in any way by the release of the information for research purposes, Oregon State University shall first obtain written consent of the faculty member prior to releasing personal information for research purposes.

Stat. Auth.: ORS 351.065 & 351.070
Stats. Implemented: ORS 351.065
Hist.: OSU 1-2009(Temp), f. & cert. ef. 6-9-09 thru 12-4-09

576-003-0120
Permanence, Duplication, and Disposal of Faculty Records

(1) The individual faculty member's record shall be maintained only for the time required to serve the basic official functions of the office that generates and maintains it. It should then be disposed of in a manner designed to assure confidentiality.

(2) The permanent retention of faculty records shall be limited to those that the president or the State Archivist shall determine to be of long-range value to the faculty member, Oregon State University, or to the public. ORS 351.065 provides that access to personal records more than 25 years old may not be limited.

(3) Duplication of faculty records shall be minimized. Duplicated records that are made shall be destroyed at a time to be determined and set forth in institutional rules and in such manner as to assure confidentiality in accordance with the rules of the State Archivist, or with the Archivist's approval.

Stat. Auth.: ORS 351.065 & 351.070
Stats. Implemented: ORS 351.065
Hist.: OSU 1-2009(Temp), f. & cert. ef. 6-9-09 thru 12-4-09

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Oregon University System, Southern Oregon University
Chapter 573

Rule Caption: Special Fees.
Adm. Order No.: SOU 1-2009
Filed with Sec. of State: 6-4-2009
Certified to be Effective: 6-15-09
Notice Publication Date: 3-1-2009
Rules Amended: 573-040-0005
Subject: The proposed rule amendments eliminate fees that are no longer necessary and establish, increase, or decrease fees to more accurately reflect the actual costs of instruction for certain courses and special services not otherwise funded through the institution's operating budget.
Rules Coordinator: Treasa Sprague—(541) 552-6319

573-040-0005
Special Fees

The Special Fees for certain courses and general services approved by Southern Oregon University are hereby adopted by reference.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070 & OAR 580-040-0010
Hist.: SOSC 4, f. & ef. 9-2-76; SOSC 10, f. & ef. 5-9-77; SOSC 6-1978, f. & ef. 6-2-77; SOSC 8-1978, f. & ef. 12-15-78; SOSC 2-1979, f. & ef. 6-20-79; SOSC 4-1980, f. & ef. 5 20-80; SOSC 4-1980, f. & ef. 5-20-80; SOSC 2-1981, f. & ef. 6-2-81; SOSC 3-1982, f. & ef. 7-1-82; SOSC 4-1983, f. & ef. 5-26-83; SOSC 1-1984, f. & ef. 6-20-84; SOSC 4-1985, f. & ef. 6-3-85; SOSC 9-1985, f. & ef. 12-17-85; SOSC 2-1986, f. & ef. 5-30-86; SOSC 1-1987, f. & ef. 6-5-87; SOSC 4-1987, f. & ef. 9-4-87; SOSC 1-1988, f. & cert. ef. 5-19-88; SOSC 2-1988(Temp), f. & cert. ef. 9-2-88; SOSC 4-1988, f. & cert. ef. 11-23-88; SOSC 3-1989, f. & cert. ef. 6-1-89; SOSC 3-1990, f. & cert. ef. 5-31-90; SOSC 3-1991, f. & cert. ef. 5-30-91; SOSC 1-1992, f. & cert. ef. 6-3-92; SOSC 3-1993, f. & cert. ef. 5-21-93; SOSC 2-1994, f. & cert. ef. 6-10-94; SOSC 1-1995, f. & cert. ef. 6-7-95; SOSC 1-1996, f. & cert. ef. 6-5-96; SOU 1-1997, f. & cert. ef. 5-20-97; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 2-1999, f. & cert. ef. 5-7-99; SOU 1-2000, f. & cert. ef. 4-10-00; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2002, f. & cert. ef. 4-11-02; SOU 1-2003, f. & cert. ef. 4-16-03; SOU 1-2004, f. & cert. ef. 4-5-04; SOU 1-2005, f. & cert. ef. 4-11-05; SOU 1-2006, f. & cert. ef. 3-31-06; SOU 1-2007, f. & cert. ef. 4-25-07; SOU 4-2008, f. 4-9-08, cert. ef. 4-15-08; SOU 1-2009, f. 6-4-09, cert. ef. 6-15-09

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Parks and Recreation Department
Chapter 736

Rule Caption: Amend the Administrative Rules on Rates to require full payment of all fees at time of reservation.
Adm. Order No.: PRD 7-2009
Filed with Sec. of State: 6-2-2009
Certified to be Effective: 8-1-09
Notice Publication Date: 4-1-2009
Rules Amended: 736-015-0015
Subject: Amend the rules to require full payment of fees at time of reservation, adjust the cancellation/change rules to deal with full payment, and make other housekeeping changes as required.
Rules Coordinator: Joyce Merritt—(503) 986-0756

736-015-0015
Reservations

(1) Purpose: Based on the department's goal to promote outdoor recreation in Oregon, the department established a reservation program

known as Reservations Northwest to increase use of park areas and facilities. The director may designate specific park facilities to offer for reservation through a centralized call center and through the Internet.

(2) General Regulations:

(a) Reservations will be accepted and processed for designated park facilities through Reservations Northwest.

(b) A person may make a reservation a minimum of two days and a maximum of nine months prior to the arrival date.

(c) A person must be 18 years of age or older to make a reservation.

(d) A person who qualifies under the Americans with Disabilities Act (ADA) may reserve accessible campsites.

(e) A person may not make reservations for multiple park areas for the same date range.

(f) A person reserving a boat slip (where available) must also reserve another facility at the same park area.

(g) Split reservations are allowed to accommodate persons. Only one split reservation shall be allowed per reservation.

(h) Only the person whose name appears on the original reservation or their designee (as documented in the original reservation) may change or cancel an existing reservation or access information associated with a reservation.

(i) Customer information may be made available upon written request in compliance with ORS Chapter 192 and department policy.

(j) Specific information regarding a confirmed reservation will not be released to the public as provided in ORS 192.501 and 192.502.

(3) Transaction Fees and Deposits:

(a) The department will charge a $6 non-refundable transaction fee for each reservation made through the centralized call center or the Internet.

(b) Reservations require a facility deposit equal to the full amount charged for use of the facility during the reservation period.

(c) All fees are due at the time the person makes the reservation.

(4) Payment Methods:

(a) A person may use a valid credit card (VISA or MasterCard) or bank debit card with a VISA or MasterCard logo.

(b) A person may pay by personal check, money order, certified check, or travelers check (in U.S. funds).

(c) The department must receive payment within five calendar days of the date the person makes the reservation. If payment is not received within this time frame, the department will cancel the reservation. The person remains responsible for the $6 transaction fee for each reservation request.

(d) If a banking institution returns a check to the department for any reason or if a credit or debit card is declined, the department will attempt to contact the person. Inability to resolve the payment dispute will result in a reservation cancellation. The person will remain responsible for the $6 transaction fee for each reservation.

(e) Government agencies and non-profit entities may request to be invoiced for services. Reservations should be made at least 30 days prior to arrival. The department must receive payment within 25 days of the date the reservation is made. If payment is not received the department will cancel the reservation. The department will bill for the $6 transaction fee for each reservation.

(f) A person must pay all outstanding account balances prior to making future reservations.

(5) Reservation Cancellations:

(a) A person may cancel a reservation three calendar days or more prior to their arrival date by calling Reservations Northwest. An automated reservation cancellation voice mail system is available seven days a week, 24 hours a day.

(b) A person may also cancel a reservation three calendar days or more prior to their arrival date through E-mail by accessing the department's web site and following the posted cancellation procedures. The web site is available seven days a week, 24 hours a day.

(c) A person must contact the specific park to cancel reservations with an arrival date that is two calendar days or less from the current date.

(d) The park area may only cancel reservations with an arrival date that is two days or less from the current date.

(e) In order to receive a refund of the facility deposit, a person must cancel the reservation for individual campsites, rustic cabins and yurts, tepees, camper wagons, and boat moorages three or more calendar days prior to arrival. If the cancellation is not received three or more days in advance of the arrival date, an amount of the facility deposit fee equal to one night rental for the facility will be forfeited.

(f) In order to receive a refund of the facility deposit for deluxe cabins and yurts, group camps, day use areas, meeting halls, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, Shore Acres Garden House, Pavilions, RV Group Areas and other special facilities as designated by the department, a person must cancel the reservation at least one month prior to arrival. If the cancellation is not received one month or more in advance of the arrival date, an amount of facility deposit fee equal to one night rental for the facility will be forfeited.

(6) Reservation Changes:

(a) The department will charge a $6 non-refundable transaction fee for each reservation change.

(b) A person may request to change a confirmed reservation by calling Reservations Northwest during normal business hours Monday through Friday.

(c) A person may also request to change a reservation through Email by accessing the department's web site and following the posted reservation change procedures. The web site is available seven days a week, 24 hours a day.

(d) A person may not make any changes to reservations more than eight months in advance of the arrival date.

(e) The park area may only cancel reservations with an arrival date that is two days or less from the current date.

(f) Any change resulting is a reduction in length of stay for reservation bookings greater than 5 nights will be assessed a fee equal to one night rental for that facility.

(g) A person must request a reservation change for campsites, rustic cabins and yurts, tepees, camper wagons, and boat moorages three or more days in advance of the arrival date. The department will treat reservation change requests with an arrival date of three days or less from the current date as a cancellation and cancellation rules will apply. A person may request a new reservation once the existing reservation has been cancelled.

(h) A person requesting a reservation change for deluxe cabins and yurts, group camps, day use areas, meeting halls, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, Shore Acres Garden House, Pavilions, RV Group Areas, and other special facilities as designated by the department must request the change at least one month prior to arrival date. The department will treat reservation change requests with an arrival date of less than one month from the current date as a cancellation and cancellation rules will apply. A person may request a new reservation once the existing reservation has been cancelled.

(7) Reservations to Accommodate Organized Groups:

(a) General: To promote the use of facilities by groups and to bring efficiencies to the group reservation process, the director may offer group camping to persons reserving multiple tent, electrical or full hook-up campsites.

(b) The department will charge only one transaction fee for the group when the sites are reserved together. The department will require a facility deposit fee equal to the full amount of the site fee for each campsite at the time the reservation is made.

(c) A person must reserve a minimum of five individual campsites during Discovery Season (October 1 to April 30) or ten individual campsites during the Prime Season (May 1 to September 30) to qualify for group camping benefits.

(d) The department will charge a transaction fee of $6 for each site cancellation or change made to the group reservation.

(e) A person must pay all remaining campsite fees 30 calendar days before the reservation arrival date. Reservations made less than 30 calendar days prior to the arrival date must be paid in full at the time the reservation is made.

(f) Reservations made on the Internet for a group of sites are not eligible.

(g) A person may reserve a meeting hall (where available) for one day's free use when the minimum number of sites are reserved and used. The person may reserve the meeting hall for additional days at the normal rental rate.

(h) Special facilities such as deluxe cabins and yurts, rustic cabins and yurts, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, and other special facilities as designated by the department are not included in the group camping program.

(i) A person must make reservations at least 10 days prior to arrival date to qualify for group camping benefits.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.111, 390.121 & 390.124
Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979(Temp), f. & ef. 9-9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 2-1994, f. & cert. ef. 2-9-94; PR 2-1995, f. & cert. ef. 1-23-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 10-2003, f. & cert. ef. 10-17-03; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0099, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 7-2009, f. 6-2-09, cert. ef. 8-1-09

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Rule Caption: Amend 736-015-0035 to make waiver of camping fees to U.S. Military veterans only as was the original intent.
Adm. Order No.: PRD 8-2009
Filed with Sec. of State: 6-2-2009

Certified to be Effective: 6-2-09
Notice Publication Date: 3-1-2009
Rules Amended: 736-015-0035
Subject: OAR 736-015 is being amended to limit the waiver of camping fees to U.S. Military veterans with a service connected disability or active duty U.S. Military personnel on leave, as was the original intent of the rule. The fee waiver has been in place since 2004, but the rule did not specify U.S. Military veterans. Over the last few years, there have been increasing requests for fee waiver from people outside the United States, mostly Canadian military personnel. The rule needs to be specific to the original intent to prevent confusion or reaction from foreign military visitors expecting to have a fee waiver.
Rules Coordinator: Joyce Merritt—(503) 986-0756

736-015-0035
Fee Waivers and Refunds

(1) The director, at the direction of the commission, may waive, reduce or exempt fees established in this division under the following conditions:

(a) A person or group provides in-kind services or materials equal to or greater than the value of the applicable rate, as determined by criteria approved by the director;

(b) Marketing or promotional considerations, including but not limited to special events and commercial filming, that promote the use of park areas and Oregon tourism;

(c) Traditional tribal activities in accordance with policy adopted by the Commission;

(d) Reduced service levels at a park, campsite or other facility as determined by the Park Manager.

(2) Reservation Facility Deposit Fee Waivers for individual primitive, tent, electric or full hook-up campsites only:

(a) The facility deposit fee is waived for all persons with reservations commencing on State Parks Day (first Saturday of June). All other fees apply.

(b) The facility deposit fee is waived for foster families as defined in OAR 736-015-0005. The fee waiver is limited to the first two campsites and an adult care provider must be present with the foster children. All other fees apply.

(c) The facility deposit fee is waived for U. S. veterans with a service connected disability or active duty U. S. military personnel as provided in ORS 390.124. All other fees apply.

(d) The person making the reservation must pay the $6 non-refundable transaction fee at the time the reservation is made. This fee is not included in the fee waiver.

(e) Reservations made on the Internet are not eligible for fee waivers.

(3) Overnight Rental Fee Waivers for individual primitive, tent, electric or full hook-up campsites only:

(a) The overnight rental fee is waived for all persons on the night of State Parks Day (first Saturday of June). All other fees apply.

(b) The overnight rental fee is waived for foster families as defined in OAR 736-015-0005. The fee waiver is limited to the first two campsites and an adult care provider must be present. All other fees apply.

(c) The overnight rental fee is waived for U. S. veterans with a service connected disability or active duty U. S. military personnel on leave as provided in ORS 390.124. The waiver of individual campsite fees shall be limited to no more than five consecutive days per stay and no more than ten days total in a calendar month. All other fees apply.

(d) The director may waive the overnight rental fee for volunteer hosts traveling to an assignment at a park area.

(4) Day Use Parking Fee Waivers:

(a) The day use parking fee is waived for all persons on State Parks Day (first Saturday of June).

(b) The day use parking fee is waived for U. S. veterans with a service connected disability or active duty U. S. military personnel on leave as provided in ORS 390.124.

(c) Only department staff may issue a free 12-month day use parking permit to a foster family, as defined in OAR 736-015-0005, if the foster care provider has a valid Certificate of Approval to Provide Foster Care in Oregon issued by the Oregon Department of Human Services. The permit shall be valid for 12 months or until the expiration date of the Certificate of Approval to Provide Foster Care, whichever date is sooner.

(d) All other fees apply.

(5) A person may request a refund under the following circumstances.

(a) Reservations Northwest may refund a reservation fee when the department has made a reservation error.

(b) Reservations Northwest may refund a facility deposit and may waive the cancellation/change rules when requested by the person due to the following emergency situations:

(A) Emergency vehicle repair created a late arrival or complete reservation cancellation;

(B) A medical emergency created a late arrival or complete reservation cancellation; or

(C) Acts of Nature that create dangerous travel conditions.

(c) The director or his/her designee may approve a refund under other special circumstances.

(d) All requests for refunds listed above must be sent in writing to Reservations Northwest via email, fax or surface mail to be considered for a refund.

(e) The department will issue refunds for specific site or park area closures and no written request is required.

(f) The park manager may only issue a refund at the park due to the person leaving earlier than expected, and while the person is present and has signed for the refund. Once the person has left the park, refund requests must be sent to Reservations Northwest for processing.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.111, 390.121 & 390.124
Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 3-1996, f. & cert. ef. 5-13-96; PRD 7-2002, f. & cert. ef. 7-1-02; PRD 6-2003, f. 10-3-03 cert. ef. 11-1-03; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0120, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 5-2005(Temp), f. 10-14-05, cert. ef. 11-11-05 thru 4-30-06; PRD 1-2006, f. & cert. ef. 2-14-06; PRD 8-2009, f. & cert. ef. 6-2-09

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Rule Caption: Adopting new rules governing Confidentiality and Inadmissibility of Mediation Communications as recommended and modeled by the Office of the Attorney General.
Adm. Order No.: PRD 9-2009(Temp)
Filed with Sec. of State: 6-2-2009
Certified to be Effective: 6-2-09 thru 11-28-09
Notice Publication Date:
Rules Adopted: 736-140-0010, 736-140-0020
Subject: These rules govern the Confidentiality and Inadmissibility of Mediation Communications, and are developed using the model rules provided by the Office of the Attorney General to state agencies as recommended by the Office of the Attorney General and authorized by ORS 36.224(4). They are being adopted temporarily to protect the confidentiality of mediation communication for a mediation scheduled June 3, 2009. The agency is also filing a Notice of Rulemaking Hearing to prepare for permanent adoption of these rules. The unexpired temporarily adopted rules will be repealed upon the effective date of the permanent adoption of these rules.
Rules Coordinator: Joyce Merritt—(503) 986-0756

736-140-0010
Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in these rules have the same meaning as given to them in ORS 36.110 and 36.234. In addition, as used in this rule, unless the context requires otherwise:

(a) "Agency" or "the agency" means Oregon Parks and Recreation Department or OPRD.

(b) "Director" means the Director of the Oregon Parks and Recreation Department.

(c) "State agency" may refer to Oregon Parks and Recreation Department or could refer to a state agency other than the Oregon Parks and Recreation Department if more than one state agency is party to the mediation.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise 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) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rules or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) 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)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications 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 as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be either confidential; or non-discoverable and inadmissible; or both confidential and non-discoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the format outlined in the OPRD form entitled: "Agreement to Participate in A Confidential Mediation" available from the agency. This form may be used separately or incorporated into an "agreement to mediate."

(9) 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) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) 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.

(f) 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.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) 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.

(i) 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.

(j) 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.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) 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.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Director or designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under 30.402 or state or federal law requires the terms to be confidential.

(p) 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 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).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

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

Stat. Auth.: ORS 36.224 & 390.124

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: PRD 9-2009(Temp), f. & cert. ef. 6-2-09 thru 11-28-09

736-140-0020

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. In addition, as used in this rule, unless the context requires otherwise:

(a) "Agency" or "the agency" means Oregon Parks and Recreation Department or OPRD.

(b) "Director" means the Director of the Oregon Parks and Recreation Department.

(c) "State agency" may refer to Oregon Parks and Recreation Department or could refer to a state agency other than the Oregon Parks and Recreation Department if more than one state agency is party to the mediation.

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

(4) To the extent mediation communications would otherwise 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; and

(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 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 & 390.124

Stats. Implemented: ORS 36.230(4)

Hist.: PRD 9-2009(Temp), f. & cert. ef. 6-2-09 thru 11-28-09

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Secretary of State, Elections Division
Chapter 165

Rule Caption: Adopts Most Recent Version of the Oregon Attorney General's Law Manual.

Adm. Order No.: ELECT 13-2009

Filed with Sec. of State: 5-22-2009

Certified to be Effective: 5-22-09

Notice Publication Date:

Rules Amended: 165-001-0005

Subject: This amendment will adopt the most recent version, January 1, 2008, of the Oregon Attorney General's Law Manual and

Uniform and Model Rules of Procedure Under the Administrative Procedure Act, which is the model and guide for agency rulemaking.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-001-0005
Model Rules of Procedure

The Uniform and Model Rules of Procedure, OAR 137-001-0007 through 137-002-0060 as adopted by the Attorney General of the State of Oregon under the Administrative Procedures Act, effective January 1, 2008, are adopted as the rules of procedure for rulemaking and declaratory rulings for the Elections Division, Secretary of State.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Elections Division.]
Stat. Auth.: ORS 183
Stats. Implemented: ORS 183.341
Hist.: SD 76, f. 8-31-72; SD 81, f. 10-16-73, ef. 11-11-73; SD 109, f. & ef. 12-9-76; SD 6-1978, f. & ef. 8-4-78; SD 10-1980, f. & ef. 1-30-80; SD 16-1981, f. & ef. 12-2-81; SD 15-1983, f. & ef. 10-4-83; SD 7-1986, f. & ef. 3-6-86; ELECT 30-1988, f. & cert. ef. 8-10-88; ELECT 16-1990, f. & cert. ef. 5-11-90; ELECT 14-1991, f. & cert. ef. 12-4-91; ELECT 4-2001, f. & cert. ef. 3-15-01; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 2-2005, f. & cert. ef. 3-22-05; ELECT 1-2006, f. & cert. ef. 3-7-06; ELECT 13-2009, f. & cert. ef. 5-22-09

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Travel Information Council
Chapter 733

Rule Caption: Adopt rules to establish standards for an Interstate Oasis sign program.
Adm. Order No.: TIC 2-2009
Filed with Sec. of State: 6-1-2009
Certified to be Effective: 6-1-09
Notice Publication Date: 5-1-2009
Rules Adopted: 733-030-0400, 733-030-0410, 733-030-0420, 733-030-0430, 733-030-0440, 733-030-0450, 733-030-0460, 733-030-0470, 733-030-0480
Subject: The travel Information Council held a quarterly meeting on March 27, 2009. The Council proposed adopting new rules to establish standards for Interstate Oasis signing erected within highway right-of-way to provide directional information to qualified facilities that provide products and services to the public. Having received no public comments or requests for additional hearings, the council voted to adopt the new rules at the May 22, 2009 meeting.
Rules Coordinator: Diane Cheyne—(503) 378-4508

733-030-0400
Applicability and Purpose

(1) The purpose of these regulations is to establish standards for Interstate Oasis signing erected within highway rights-of-way to provide directional information to qualified facilities that provide products and services to the public.

(2) These regulations are applicable to the Interstate Highway system.

(3) The authority for the issuance of these regulations is Oregon Laws 1979, Chapter 478, Section 7 and 23 U.S.C. 109(d), 131(f), 315 and 49 CFR 1.48(b).

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 2-2009, f. & cert. ef. 6-1-09

733-030-0410
Definitions

In addition to the definitions described in OAR 733-030-0011, the following definitions shall apply unless the context clearly indicates otherwise:

(1) "Interstate Oasis" means a facility near an Interstate Highway but not within the Interstate right-of-way, designated by the Council after meeting the eligibility criteria of this policy, that provides products and services to the public, 24-hour access to public restrooms, and parking for automobiles and heavy trucks.

(2) "Guide sign" means a sign that shows route designations, destinations, directions, distances, services, points of interest, or other geographical, recreational, or cultural information.

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 2-2009, f. & cert. ef. 6-1-09

733-030-0420
Location

(1) Interstate Oasis signs are intended for use primarily in rural areas. Urban areas may be considered if a suitable location is available and approved by ODOT.

(2) Interstate Oasis signs should be located so as to take advantage of natural terrain, to have the least impact on the scenic environment, and to avoid visual conflict with other signs within the highway right of way. Unprotected sign supports located within the clear zone shall be of a breakaway design.

(3) If adequate sign spacing allows, a separate Interstate Oasis sign should be installed in an effective location with a spacing of at least 800 feet from other adjacent guide signs, including any Logo signs. This sign should be located in advance of the advance guide sign or between the advance guide sign and the exit direction sign for the exit leading to the Oasis.

(4) If the spacing of other guide signs precludes use of a separate Interstate Oasis sign, a supplemental sign with a white legend and border on a blue background may be appended above or below an existing specific service sign or general service sign for the interchange.

(5) There shall be no more than one Interstate Oasis sign erected in advance of an interchange in each direction of travel.

(6) The proposed locations of Interstate Oasis signs must be reviewed and approved by the Engineer to determine that no conflicts resulting in unsafe driving conditions will exist with other traffic control devices.

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 2-2009, f. & cert. ef. 6-1-09

733-030-0430
Eligibility Criteria

(1) Each qualified Interstate Oasis facility identified on a sign shall have given written assurance to the Council of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, age, sex, or national origin, meet all applicable Federal and State Americans with Disabilities Act (ADA) guidelines, and shall not be in breach of that assurance. Each qualified business will offer services to all citizens.

(2) Each qualified Interstate Oasis facility shall have appropriate business and health department licensing where required.

(3) Each qualified Interstate Oasis facility shall be located no more than 3 miles from an interchange with an Interstate Highway. Greater distances, in 3-mile increments up to a maximum of 15 miles may be considered for interchanges in very sparsely developed rural areas where eligible facilities are not available within the 3-mile limit.

(4) Each qualified Interstate Oasis facility shall be accessible via a route that can safely and conveniently accommodate vehicles of the types, sizes, and weights that would be traveling to the facility, entering and leaving the facility, returning to the Interstate highway, and continuing in the original direction of travel.

(5) Each qualified Interstate Oasis facility shall have physical geometry of site layout, including parking areas and ingress/egress points, that can safely and efficiently accommodate movements into and out of the site, onsite circulation, and parking by all vehicles, including heavy trucks of the types, sizes, and weights anticipated to use the facility.

(6) Each qualified Interstate Oasis facility shall have restrooms available to the public at all times (24 hours per day, 365 days per year). Restrooms should be modern and sanitary and should have drinking water. The restrooms and drinking water should be available at no charge or obligation.

(7) Each qualified Interstate Oasis facility shall have parking spaces available to the public for 50 automobiles and 50 heavy trucks. The parking spaces should be well lit and should be available at no charge or obligation for parking durations of up to 10 hours or more, in sufficient numbers for the various vehicle types, including heavy trucks.

(8) Each qualified Interstate Oasis facility shall provide products and services to the public. These products and services should include:
public telephone; food (vending, snacks, fast food, and/or full service); and fuel, oil, and water for automobiles, trucks, and other motor vehicles.

(9) Each qualified Interstate Oasis facility should be staffed by at least one person on duty at all times (24 hours per day, 365 days per year).

(10) In cases where no single business near an interchange meets all the eligibility criteria, the Council may allow the criteria to be satisfied by a combination of two or more businesses located immediately adjacent to each other and easily accessible on foot from each other's parking lots via pedestrian walkways compliant with ADA and that do not require crossing a public highway.

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 2-2009, f. & cert. ef. 6-1-09

733-030-0440
Composition

(1) A separate Interstate Oasis sign shall have a blue reflective background with a white reflective border and white reflective legends. The directional legend shall consist of the exit number, or an action message

such as "NEXT RIGHT," and the service legend shall read "INTERSTATE OASIS." All numbers shall be 10 inches in height and all words shall be in 10-inch capital letters.

(2) A supplemental Interstate Oasis sign shall have the legend "OASIS" in white reflective 10-inch capital letters on a blue reflective background with white reflective border.

(3) If Logo signing is provided at the interchange, a business designated as an Interstate Oasis and having a Logo plaque on a Logo sign may use the bottom portion of the plaque to display the word "OASIS" as a supplemental message.

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 2-2009, f. & cert. ef. 6-1-09

733-030-0450
Special Requirements — Interstate Highways and Expressways

If Supplemental Logo plaques containing the supplemental message "OASIS" are not used on the exit ramp, a Trailblazer sign with a white legend (minimum 6 inch letters) and border on a blue background should be provided on the exit ramp to indicate the direction and distance to the Interstate Oasis, unless the Interstate Oasis is clearly visible and identifiable from the exit ramp. Additional Trailblazer signs may be used, if determined to be necessary, along the cross road to guide motorists to the Oasis.

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 2-2009, f. & cert. ef. 6-1-09

733-030-0460
State Sign Policy

(1) If an eligible Interstate Oasis facility existing within three miles of an interchange has not applied for a permit for Interstate Oasis signing, then an otherwise eligible Interstate Oasis facility that is located farther than three miles from the interchange may apply for a permit.

(2) If applications are received for any one interchange from more than one eligible Interstate Oasis facility, the order of priority shall be based on the date of the properly completed application received by Council.

(3) The owner or responsible operator of an Interstate Oasis facility must file an application for Interstate Oasis signing on a form specified by the Council.

(4) Eligibility of Interstate Oasis facilities for continued placement of their Interstate Oasis signing may be reviewed by the Travel Information Council at any time to assess whether the facilities and sign locations meet present guidelines. If the review finds that the facility and/or the signing location does not meet all applicable rules and laws, the signing may be removed.

(5) In consideration for the Council's grant of a permit, the Interstate Oasis facility waives any claim it may have against the State of Oregon, the Council, their officers, employees or agents that may arise from the removal, relocation, displacement, destruction of or damage to the Interstate Oasis signing, sign panel due to any cause, including but not limited to highway construction work, highway re-design or reconfiguration, vehicular collision, accident, vandalism, forces of nature or other acts of God.

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 2-2009, f. & cert. ef. 6-1-09

733-030-0470
Waiver

Procedures. Administration Procedure Act. Any order of the Council denying a permit under these rules, or for removal of a sign under the Regulations, may be entered administratively without hearing, subject to requirements of ORS Chapter 183 and the administrative and judicial review as provided therein. The Council shall notify businesses promptly on any permit denial or decision to remove a sign under these regulations.

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 2-2009, f. & cert. ef. 6-1-09

733-030-0480
Installation and Permit Fees

(1) Upon approval of a permit, the Council may furnish, erect and maintain Interstate Oasis signs as required and shall notify the business applying for those signs when a permit has been approved.

(2) Upon the approval of a permit for Interstate Oasis signs, the Council shall issue a Request for Quotation (RFQ) from qualified contractors and suppliers to determine the total construction and fabrication costs to install the Interstate Oasis signs.

(3) All costs to install the Interstate Oasis signs shall be paid for by the business applying for those signs.

(4) Installation fees are determined by the total cost of the Interstate Oasis signs. Fees are payable within 30 days following the installation date.

(5) Permit fees will be reviewed and established annually by the Council pursuant to ORS 377.825 and will be charged according to the Council's current Schedule of Fees. When permit fees are reviewed for potential changes, the Council will send a notice of permit fee changes to the business with an Interstate Oasis sign permit and to all interested parties requesting the information. Businesses and interested parties will have 30 days to respond in writing and/or attend a public hearing scheduled after the 30 day time period. The Schedule of Fees will also be available on the Council web site for personal download or by mail upon request.

(6) Permit fees are payable with the contract and the permit shall be automatically renewed upon receipt of the annual invoice on or before the payment due date stated in the Council's invoice.

Stat. Auth.: ORS 377.700 - 377.840
Stats. Implemented: ORS 183.310 - 183.550
Hist.: TIC 2-2009, f. & cert. ef. 6-1-09

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101-005-0040	2-24-2009	Amend(T)	4-1-2009
101-005-0070	2-24-2009	Amend(T)	4-1-2009
101-005-0080	2-24-2009	Amend(T)	4-1-2009
101-030-0026	2-24-2009	Adopt(T)	4-1-2009
104-050-0000	4-22-2009	Adopt	6-1-2009
104-050-0010	4-22-2009	Adopt	6-1-2009
104-050-0020	4-22-2009	Adopt	6-1-2009
104-050-0030	4-22-2009	Adopt	6-1-2009
104-050-0040	4-22-2009	Adopt	6-1-2009
104-050-0050	4-22-2009	Adopt	6-1-2009
104-050-0060	4-22-2009	Adopt	6-1-2009
104-050-0070	4-22-2009	Adopt	6-1-2009
104-050-0080	4-22-2009	Adopt	6-1-2009
104-050-0090	4-22-2009	Adopt	6-1-2009
104-050-0100	4-22-2009	Adopt	6-1-2009
111-010-0015	1-30-2009	Amend	3-1-2009
111-010-0015	3-10-2009	Amend(T)	4-1-2009
111-010-0015	5-1-2009	Amend	6-1-2009
111-010-0015(T)	1-30-2009	Repeal	3-1-2009
111-010-0015(T)	5-1-2009	Repeal	6-1-2009
111-020-0001	1-30-2009	Amend	3-1-2009
111-020-0001	3-10-2009	Amend(T)	4-1-2009
111-020-0001	5-1-2009	Amend	6-1-2009
111-020-0001(T)	1-30-2009	Repeal	3-1-2009
111-020-0001(T)	5-1-2009	Repeal	6-1-2009
111-040-0035	5-5-2009	Suspend	6-1-2009
111-040-0040	5-5-2009	Amend(T)	6-1-2009
111-050-0001	1-30-2009	Amend	3-1-2009
111-050-0001(T)	1-30-2009	Repeal	3-1-2009
111-050-0010	1-30-2009	Amend	3-1-2009
111-050-0010(T)	1-30-2009	Repeal	3-1-2009
111-050-0015	1-30-2009	Amend	3-1-2009
111-050-0015(T)	1-30-2009	Repeal	3-1-2009
111-050-0020	1-30-2009	Adopt	3-1-2009
111-050-0020(T)	1-30-2009	Repeal	3-1-2009
111-050-0025	1-30-2009	Adopt	3-1-2009
111-050-0025(T)	1-30-2009	Repeal	3-1-2009
111-050-0030	1-30-2009	Adopt	3-1-2009
111-050-0030(T)	1-30-2009	Repeal	3-1-2009
111-050-0035	1-30-2009	Adopt	3-1-2009
111-050-0035(T)	1-30-2009	Repeal	3-1-2009
111-050-0045	1-30-2009	Adopt	3-1-2009
111-050-0045(T)	1-30-2009	Repeal	3-1-2009
111-050-0050	1-30-2009	Adopt	3-1-2009
111-050-0050(T)	1-30-2009	Repeal	3-1-2009
111-050-0060	1-30-2009	Adopt	3-1-2009
111-050-0060(T)	1-30-2009	Repeal	3-1-2009
111-050-0065	1-30-2009	Adopt	3-1-2009
111-050-0065(T)	1-30-2009	Repeal	3-1-2009
111-050-0070	1-30-2009	Adopt	3-1-2009
111-050-0070(T)	1-30-2009	Repeal	3-1-2009
111-050-0075	1-30-2009	Adopt	3-1-2009
111-050-0075(T)	1-30-2009	Repeal	3-1-2009
111-050-0080	1-30-2009	Adopt	3-1-2009
111-050-0080(T)	1-30-2009	Repeal	3-1-2009
111-080-0001	1-30-2009	Adopt	3-1-2009
111-080-0001(T)	1-30-2009	Repeal	3-1-2009
111-080-0005	1-30-2009	Adopt	3-1-2009
111-080-0005(T)	1-30-2009	Repeal	3-1-2009
111-080-0030	4-1-2009	Adopt	5-1-2009
111-080-0030(T)	4-1-2009	Repeal	5-1-2009
122-060-0020	12-11-2008	Adopt(T)	1-1-2009
122-060-0020(T)	3-6-2009	Suspend	4-1-2009
123-024-0031	5-7-2009	Amend(T)	6-1-2009
123-024-0045	5-7-2009	Adopt(T)	6-1-2009
123-049-0005	3-6-2009	Amend(T)	4-1-2009
123-049-0030	3-6-2009	Amend(T)	4-1-2009
123-049-0050	3-6-2009	Amend(T)	4-1-2009
123-070-1000	2-24-2009	Amend	4-1-2009
123-070-1100	2-24-2009	Amend	4-1-2009
123-070-1150	2-24-2009	Amend	4-1-2009
123-106-0000	2-24-2009	Repeal	4-1-2009
123-106-0010	2-24-2009	Repeal	4-1-2009
123-106-0020	2-24-2009	Repeal	4-1-2009
123-106-0030	2-24-2009	Repeal	4-1-2009
123-106-0040	2-24-2009	Repeal	4-1-2009
123-106-0050	2-24-2009	Repeal	4-1-2009
123-106-0060	2-24-2009	Repeal	4-1-2009
123-106-0070	2-24-2009	Repeal	4-1-2009
123-106-0080	2-24-2009	Repeal	4-1-2009
123-106-0090	2-24-2009	Repeal	4-1-2009
123-155-0000	2-24-2009	Amend	4-1-2009
123-155-0175	2-24-2009	Amend	4-1-2009
123-155-0350	2-24-2009	Amend	4-1-2009
123-500-0000	5-1-2009	Adopt	6-1-2009
123-500-0005	5-1-2009	Adopt	6-1-2009
123-500-0020	5-1-2009	Adopt	6-1-2009
123-500-0030	5-1-2009	Adopt	6-1-2009
123-500-0040	5-1-2009	Adopt	6-1-2009
123-500-0050	5-1-2009	Adopt	6-1-2009
123-500-0060	5-1-2009	Adopt	6-1-2009
123-500-0070	5-1-2009	Adopt	6-1-2009
125-045-0235	1-23-2009	Amend(T)	3-1-2009
125-075-0015	1-6-2009	Amend	2-1-2009
125-125-0540	5-11-2009	Amend	6-1-2009
125-125-0700	1-26-2009	Adopt	3-1-2009
125-160-0010	1-23-2009	Amend	3-1-2009
125-160-0010(T)	1-23-2009	Repeal	3-1-2009
125-160-0020	1-23-2009	Adopt	3-1-2009
125-160-0020(T)	1-23-2009	Repeal	3-1-2009
125-247-0280	2-13-2009	Amend(T)	3-1-2009
125-249-0150	2-13-2009	Amend(T)	3-1-2009
137-045-0050	2-26-2009	Amend(T)	4-1-2009
137-050-0320	5-7-2009	Amend(T)	6-1-2009
137-050-0330	5-7-2009	Amend(T)	6-1-2009
137-050-0340	5-7-2009	Amend(T)	6-1-2009
137-050-0360	5-7-2009	Amend(T)	6-1-2009
137-050-0360	5-12-2009	Amend(T)	6-1-2009
137-050-0360(T)	5-12-2009	Suspend	6-1-2009
137-050-0420	5-7-2009	Amend(T)	6-1-2009
137-050-0430	5-7-2009	Amend(T)	6-1-2009
137-050-0475	5-7-2009	Amend(T)	6-1-2009
137-050-0485	5-7-2009	Adopt(T)	6-1-2009
137-055-1320	4-1-2009	Amend	5-1-2009
137-055-2140	5-7-2009	Amend(T)	6-1-2009
137-055-2165	5-7-2009	Amend(T)	6-1-2009

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137-055-3080	4-1-2009	Amend	5-1-2009
137-055-3100	4-1-2009	Amend	5-1-2009
137-055-3420	1-2-2009	Amend	2-1-2009
137-055-3420	5-7-2009	Amend(T)	6-1-2009
137-055-3420(T)	1-2-2009	Repeal	2-1-2009
137-055-3430	5-7-2009	Amend(T)	6-1-2009
137-055-3430	5-14-2009	Amend(T)	6-1-2009
137-055-3430(T)	5-14-2009	Suspend	6-1-2009
137-055-3460	4-1-2009	Amend	5-1-2009
137-055-6210	1-2-2009	Amend	2-1-2009
137-055-6210(T)	1-2-2009	Repeal	2-1-2009
141-001-0000	12-10-2008	Amend	1-1-2009
141-001-0005	12-10-2008	Amend	1-1-2009
141-001-0010	12-10-2008	Amend	1-1-2009
141-001-0020	12-10-2008	Amend	1-1-2009
141-040-0020	1-1-2009	Amend	1-1-2009
141-040-0030	1-1-2009	Amend	1-1-2009
141-040-0035	1-1-2009	Repeal	1-1-2009
141-040-0040	1-1-2009	Repeal	1-1-2009
141-040-0211	1-1-2009	Amend	1-1-2009
141-040-0212	1-1-2009	Amend	1-1-2009
141-040-0213	1-1-2009	Adopt	1-1-2009
141-040-0214	1-1-2009	Amend	1-1-2009
141-045-0010	1-1-2009	Amend	1-1-2009
141-045-0021	1-1-2009	Amend	1-1-2009
141-045-0031	1-1-2009	Amend	1-1-2009
141-045-0041	1-1-2009	Amend	1-1-2009
141-045-0061	1-1-2009	Amend	1-1-2009
141-045-0100	1-1-2009	Amend	1-1-2009
141-045-0115	1-1-2009	Amend	1-1-2009
141-045-0126	1-1-2009	Amend	1-1-2009
141-045-0130	1-1-2009	Amend	1-1-2009
141-050-0500	12-10-2008	Amend	1-1-2009
141-050-0530	12-10-2008	Repeal	1-1-2009
141-050-0535	12-10-2008	Repeal	1-1-2009
141-050-0890	12-10-2008	Renumber	1-1-2009
141-050-0900	12-10-2008	Amend	1-1-2009
141-050-0905	12-10-2008	Amend	1-1-2009
141-050-0910	12-10-2008	Repeal	1-1-2009
141-050-0920	12-10-2008	Amend	1-1-2009
141-050-0940	12-10-2008	Amend	1-1-2009
141-050-0945	12-10-2008	Repeal	1-1-2009
141-050-0965	12-10-2008	Amend	1-1-2009
141-050-0972	12-10-2008	Amend	1-1-2009
141-050-0976	12-10-2008	Amend	1-1-2009
141-050-0982	12-10-2008	Amend	1-1-2009
141-085-0005	3-1-2009	Repeal	3-1-2009
141-085-0006	3-1-2009	Repeal	3-1-2009
141-085-0010	3-1-2009	Repeal	3-1-2009
141-085-0015	3-1-2009	Repeal	3-1-2009
141-085-0018	3-1-2009	Repeal	3-1-2009
141-085-0020	3-1-2009	Repeal	3-1-2009
141-085-0022	3-1-2009	Repeal	3-1-2009
141-085-0023	3-1-2009	Repeal	3-1-2009
141-085-0024	3-1-2009	Repeal	3-1-2009
141-085-0025	3-1-2009	Repeal	3-1-2009
141-085-0027	3-1-2009	Repeal	3-1-2009
141-085-0028	3-1-2009	Repeal	3-1-2009
141-085-0029	3-1-2009	Repeal	3-1-2009
141-085-0031	3-1-2009	Repeal	3-1-2009
141-085-0034	3-1-2009	Repeal	3-1-2009
141-085-0036	3-1-2009	Repeal	3-1-2009
141-085-0064	3-1-2009	Repeal	3-1-2009
141-085-0066	3-1-2009	Repeal	3-1-2009
141-085-0068	3-1-2009	Repeal	3-1-2009
141-085-0070	3-1-2009	Repeal	3-1-2009
141-085-0075	3-1-2009	Repeal	3-1-2009
141-085-0079	3-1-2009	Repeal	3-1-2009
141-085-0080	3-1-2009	Repeal	3-1-2009
141-085-0085	3-1-2009	Repeal	3-1-2009
141-085-0090	3-1-2009	Repeal	3-1-2009
141-085-0095	3-1-2009	Repeal	3-1-2009
141-085-0096	3-1-2009	Repeal	3-1-2009
141-085-0115	3-1-2009	Repeal	3-1-2009
141-085-0121	3-1-2009	Repeal	3-1-2009
141-085-0126	3-1-2009	Repeal	3-1-2009
141-085-0131	3-1-2009	Repeal	3-1-2009
141-085-0136	3-1-2009	Repeal	3-1-2009
141-085-0141	3-5-2009	Repeal	4-1-2009
141-085-0146	3-1-2009	Repeal	3-1-2009
141-085-0151	3-1-2009	Repeal	3-1-2009
141-085-0156	3-1-2009	Repeal	3-1-2009
141-085-0161	3-1-2009	Repeal	3-1-2009
141-085-0166	3-1-2009	Repeal	3-1-2009
141-085-0171	3-1-2009	Repeal	3-1-2009
141-085-0176	3-1-2009	Repeal	3-1-2009
141-085-0240	3-1-2009	Repeal	3-1-2009
141-085-0244	3-1-2009	Repeal	3-1-2009
141-085-0246	3-1-2009	Repeal	3-1-2009
141-085-0248	3-1-2009	Repeal	3-1-2009
141-085-0250	3-1-2009	Repeal	3-1-2009
141-085-0252	3-1-2009	Repeal	3-1-2009
141-085-0254	3-1-2009	Repeal	3-1-2009
141-085-0256	3-1-2009	Repeal	3-1-2009
141-085-0257	3-1-2009	Repeal	3-1-2009
141-085-0262	3-1-2009	Repeal	3-1-2009
141-085-0263	3-1-2009	Repeal	3-1-2009
141-085-0264	3-1-2009	Repeal	3-1-2009
141-085-0266	3-1-2009	Repeal	3-1-2009
141-085-0400	3-1-2009	Repeal	3-1-2009
141-085-0406	3-1-2009	Repeal	3-1-2009
141-085-0410	3-1-2009	Repeal	3-1-2009
141-085-0421	3-1-2009	Repeal	3-1-2009
141-085-0425	3-1-2009	Repeal	3-1-2009
141-085-0430	3-1-2009	Repeal	3-1-2009
141-085-0436	3-1-2009	Repeal	3-1-2009
141-085-0440	3-1-2009	Repeal	3-1-2009
141-085-0445	3-1-2009	Repeal	3-1-2009
141-085-0450	3-1-2009	Repeal	3-1-2009
141-085-0500	3-1-2009	Adopt	3-1-2009
141-085-0506	3-1-2009	Adopt	3-1-2009
141-085-0510	3-1-2009	Adopt	3-1-2009
141-085-0515	3-1-2009	Adopt	3-1-2009
141-085-0520	3-1-2009	Adopt	3-1-2009
141-085-0525	3-1-2009	Adopt	3-1-2009
141-085-0530	3-1-2009	Adopt	3-1-2009
141-085-0535	3-1-2009	Adopt	3-1-2009

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141-085-0550	3-1-2009	Adopt	3-1-2009
141-085-0555	3-1-2009	Adopt	3-1-2009
141-085-0560	3-1-2009	Adopt	3-1-2009
141-085-0565	3-1-2009	Adopt	3-1-2009
141-085-0570	3-1-2009	Adopt	3-1-2009
141-085-0575	3-1-2009	Adopt	3-1-2009
141-085-0580	3-1-2009	Adopt	3-1-2009
141-085-0585	3-1-2009	Adopt	3-1-2009
141-085-0590	3-1-2009	Adopt	3-1-2009
141-085-0595	3-1-2009	Adopt	3-1-2009
141-085-0610	3-1-2009	Repeal	3-1-2009
141-085-0620	3-1-2009	Repeal	3-1-2009
141-085-0630	3-1-2009	Repeal	3-1-2009
141-085-0640	3-1-2009	Repeal	3-1-2009
141-085-0650	3-1-2009	Repeal	3-1-2009
141-085-0660	3-1-2009	Repeal	3-1-2009
141-085-0665	3-1-2009	Adopt	3-1-2009
141-085-0670	3-1-2009	Adopt	3-1-2009
141-085-0675	3-1-2009	Adopt	3-1-2009
141-085-0680	3-1-2009	Adopt	3-1-2009
141-085-0685	3-1-2009	Adopt	3-1-2009
141-085-0690	3-1-2009	Adopt	3-1-2009
141-085-0695	3-1-2009	Adopt	3-1-2009
141-085-0700	3-1-2009	Adopt	3-1-2009
141-085-0705	3-1-2009	Adopt	3-1-2009
141-085-0710	3-1-2009	Adopt	3-1-2009
141-085-0715	3-1-2009	Adopt	3-1-2009
141-085-0720	3-1-2009	Adopt	3-1-2009
141-085-0725	3-1-2009	Adopt	3-1-2009
141-085-0730	3-1-2009	Adopt	3-1-2009
141-085-0735	3-1-2009	Adopt	3-1-2009
141-085-0740	3-1-2009	Adopt	3-1-2009
141-085-0745	3-1-2009	Adopt	3-1-2009
141-085-0750	3-1-2009	Adopt	3-1-2009
141-085-0755	3-1-2009	Adopt	3-1-2009
141-085-0760	3-1-2009	Adopt	3-1-2009
141-085-0765	3-1-2009	Adopt	3-1-2009
141-085-0770	3-1-2009	Adopt	3-1-2009
141-085-0775	3-1-2009	Adopt	3-1-2009
141-085-0780	3-1-2009	Adopt	3-1-2009
141-085-0785	3-1-2009	Adopt	3-1-2009
141-086-0185	1-1-2009	Amend	1-1-2009
141-086-0190	1-1-2009	Repeal	1-1-2009
141-086-0200	1-1-2009	Amend	1-1-2009
141-086-0210	1-1-2009	Amend	1-1-2009
141-086-0220	1-1-2009	Amend	1-1-2009
141-086-0222	1-1-2009	Adopt	1-1-2009
141-086-0225	1-1-2009	Amend	1-1-2009
141-086-0228	1-1-2009	Amend	1-1-2009
141-086-0230	1-1-2009	Amend	1-1-2009
141-086-0240	1-1-2009	Amend	1-1-2009
141-089-0100	3-1-2009	Amend	3-1-2009
141-089-0105	3-1-2009	Amend	3-1-2009
141-089-0110	3-1-2009	Amend	3-1-2009
141-089-0115	3-1-2009	Amend	3-1-2009
141-089-0120	3-1-2009	Amend	3-1-2009
141-089-0130	3-1-2009	Amend	3-1-2009
141-089-0135	3-1-2009	Amend	3-1-2009
141-089-0145	3-1-2009	Amend	3-1-2009
141-089-0150	3-1-2009	Amend	3-1-2009
141-089-0155	3-1-2009	Amend	3-1-2009
141-089-0157	3-1-2009	Repeal	3-1-2009
141-089-0165	3-1-2009	Amend	3-1-2009
141-089-0170	3-1-2009	Amend	3-1-2009
141-089-0175	3-1-2009	Amend	3-1-2009
141-089-0185	3-1-2009	Amend	3-1-2009
141-089-0190	3-1-2009	Amend	3-1-2009
141-089-0200	3-1-2009	Amend	3-1-2009
141-089-0205	3-1-2009	Amend	3-1-2009
141-089-0210	3-1-2009	Amend	3-1-2009
141-089-0215	3-1-2009	Amend	3-1-2009
141-089-0220	3-1-2009	Amend	3-1-2009
141-089-0225	3-1-2009	Amend	3-1-2009
141-089-0230	3-1-2009	Amend	3-1-2009
141-089-0240	3-1-2009	Amend	3-1-2009
141-089-0245	3-1-2009	Amend	3-1-2009
141-089-0250	3-1-2009	Amend	3-1-2009
141-089-0255	3-1-2009	Amend	3-1-2009
141-089-0260	3-1-2009	Amend	3-1-2009
141-089-0265	3-1-2009	Amend	3-1-2009
141-089-0275	3-1-2009	Amend	3-1-2009
141-089-0280	3-1-2009	Amend	3-1-2009
141-089-0295	3-1-2009	Amend	3-1-2009
141-089-0300	3-1-2009	Amend	3-1-2009
141-089-0310	3-1-2009	Amend	3-1-2009
141-089-0350	3-1-2009	Amend	3-1-2009
141-089-0355	3-1-2009	Amend	3-1-2009
141-089-0370	3-1-2009	Amend	3-1-2009
141-089-0390	3-1-2009	Amend	3-1-2009
141-089-0400	3-1-2009	Amend	3-1-2009
141-089-0405	3-1-2009	Amend	3-1-2009
141-089-0415	3-1-2009	Amend	3-1-2009
141-089-0420	3-1-2009	Amend	3-1-2009
141-089-0430	3-1-2009	Amend	3-1-2009
141-089-0500	3-1-2009	Amend	3-1-2009
141-089-0505	3-1-2009	Amend	3-1-2009
141-089-0515	3-1-2009	Amend	3-1-2009
141-089-0520	3-1-2009	Amend	3-1-2009
141-089-0530	3-1-2009	Amend	3-1-2009
141-089-0550	3-1-2009	Repeal	3-1-2009
141-089-0555	3-1-2009	Repeal	3-1-2009
141-089-0560	3-1-2009	Repeal	3-1-2009
141-089-0565	3-1-2009	Repeal	3-1-2009
141-089-0570	3-1-2009	Repeal	3-1-2009
141-089-0572	3-1-2009	Repeal	3-1-2009
141-089-0575	3-1-2009	Repeal	3-1-2009
141-089-0580	3-1-2009	Repeal	3-1-2009
141-089-0585	3-1-2009	Amend	3-1-2009
141-089-0600	3-1-2009	Amend	3-1-2009
141-089-0605	3-1-2009	Amend	3-1-2009
141-089-0615	3-1-2009	Amend	3-1-2009
141-091-0005	12-10-2008	Amend	1-1-2009
141-091-0015	12-10-2008	Amend	1-1-2009
141-100-0000	3-1-2009	Amend	3-1-2009
141-100-0020	3-1-2009	Amend	3-1-2009
141-100-0030	3-1-2009	Amend	3-1-2009

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141-100-0055	3-1-2009	Amend	3-1-2009
141-100-0060	3-1-2009	Amend	3-1-2009
141-100-0070	3-1-2009	Amend	3-1-2009
141-100-0080	3-1-2009	Amend	3-1-2009
141-100-0090	3-1-2009	Amend	3-1-2009
150-294.435(1)-(A)	1-1-2009	Amend	2-1-2009
150-294.435(1)-(B)	1-1-2009	Repeal	2-1-2009
150-305.220(1)	1-1-2009	Amend	2-1-2009
150-305.220(2)	1-1-2009	Amend	2-1-2009
150-307.140	1-1-2009	Amend	2-1-2009
150-307.455	1-1-2009	Adopt	2-1-2009
150-308.515(1)(h)	1-1-2009	Adopt	2-1-2009
150-308A.056	1-1-2009	Amend	2-1-2009
150-308A.059	1-1-2009	Repeal	2-1-2009
150-309.110(1)-(B)	1-1-2009	Am. & Ren.	2-1-2009
150-309.110(1)-(E)	1-1-2009	Am. & Ren.	2-1-2009
150-311.670(1)	1-1-2009	Adopt	2-1-2009
150-311.706(1)	1-1-2009	Adopt	2-1-2009
150-314.402(1)	1-1-2009	Amend	2-1-2009
150-314.402(4)(b)	1-1-2009	Amend	2-1-2009
150-314.515(2)	1-1-2009	Amend	2-1-2009
150-314.752	1-1-2009	Amend	2-1-2009
150-316.007-(B)	1-1-2009	Amend	2-1-2009
150-316.007-(B)	1-5-2009	Amend	2-1-2009
150-316.082(1)-(B)	1-1-2009	Amend	2-1-2009
150-316.127-(9)	1-1-2009	Amend	2-1-2009
150-316.202(3)	1-1-2009	Amend	2-1-2009
150-316.791	1-1-2009	Adopt	2-1-2009
150.309.067(1)(b)	1-1-2009	Am. & Ren.	2-1-2009
151-020-0030	2-5-2009	Amend(T)	3-1-2009
161-002-0000	1-30-2009	Amend(T)	3-1-2009
161-006-0025	7-1-2009	Amend(T)	6-1-2009
161-010-0035	1-30-2009	Amend(T)	3-1-2009
161-010-0045	1-30-2009	Amend(T)	3-1-2009
161-010-0085	1-30-2009	Amend	3-1-2009
161-020-0045	1-30-2009	Amend	3-1-2009
161-020-0140	1-30-2009	Amend	3-1-2009
161-020-0150	1-30-2009	Amend	3-1-2009
161-025-0060	1-30-2009	Amend	3-1-2009
165-001-0005	5-22-2009	Amend	7-1-2009
165-005-0050	5-4-2009	Amend	6-1-2009
165-007-0130	5-4-2009	Amend	6-1-2009
165-012-0005	5-4-2009	Amend	6-1-2009
165-013-0020	5-4-2009	Amend	6-1-2009
165-014-0031	5-4-2009	Repeal	6-1-2009
165-014-0032	5-4-2009	Amend	6-1-2009
165-020-0430	5-4-2009	Repeal	6-1-2009
165-020-2022	2-18-2009	Adopt(T)	4-1-2009
165-020-2023	3-3-2009	Adopt(T)	4-1-2009
165-020-2024	3-5-2009	Adopt(T)	4-1-2009
165-020-2025	3-16-2009	Adopt(T)	5-1-2009
165-020-2026	3-19-2009	Adopt(T)	5-1-2009
166-200-0005	12-10-2008	Amend	1-1-2009
166-200-0010	12-10-2008	Amend	1-1-2009
166-200-0015	12-10-2008	Amend	1-1-2009
166-200-0020	12-10-2008	Amend	1-1-2009
166-200-0025	12-10-2008	Amend	1-1-2009
166-200-0030	12-10-2008	Amend	1-1-2009
166-200-0035	12-10-2008	Amend	1-1-2009
166-200-0040	12-10-2008	Amend	1-1-2009
166-200-0045	12-10-2008	Amend	1-1-2009
166-200-0050	12-10-2008	Amend	1-1-2009
166-200-0055	12-10-2008	Amend	1-1-2009
166-200-0060	12-10-2008	Amend	1-1-2009
166-200-0065	12-10-2008	Amend	1-1-2009
166-200-0070	12-10-2008	Amend	1-1-2009
166-200-0075	12-10-2008	Amend	1-1-2009
166-200-0080	12-10-2008	Amend	1-1-2009
166-200-0085	12-10-2008	Amend	1-1-2009
166-200-0090	12-10-2008	Amend	1-1-2009
166-200-0095	12-10-2008	Amend	1-1-2009
166-200-0100	12-10-2008	Amend	1-1-2009
166-200-0105	12-10-2008	Amend	1-1-2009
166-200-0110	12-10-2008	Amend	1-1-2009
166-200-0115	12-10-2008	Amend	1-1-2009
166-200-0120	12-10-2008	Amend	1-1-2009
166-200-0125	12-10-2008	Amend	1-1-2009
166-200-0130	12-10-2008	Amend	1-1-2009
166-200-0135	12-10-2008	Amend	1-1-2009
166-200-0140	12-10-2008	Amend	1-1-2009
166-200-0145	12-10-2008	Amend	1-1-2009
166-300-0025	2-19-2009	Amend	4-1-2009
170-040-0020	4-10-2009	Amend	5-1-2009
170-040-0090	11-28-2008	Adopt	1-1-2009
170-040-0100	11-28-2008	Adopt	1-1-2009
170-055-0001	12-29-2008	Adopt	2-1-2009
170-055-0005	12-29-2008	Repeal	2-1-2009
170-060-0001	12-29-2008	Adopt	2-1-2009
170-060-0005	12-29-2008	Adopt	2-1-2009
170-060-1010	12-29-2008	Amend	2-1-2009
170-061-0000	12-29-2008	Amend	2-1-2009
170-061-0005	12-29-2008	Repeal	2-1-2009
170-061-0015	12-29-2008	Amend	2-1-2009
170-061-0015	4-22-2009	Amend	6-1-2009
170-061-0020	12-29-2008	Amend	2-1-2009
170-061-0100	12-29-2008	Amend	2-1-2009
170-061-0200	12-29-2008	Amend	2-1-2009
170-061-0300	12-29-2008	Adopt	2-1-2009
170-061-0400	12-29-2008	Adopt	2-1-2009
170-062-0000	12-29-2008	Amend	2-1-2009
170-063-0000	12-29-2008	Amend	2-1-2009
170-071-0005	12-29-2008	Amend	2-1-2009
171-010-0000	6-10-2009	Repeal	7-1-2009
171-010-0005	6-10-2009	Repeal	7-1-2009
171-010-0010	6-10-2009	Repeal	7-1-2009
171-010-0015	6-10-2009	Repeal	7-1-2009
171-010-0020	6-10-2009	Repeal	7-1-2009
171-010-0025	6-10-2009	Repeal	7-1-2009
171-010-0030	6-10-2009	Repeal	7-1-2009
171-010-0035	6-10-2009	Repeal	7-1-2009
171-010-0040	6-10-2009	Repeal	7-1-2009
171-010-0045	6-10-2009	Repeal	7-1-2009
177-040-0001	1-1-2009	Amend	2-1-2009
177-040-0005	1-1-2009	Amend	2-1-2009
177-040-0017	2-1-2009	Amend	3-1-2009
177-040-0017(T)	2-1-2009	Repeal	3-1-2009

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177-040-0050	1-1-2009	Amend	2-1-2009
177-040-0052	1-1-2009	Amend	2-1-2009
177-040-0061	2-1-2009	Amend	3-1-2009
177-040-0061(T)	2-1-2009	Repeal	3-1-2009
177-045-0000	1-1-2009	Amend	2-1-2009
177-045-0010	1-1-2009	Amend	2-1-2009
177-045-0030	1-1-2009	Amend	2-1-2009
177-045-0040	1-1-2009	Repeal	2-1-2009
177-046-0020	11-23-2008	Amend(T)	1-1-2009
177-046-0020	3-1-2009	Amend	4-1-2009
177-046-0020(T)	3-1-2009	Repeal	4-1-2009
177-046-0150	12-1-2008	Repeal	1-1-2009
177-050-0025	12-1-2008	Amend	1-1-2009
177-050-0027	12-1-2008	Amend	1-1-2009
177-050-0100	12-1-2008	Adopt	1-1-2009
177-050-0100	3-1-2009	Amend	4-1-2009
177-069-0000	12-1-2008	Adopt	1-1-2009
177-069-0010	12-1-2008	Adopt	1-1-2009
177-069-0020	12-1-2008	Adopt	1-1-2009
177-069-0030	12-1-2008	Adopt	1-1-2009
177-069-0040	12-1-2008	Adopt	1-1-2009
177-069-0050	12-1-2008	Adopt	1-1-2009
177-075-0010	11-23-2008	Amend(T)	1-1-2009
177-075-0010	3-1-2009	Amend	4-1-2009
177-075-0010(T)	3-1-2009	Repeal	4-1-2009
177-081-0020	11-23-2008	Amend(T)	1-1-2009
177-081-0020	3-1-2009	Amend	4-1-2009
177-081-0020(T)	3-1-2009	Repeal	4-1-2009
177-083-0020	11-23-2008	Amend(T)	1-1-2009
177-083-0020	3-1-2009	Amend	4-1-2009
177-083-0020(T)	3-1-2009	Repeal	4-1-2009
177-083-0030	11-23-2008	Amend(T)	1-1-2009
177-083-0030	3-1-2009	Amend	4-1-2009
177-083-0030(T)	3-1-2009	Repeal	4-1-2009
177-083-0040	11-23-2008	Amend(T)	1-1-2009
177-083-0040	3-1-2009	Amend	4-1-2009
177-083-0040(T)	3-1-2009	Repeal	4-1-2009
177-085-0000	1-4-2009	Amend	1-1-2009
177-085-0005	1-4-2009	Amend	1-1-2009
177-085-0010	1-4-2009	Amend	1-1-2009
177-085-0015	11-23-2008	Amend(T)	1-1-2009
177-085-0015	1-4-2009	Amend	1-1-2009
177-085-0015	3-1-2009	Amend	4-1-2009
177-085-0015(T)	3-1-2009	Repeal	4-1-2009
177-085-0020	1-4-2009	Amend	1-1-2009
177-085-0025	1-4-2009	Amend	1-1-2009
177-085-0030	1-4-2009	Amend	1-1-2009
177-085-0035	1-4-2009	Amend	1-1-2009
177-085-0040	1-4-2009	Amend	1-1-2009
177-085-0045	1-4-2009	Amend	1-1-2009
177-085-0050	1-4-2009	Amend	1-1-2009
177-085-0065	1-4-2009	Amend	1-1-2009
177-094-0020	11-23-2008	Amend(T)	1-1-2009
177-094-0020	3-1-2009	Amend	4-1-2009
177-094-0020(T)	3-1-2009	Repeal	4-1-2009
213-003-0001	1-1-2010	Amend(T)	5-1-2009
213-003-0001	1-1-2010	Amend(T)	5-1-2009
213-017-0004	1-1-2010	Amend(T)	5-1-2009
213-017-0006	1-1-2009	Amend(T)	2-1-2009
213-017-0006	1-1-2010	Amend(T)	5-1-2009
213-017-0009	1-1-2010	Amend(T)	5-1-2009
250-020-0261	5-1-2009	Amend	5-1-2009
250-020-0290	5-1-2009	Repeal	5-1-2009
255-070-0001	4-10-2009	Amend(T)	5-1-2009
259-001-0005	4-8-2009	Amend	5-1-2009
259-008-0010	1-1-2009	Amend	1-1-2009
259-008-0011	1-1-2009	Amend	1-1-2009
259-008-0025	4-8-2009	Amend	5-1-2009
259-008-0060	12-29-2008	Amend	2-1-2009
259-008-0060	4-8-2009	Amend	5-1-2009
259-008-0065	4-8-2009	Amend	5-1-2009
259-008-0070	1-1-2009	Amend	1-1-2009
259-020-0010	12-29-2008	Amend(T)	2-1-2009
259-020-0010	2-2-2009	Amend	3-1-2009
259-020-0010(T)	2-2-2009	Repeal	3-1-2009
259-020-0015	2-2-2009	Amend	3-1-2009
259-020-0020	2-2-2009	Amend	3-1-2009
259-020-0025	2-2-2009	Amend	3-1-2009
291-019-0130	5-22-2009	Amend	7-1-2009
291-022-0115	11-25-2008	Amend(T)	1-1-2009
291-022-0115	5-23-2009	Amend	7-1-2009
291-022-0160	11-25-2008	Amend(T)	1-1-2009
291-022-0160	5-23-2009	Amend	7-1-2009
291-022-0161	11-25-2008	Adopt(T)	1-1-2009
291-022-0161	5-23-2009	Adopt	7-1-2009
291-022-0162	11-25-2008	Adopt(T)	1-1-2009
291-022-0162	5-23-2009	Adopt	7-1-2009
291-039-0010	12-16-2008	Amend(T)	2-1-2009
291-039-0015	12-16-2008	Amend(T)	2-1-2009
291-042-0005	1-22-2009	Amend	3-1-2009
291-042-0010	1-22-2009	Amend	3-1-2009
291-042-0011	1-22-2009	Amend	3-1-2009
291-042-0015	1-22-2009	Amend	3-1-2009
291-042-0025	1-22-2009	Amend	3-1-2009
291-042-0035	1-22-2009	Amend	3-1-2009
291-042-0045	1-22-2009	Repeal	3-1-2009
291-058-0010	5-29-2009	Amend	7-1-2009
291-058-0020	5-29-2009	Amend	7-1-2009
291-058-0030	5-29-2009	Amend	7-1-2009
291-058-0040	5-29-2009	Amend	7-1-2009
291-058-0045	5-29-2009	Amend	7-1-2009
291-058-0046	5-29-2009	Adopt	7-1-2009
291-058-0050	5-29-2009	Amend	7-1-2009
291-058-0060	5-29-2009	Amend	7-1-2009
291-058-0065	5-29-2009	Adopt	7-1-2009
291-062-0100	3-20-2009	Amend(T)	5-1-2009
291-062-0110	3-20-2009	Amend(T)	5-1-2009
291-062-0120	3-20-2009	Amend(T)	5-1-2009
291-062-0130	3-20-2009	Amend(T)	5-1-2009
291-062-0140	3-20-2009	Amend(T)	5-1-2009
291-062-0150	3-20-2009	Amend(T)	5-1-2009
291-062-0160	3-20-2009	Amend(T)	5-1-2009
291-062-0170	3-20-2009	Adopt(T)	5-1-2009
291-070-0120	12-16-2008	Amend(T)	2-1-2009
291-097-0005	3-10-2009	Amend	4-1-2009
291-097-0010	3-10-2009	Amend	4-1-2009
291-097-0015	3-10-2009	Amend	4-1-2009

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291-097-0040	3-10-2009	Amend	4-1-2009
291-097-0050	3-10-2009	Amend	4-1-2009
291-097-0060	3-10-2009	Amend	4-1-2009
291-097-0070	3-10-2009	Amend	4-1-2009
291-097-0080	3-10-2009	Amend	4-1-2009
291-097-0100	3-10-2009	Amend	4-1-2009
291-097-0110	3-10-2009	Am. & Ren.	4-1-2009
291-097-0120	3-10-2009	Amend	4-1-2009
291-127-0240	5-15-2009	Amend	6-1-2009
291-127-0260	12-16-2008	Amend(T)	2-1-2009
291-127-0260	5-15-2009	Amend	6-1-2009
291-127-0260(T)	5-15-2009	Repeal	6-1-2009
291-158-0005	12-26-2008	Amend	2-1-2009
291-158-0010	12-26-2008	Amend	2-1-2009
291-158-0015	12-26-2008	Amend	2-1-2009
291-158-0025	12-26-2008	Amend	2-1-2009
291-158-0035	12-26-2008	Amend	2-1-2009
291-158-0045	12-26-2008	Amend	2-1-2009
291-158-0055	12-26-2008	Amend	2-1-2009
291-158-0065	12-26-2008	Amend	2-1-2009
291-158-0075	12-26-2008	Amend	2-1-2009
291-203-0020	5-15-2009	Amend(T)	6-1-2009
291-203-0040	5-15-2009	Amend(T)	6-1-2009
291-203-0050	5-15-2009	Amend(T)	6-1-2009
309-114-0005	1-23-2009	Amend(T)	3-1-2009
309-114-0005	4-2-2009	Amend(T)	5-1-2009
309-114-0005(T)	4-2-2009	Suspend	5-1-2009
309-114-0010	1-23-2009	Amend(T)	3-1-2009
309-114-0020	1-23-2009	Amend(T)	3-1-2009
330-061-0005	12-5-2008	Amend	1-1-2009
330-061-0025	12-5-2008	Amend	1-1-2009
330-061-0030	12-5-2008	Amend	1-1-2009
331-001-0000	6-1-2009	Amend	7-1-2009
331-001-0010	6-1-2009	Amend	7-1-2009
331-010-0000	6-1-2009	Amend	7-1-2009
331-010-0020	6-1-2009	Amend	7-1-2009
331-010-0030	6-1-2009	Amend	7-1-2009
331-010-0040	6-1-2009	Amend	7-1-2009
331-020-0030	6-1-2009	Amend	7-1-2009
331-020-0040	6-1-2009	Amend	7-1-2009
331-020-0060	6-1-2009	Amend	7-1-2009
331-020-0070	6-1-2009	Amend	7-1-2009
331-030-0000	12-1-2008	Amend(T)	1-1-2009
331-030-0000	6-1-2009	Amend	7-1-2009
331-030-0004	6-1-2009	Adopt	7-1-2009
331-030-0005	12-1-2008	Adopt(T)	1-1-2009
331-030-0010	12-1-2008	Amend(T)	1-1-2009
331-030-0010	6-1-2009	Amend	7-1-2009
331-030-0020	6-1-2009	Amend	7-1-2009
331-030-0025	6-1-2009	Adopt	7-1-2009
331-030-0030	6-1-2009	Am. & Ren.	7-1-2009
331-030-0040	6-1-2009	Adopt	7-1-2009
331-810-0038	12-1-2008	Adopt	1-1-2009
332-015-0070	4-1-2009	Amend	5-1-2009
332-020-0010	4-1-2009	Amend	5-1-2009
333-004-0010	3-2-2009	Amend	4-1-2009
333-004-0020	3-2-2009	Amend	4-1-2009
333-004-0030	3-2-2009	Amend	4-1-2009
333-004-0040	3-2-2009	Amend	4-1-2009
333-004-0050	3-2-2009	Amend	4-1-2009
333-004-0060	3-2-2009	Amend	4-1-2009
333-004-0070	3-2-2009	Amend	4-1-2009
333-004-0080	3-2-2009	Amend	4-1-2009
333-004-0090	3-2-2009	Repeal	4-1-2009
333-004-0100	3-2-2009	Amend	4-1-2009
333-004-0110	3-2-2009	Amend	4-1-2009
333-004-0120	3-2-2009	Amend	4-1-2009
333-004-0140	3-2-2009	Amend	4-1-2009
333-004-0150	3-2-2009	Amend	4-1-2009
333-004-0160	3-2-2009	Amend	4-1-2009
333-010-0200	2-13-2009	Adopt	3-1-2009
333-010-0205	2-13-2009	Adopt	3-1-2009
333-010-0210	2-13-2009	Adopt	3-1-2009
333-010-0215	2-13-2009	Adopt	3-1-2009
333-010-0220	2-13-2009	Adopt	3-1-2009
333-010-0225	2-13-2009	Adopt	3-1-2009
333-010-0230	2-13-2009	Adopt	3-1-2009
333-010-0235	2-13-2009	Adopt	3-1-2009
333-010-0240	2-13-2009	Adopt	3-1-2009
333-010-0245	2-13-2009	Adopt	3-1-2009
333-010-0250	2-13-2009	Adopt	3-1-2009
333-010-0255	2-13-2009	Adopt	3-1-2009
333-010-0260	2-13-2009	Adopt	3-1-2009
333-010-0265	2-13-2009	Adopt	3-1-2009
333-010-0270	2-13-2009	Adopt	3-1-2009
333-010-0275	2-13-2009	Adopt	3-1-2009
333-010-0280	2-13-2009	Adopt	3-1-2009
333-010-0285	2-13-2009	Adopt	3-1-2009
333-010-0290	2-13-2009	Adopt	3-1-2009
333-054-0010	6-1-2009	Amend	7-1-2009
333-054-0020	6-1-2009	Amend	7-1-2009
333-054-0025	6-1-2009	Amend	7-1-2009
333-054-0027	6-1-2009	Adopt	7-1-2009
333-054-0030	6-1-2009	Amend	7-1-2009
333-054-0035	6-1-2009	Adopt	7-1-2009
333-054-0040	6-1-2009	Amend	7-1-2009
333-054-0050	6-1-2009	Amend	7-1-2009
333-054-0055	6-1-2009	Adopt	7-1-2009
333-054-0060	6-1-2009	Amend	7-1-2009
333-054-0065	6-1-2009	Adopt	7-1-2009
333-054-0070	6-1-2009	Amend	7-1-2009
333-061-0020	5-18-2009	Amend	7-1-2009
333-061-0025	5-18-2009	Amend	7-1-2009
333-061-0030	5-18-2009	Amend	7-1-2009
333-061-0031	5-18-2009	Amend	7-1-2009
333-061-0032	5-18-2009	Amend	7-1-2009
333-061-0034	5-18-2009	Amend	7-1-2009
333-061-0036	5-18-2009	Amend	7-1-2009
333-061-0040	5-18-2009	Amend	7-1-2009
333-061-0042	5-18-2009	Amend	7-1-2009
333-061-0043	5-18-2009	Amend	7-1-2009
333-061-0045	5-18-2009	Amend	7-1-2009
333-061-0050	5-18-2009	Amend	7-1-2009
333-061-0058	5-18-2009	Amend	7-1-2009
333-061-0060	5-18-2009	Amend	7-1-2009
333-061-0064	5-18-2009	Amend	7-1-2009

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333-061-0065	5-18-2009	Amend	7-1-2009
333-061-0070	5-18-2009	Amend	7-1-2009
333-061-0071	5-18-2009	Amend	7-1-2009
333-061-0076	5-18-2009	Amend	7-1-2009
333-061-0077	5-18-2009	Amend	7-1-2009
333-061-0090	5-18-2009	Amend	7-1-2009
333-061-0097	5-18-2009	Amend	7-1-2009
333-061-0220	5-18-2009	Amend	7-1-2009
333-061-0225	5-18-2009	Amend	7-1-2009
333-061-0270	5-18-2009	Amend	7-1-2009
333-565-0000	1-1-2009	Amend	2-1-2009
333-565-0010	4-20-2009	Adopt	6-1-2009
333-675-0050	1-1-2009	Amend	2-1-2009
334-001-0000	3-1-2009	Amend	3-1-2009
334-001-0035	3-1-2009	Amend	3-1-2009
334-001-0045	3-1-2009	Amend	3-1-2009
334-001-0060	3-1-2009	Amend	3-1-2009
334-010-0005	3-1-2009	Amend	3-1-2009
334-010-0010	3-1-2009	Amend	3-1-2009
334-010-0012	3-1-2009	Amend	3-1-2009
334-010-0015	3-1-2009	Amend	3-1-2009
334-010-0016	3-1-2009	Repeal	3-1-2009
334-010-0017	3-1-2009	Amend	3-1-2009
334-010-0025	3-1-2009	Amend	3-1-2009
334-010-0031	3-1-2009	Repeal	3-1-2009
334-010-0033	3-1-2009	Amend	3-1-2009
334-010-0041	3-1-2009	Am. & Ren.	3-1-2009
334-010-0046	3-1-2009	Amend	3-1-2009
334-010-0047	3-1-2009	Amend	3-1-2009
334-010-0050	3-1-2009	Amend	3-1-2009
334-020-0005	3-1-2009	Amend	3-1-2009
334-020-0015	3-1-2009	Amend	3-1-2009
334-020-0020	3-1-2009	Repeal	3-1-2009
334-020-0025	3-1-2009	Repeal	3-1-2009
334-020-0030	3-1-2009	Repeal	3-1-2009
334-020-0035	3-1-2009	Repeal	3-1-2009
334-020-0040	3-1-2009	Repeal	3-1-2009
334-020-0045	3-1-2009	Repeal	3-1-2009
334-020-0050	3-1-2009	Amend	3-1-2009
334-020-0055	3-1-2009	Amend	3-1-2009
334-020-0060	3-1-2009	Repeal	3-1-2009
334-020-0065	3-1-2009	Repeal	3-1-2009
334-020-0070	3-1-2009	Repeal	3-1-2009
334-020-0075	3-1-2009	Repeal	3-1-2009
334-020-0080	3-1-2009	Repeal	3-1-2009
334-020-0085	3-1-2009	Repeal	3-1-2009
334-020-0090	3-1-2009	Repeal	3-1-2009
334-030-0001	3-1-2009	Amend	3-1-2009
334-030-0002	3-1-2009	Repeal	3-1-2009
334-030-0005	3-1-2009	Amend	3-1-2009
334-030-0010	3-1-2009	Repeal	3-1-2009
334-030-0025	3-1-2009	Am. & Ren.	3-1-2009
334-040-0001	3-1-2009	Adopt	3-1-2009
335-005-0010	7-1-2009	Amend	7-1-2009
335-005-0020	7-1-2009	Amend	7-1-2009
335-005-0025	7-1-2009	Amend	7-1-2009
335-060-0010	7-1-2009	Amend	7-1-2009
335-060-0020	7-1-2009	Amend	7-1-2009
335-070-0055	7-1-2009	Amend	7-1-2009
335-070-0060	7-1-2009	Amend	7-1-2009
335-070-0075	7-1-2009	Amend	7-1-2009
335-070-0080	7-1-2009	Amend	7-1-2009
335-070-0085	7-1-2009	Amend	7-1-2009
335-095-0010	7-1-2009	Amend	7-1-2009
335-095-0030	7-1-2009	Amend	7-1-2009
335-095-0050	7-1-2009	Amend	7-1-2009
335-095-0060	7-1-2009	Amend	7-1-2009
339-010-0023	1-1-2009	Amend	1-1-2009
339-010-0035	1-1-2009	Amend	1-1-2009
339-010-0050	1-1-2009	Amend	1-1-2009
339-020-0015	1-1-2009	Adopt	1-1-2009
340-054-0024	5-1-2009	Amend(T)	6-1-2009
340-054-0025	5-1-2009	Amend(T)	6-1-2009
340-054-0035	5-1-2009	Amend(T)	6-1-2009
340-054-0098	5-1-2009	Adopt(T)	6-1-2009
340-054-0100	5-1-2009	Adopt(T)	6-1-2009
340-054-0102	5-1-2009	Adopt(T)	6-1-2009
340-054-0104	5-1-2009	Adopt(T)	6-1-2009
340-054-0106	5-1-2009	Adopt(T)	6-1-2009
340-054-0108	5-1-2009	Adopt(T)	6-1-2009
340-200-0040	12-31-2008	Amend	2-1-2009
340-216-0020	12-31-2008	Amend	2-1-2009
340-216-0060	12-31-2008	Amend	2-1-2009
340-228-0600	12-31-2008	Amend	2-1-2009
340-228-0601	12-31-2008	Adopt	2-1-2009
340-228-0602	12-31-2008	Amend	2-1-2009
340-228-0603	12-31-2008	Amend	2-1-2009
340-228-0604	12-31-2008	Repeal	2-1-2009
340-228-0605	12-31-2008	Repeal	2-1-2009
340-228-0606	12-31-2008	Amend	2-1-2009
340-228-0608	12-31-2008	Repeal	2-1-2009
340-228-0609	12-31-2008	Adopt	2-1-2009
340-228-0610	12-31-2008	Repeal	2-1-2009
340-228-0611	12-31-2008	Adopt	2-1-2009
340-228-0612	12-31-2008	Repeal	2-1-2009
340-228-0613	12-31-2008	Adopt	2-1-2009
340-228-0614	12-31-2008	Repeal	2-1-2009
340-228-0615	12-31-2008	Adopt	2-1-2009
340-228-0616	12-31-2008	Repeal	2-1-2009
340-228-0617	12-31-2008	Adopt	2-1-2009
340-228-0618	12-31-2008	Repeal	2-1-2009
340-228-0619	12-31-2008	Adopt	2-1-2009
340-228-0620	12-31-2008	Repeal	2-1-2009
340-228-0621	12-31-2008	Adopt	2-1-2009
340-228-0622	12-31-2008	Repeal	2-1-2009
340-228-0623	12-31-2008	Adopt	2-1-2009
340-228-0624	12-31-2008	Repeal	2-1-2009
340-228-0625	12-31-2008	Adopt	2-1-2009
340-228-0626	12-31-2008	Repeal	2-1-2009
340-228-0627	12-31-2008	Adopt	2-1-2009
340-228-0628	12-31-2008	Repeal	2-1-2009
340-228-0629	12-31-2008	Adopt	2-1-2009
340-228-0630	12-31-2008	Repeal	2-1-2009
340-228-0631	12-31-2008	Adopt	2-1-2009
340-228-0632	12-31-2008	Repeal	2-1-2009
340-228-0633	12-31-2008	Adopt	2-1-2009
340-228-0634	12-31-2008	Repeal	2-1-2009
340-228-0635	12-31-2008	Adopt	2-1-2009

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340-228-0636	12-31-2008	Repeal	2-1-2009
340-228-0637	12-31-2008	Adopt	2-1-2009
340-228-0638	12-31-2008	Repeal	2-1-2009
340-228-0640	12-31-2008	Repeal	2-1-2009
340-228-0642	12-31-2008	Repeal	2-1-2009
340-228-0644	12-31-2008	Repeal	2-1-2009
340-228-0646	12-31-2008	Repeal	2-1-2009
340-228-0648	12-31-2008	Repeal	2-1-2009
340-228-0650	12-31-2008	Repeal	2-1-2009
340-228-0652	12-31-2008	Repeal	2-1-2009
340-228-0654	12-31-2008	Repeal	2-1-2009
340-228-0656	12-31-2008	Repeal	2-1-2009
340-228-0658	12-31-2008	Repeal	2-1-2009
340-228-0660	12-31-2008	Repeal	2-1-2009
340-228-0662	12-31-2008	Repeal	2-1-2009
340-228-0664	12-31-2008	Repeal	2-1-2009
340-228-0666	12-31-2008	Repeal	2-1-2009
340-228-0668	12-31-2008	Repeal	2-1-2009
340-228-0670	12-31-2008	Repeal	2-1-2009
340-228-0671	12-31-2008	Repeal	2-1-2009
340-228-0672	12-31-2008	Repeal	2-1-2009
340-228-0673	12-31-2008	Repeal	2-1-2009
340-228-0674	12-31-2008	Repeal	2-1-2009
340-228-0676	12-31-2008	Repeal	2-1-2009
340-228-0678	12-31-2008	Repeal	2-1-2009
340-230-0300	12-31-2008	Amend	2-1-2009
340-230-0310	12-31-2008	Amend	2-1-2009
340-230-0320	12-31-2008	Amend	2-1-2009
340-230-0330	12-31-2008	Amend	2-1-2009
340-230-0335	12-31-2008	Adopt	2-1-2009
340-230-0340	12-31-2008	Amend	2-1-2009
340-230-0350	12-31-2008	Amend	2-1-2009
340-230-0359	12-31-2008	Adopt	2-1-2009
340-232-0070	12-31-2008	Repeal	2-1-2009
340-238-0040	12-31-2008	Amend	2-1-2009
340-238-0050	12-31-2008	Repeal	2-1-2009
340-238-0060	12-31-2008	Amend	2-1-2009
340-238-0090	12-31-2008	Amend	2-1-2009
340-242-0520	12-31-2008	Amend	2-1-2009
340-244-0020	12-31-2008	Amend	2-1-2009
340-244-0030	12-31-2008	Amend	2-1-2009
340-244-0100	12-31-2008	Amend	2-1-2009
340-244-0110	12-31-2008	Repeal	2-1-2009
340-244-0120	12-31-2008	Repeal	2-1-2009
340-244-0130	12-31-2008	Repeal	2-1-2009
340-244-0140	12-31-2008	Repeal	2-1-2009
340-244-0150	12-31-2008	Repeal	2-1-2009
340-244-0160	12-31-2008	Repeal	2-1-2009
340-244-0170	12-31-2008	Repeal	2-1-2009
340-244-0180	12-31-2008	Repeal	2-1-2009
340-244-0210	12-31-2008	Amend	2-1-2009
340-244-0220	12-31-2008	Amend	2-1-2009
340-244-0232	12-31-2008	Adopt	2-1-2009
340-244-0234	12-31-2008	Adopt	2-1-2009
340-244-0236	12-31-2008	Adopt	2-1-2009
340-244-0238	12-31-2008	Adopt	2-1-2009
340-244-0240	12-31-2008	Adopt	2-1-2009
340-244-0242	12-31-2008	Adopt	2-1-2009
340-244-0244	12-31-2008	Adopt	2-1-2009
340-244-0246	12-31-2008	Adopt	2-1-2009
340-244-0248	12-31-2008	Adopt	2-1-2009
340-244-0250	12-31-2008	Adopt	2-1-2009
340-244-0252	12-31-2008	Adopt	2-1-2009
350-040-0020	1-14-2009	Amend(T)	2-1-2009
350-040-0020	5-1-2009	Amend	5-1-2009
350-040-0040	1-14-2009	Amend(T)	2-1-2009
350-040-0040	5-1-2009	Amend	5-1-2009
350-050-0020	1-14-2009	Amend(T)	2-1-2009
350-050-0020	5-1-2009	Amend	5-1-2009
350-050-0060	1-14-2009	Amend(T)	2-1-2009
350-050-0060	5-1-2009	Amend	5-1-2009
407-001-0000	12-5-2008	Amend	1-1-2009
407-001-0005	12-5-2008	Amend	1-1-2009
407-001-0010	12-5-2008	Amend	1-1-2009
407-007-0200	1-1-2009	Amend	2-1-2009
407-007-0200	4-1-2009	Amend	5-1-2009
407-007-0210	1-1-2009	Amend	2-1-2009
407-007-0210	4-1-2009	Amend	5-1-2009
407-007-0220	1-1-2009	Amend	2-1-2009
407-007-0220	4-1-2009	Amend	5-1-2009
407-007-0230	1-1-2009	Amend	2-1-2009
407-007-0230	4-1-2009	Amend	5-1-2009
407-007-0240	1-1-2009	Amend	2-1-2009
407-007-0240	4-1-2009	Amend	5-1-2009
407-007-0250	1-1-2009	Amend	2-1-2009
407-007-0250	4-1-2009	Amend	5-1-2009
407-007-0260	1-1-2009	Repeal	2-1-2009
407-007-0270	1-1-2009	Repeal	2-1-2009
407-007-0280	1-1-2009	Amend	2-1-2009
407-007-0280	4-1-2009	Amend	5-1-2009
407-007-0290	1-1-2009	Amend	2-1-2009
407-007-0290	4-1-2009	Amend	5-1-2009
407-007-0300	1-1-2009	Amend	2-1-2009
407-007-0310	1-1-2009	Repeal	2-1-2009
407-007-0320	1-1-2009	Amend	2-1-2009
407-007-0320	4-1-2009	Amend	5-1-2009
407-007-0330	1-1-2009	Amend	2-1-2009
407-007-0330	4-1-2009	Amend	5-1-2009
407-007-0340	1-1-2009	Amend	2-1-2009
407-007-0340	4-1-2009	Amend	5-1-2009
407-007-0350	1-1-2009	Amend	2-1-2009
407-007-0350	4-1-2009	Amend	5-1-2009
407-007-0355	1-1-2009	Adopt	2-1-2009
407-007-0355	4-1-2009	Amend	5-1-2009
407-007-0360	1-1-2009	Repeal	2-1-2009
407-007-0370	1-1-2009	Amend	2-1-2009
407-007-0380	1-1-2009	Repeal	2-1-2009
407-045-0250	5-1-2009	Amend	6-1-2009
407-045-0260	5-1-2009	Amend	6-1-2009
407-045-0270	5-1-2009	Repeal	6-1-2009
407-045-0280	5-1-2009	Amend	6-1-2009
407-045-0290	5-1-2009	Amend	6-1-2009
407-045-0300	5-1-2009	Amend	6-1-2009
407-045-0310	5-1-2009	Amend	6-1-2009
407-045-0320	5-1-2009	Amend	6-1-2009
407-045-0330	5-1-2009	Amend	6-1-2009
407-045-0340	5-1-2009	Amend	6-1-2009
407-045-0350	5-1-2009	Amend	6-1-2009

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407-120-0300	12-27-2008	Amend	2-1-2009
407-120-0300(T)	12-27-2008	Repeal	2-1-2009
407-120-0310	12-27-2008	Amend	2-1-2009
407-120-0310(T)	12-27-2008	Repeal	2-1-2009
407-120-0320	12-27-2008	Amend	2-1-2009
407-120-0320(T)	12-27-2008	Repeal	2-1-2009
407-120-0325	12-27-2008	Adopt	2-1-2009
407-120-0325(T)	12-27-2008	Repeal	2-1-2009
407-120-0330	12-27-2008	Amend	2-1-2009
407-120-0330(T)	12-27-2008	Repeal	2-1-2009
407-120-0340	12-27-2008	Amend	2-1-2009
407-120-0340(T)	12-27-2008	Repeal	2-1-2009
407-120-0350	12-27-2008	Amend	2-1-2009
407-120-0350(T)	12-27-2008	Repeal	2-1-2009
407-120-0360	12-27-2008	Amend	2-1-2009
407-120-0360(T)	12-27-2008	Repeal	2-1-2009
407-120-0370	12-27-2008	Amend	2-1-2009
407-120-0370(T)	12-27-2008	Repeal	2-1-2009
407-120-0380	12-27-2008	Amend	2-1-2009
407-120-0380(T)	12-27-2008	Repeal	2-1-2009
407-120-0400	1-12-2009	Adopt(T)	2-1-2009
410-120-0000	12-1-2008	Amend	1-1-2009
410-120-0000	7-1-2009	Amend	7-1-2009
410-120-0027	1-12-2009	Adopt(T)	2-1-2009
410-120-0027	1-16-2009	Amend(T)	3-1-2009
410-120-0027	5-1-2009	Amend(T)	6-1-2009
410-120-0027	6-12-2009	Amend	7-1-2009
410-120-0027(T)	1-16-2009	Suspend	3-1-2009
410-120-0027(T)	5-1-2009	Suspend	6-1-2009
410-120-0027(T)	6-12-2009	Repeal	7-1-2009
410-120-1140	12-1-2008	Amend	1-1-2009
410-120-1180	12-1-2008	Amend	1-1-2009
410-120-1195	12-1-2008	Amend	1-1-2009
410-120-1260	12-1-2008	Amend	1-1-2009
410-120-1280	12-1-2008	Amend	1-1-2009
410-120-1340	12-1-2008	Amend	1-1-2009
410-120-1340	1-1-2009	Amend	1-1-2009
410-120-1560	7-1-2009	Amend	7-1-2009
410-120-1570	7-1-2009	Amend	7-1-2009
410-120-1580	7-1-2009	Amend	7-1-2009
410-120-1600	7-1-2009	Amend	7-1-2009
410-120-1680	7-1-2009	Repeal	7-1-2009
410-120-1700	7-1-2009	Repeal	7-1-2009
410-121-0000	1-1-2009	Amend	1-1-2009
410-121-0000	7-1-2009	Amend	7-1-2009
410-121-0030	1-1-2009	Amend	1-1-2009
410-121-0032	1-1-2009	Amend	1-1-2009
410-121-0032	7-1-2009	Amend	7-1-2009
410-121-0040	12-1-2008	Amend	1-1-2009
410-121-0040	7-1-2009	Amend	7-1-2009
410-121-0060	12-1-2008	Amend	1-1-2009
410-121-0060	1-1-2009	Amend	1-1-2009
410-121-0140	12-1-2008	Amend	1-1-2009
410-121-0140	1-1-2009	Repeal	1-1-2009
410-121-0150	12-1-2008	Amend	1-1-2009
410-121-0150	7-1-2009	Amend	7-1-2009
410-121-0155	4-1-2009	Amend(T)	5-1-2009
410-121-0155	7-1-2009	Amend	7-1-2009
410-121-0157	12-1-2008	Amend	1-1-2009
410-121-0185	1-1-2009	Amend	1-1-2009
410-121-0200	12-1-2008	Amend	1-1-2009
410-121-0300	1-1-2009	Amend	1-1-2009
410-121-0320	12-1-2008	Amend	1-1-2009
410-121-0625	1-1-2009	Amend	1-1-2009
410-122-0040	12-1-2008	Amend	1-1-2009
410-122-0080	7-1-2009	Amend	7-1-2009
410-122-0180	7-1-2009	Amend	7-1-2009
410-122-0182	1-1-2009	Amend	1-1-2009
410-122-0186	7-1-2009	Amend	7-1-2009
410-122-0200	1-1-2009	Amend	1-1-2009
410-122-0202	1-1-2009	Amend(T)	2-1-2009
410-122-0202	6-1-2009	Amend	7-1-2009
410-122-0202(T)	6-1-2009	Repeal	7-1-2009
410-122-0203	1-1-2009	Amend	1-1-2009
410-122-0204	1-1-2009	Amend	1-1-2009
410-122-0205	7-1-2009	Amend	7-1-2009
410-122-0208	7-1-2009	Amend	7-1-2009
410-122-0211	1-1-2009	Adopt	1-1-2009
410-122-0320	7-1-2009	Amend	7-1-2009
410-122-0325	7-1-2009	Amend	7-1-2009
410-122-0330	1-1-2009	Amend	1-1-2009
410-122-0340	1-1-2009	Amend	1-1-2009
410-122-0340	7-1-2009	Amend	7-1-2009
410-122-0365	1-1-2009	Amend	1-1-2009
410-122-0375	7-1-2009	Amend	7-1-2009
410-122-0400	7-1-2009	Amend	7-1-2009
410-122-0420	7-1-2009	Amend	7-1-2009
410-122-0500	7-1-2009	Amend	7-1-2009
410-122-0520	7-1-2009	Amend	7-1-2009
410-122-0560	1-1-2009	Amend	1-1-2009
410-122-0580	1-1-2009	Amend	1-1-2009
410-122-0580	7-1-2009	Amend	7-1-2009
410-122-0590	7-1-2009	Amend	7-1-2009
410-122-0600	7-1-2009	Amend	7-1-2009
410-122-0620	7-1-2009	Amend	7-1-2009
410-122-0630	1-1-2009	Amend	1-1-2009
410-122-0655	1-1-2009	Amend	1-1-2009
410-122-0700	7-1-2009	Amend	7-1-2009
410-122-0720	7-1-2009	Amend	7-1-2009
410-123-1060	7-1-2009	Amend	7-1-2009
410-123-1085	1-1-2009	Amend	1-1-2009
410-123-1100	7-1-2009	Amend	7-1-2009
410-123-1160	1-1-2009	Amend	1-1-2009
410-123-1160	7-1-2009	Amend	7-1-2009
410-123-1220	1-1-2009	Amend	1-1-2009
410-123-1220	7-1-2009	Amend	7-1-2009
410-123-1230	1-1-2009	Amend	1-1-2009
410-123-1240	1-1-2009	Amend	1-1-2009
410-123-1260	1-1-2009	Amend	1-1-2009
410-123-1260	7-1-2009	Amend	7-1-2009
410-123-1490	1-1-2009	Amend	1-1-2009
410-123-1490	7-1-2009	Amend	7-1-2009
410-123-1600	7-1-2009	Amend	7-1-2009
410-123-1620	1-1-2009	Amend	1-1-2009
410-123-1620	7-1-2009	Amend	7-1-2009
410-123-1670	1-1-2009	Amend	1-1-2009
410-123-1670	7-1-2009	Amend	7-1-2009

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410-125-0045	1-1-2009	Amend	1-1-2009
410-125-0080	1-1-2009	Amend	1-1-2009
410-125-0080	7-1-2009	Amend	7-1-2009
410-125-0085	1-1-2009	Amend	1-1-2009
410-125-0125	12-1-2008	Amend	1-1-2009
410-125-0141	5-1-2009	Amend(T)	6-1-2009
410-125-0155	1-1-2009	Amend	1-1-2009
410-125-0181	1-1-2009	Amend	1-1-2009
410-125-0195	1-1-2009	Amend	1-1-2009
410-125-0195	5-1-2009	Amend(T)	6-1-2009
410-125-0210	12-1-2008	Amend	1-1-2009
410-125-0220	12-1-2008	Amend	1-1-2009
410-125-0360	12-1-2008	Amend	1-1-2009
410-125-0400	12-1-2008	Amend	1-1-2009
410-125-0600	12-1-2008	Amend	1-1-2009
410-125-0640	12-1-2008	Amend	1-1-2009
410-125-0720	12-1-2008	Amend	1-1-2009
410-125-1020	1-1-2009	Amend	1-1-2009
410-125-1070	12-1-2008	Amend	1-1-2009
410-127-0080	12-1-2008	Amend	1-1-2009
410-129-0080	12-1-2008	Amend	1-1-2009
410-130-0163	7-1-2009	Amend	7-1-2009
410-130-0180	12-1-2008	Amend	1-1-2009
410-130-0180	7-1-2009	Amend	7-1-2009
410-130-0200	7-1-2009	Amend	7-1-2009
410-130-0220	7-1-2009	Amend	7-1-2009
410-130-0240	7-1-2009	Amend	7-1-2009
410-130-0255	7-1-2009	Amend	7-1-2009
410-130-0365	7-1-2009	Amend	7-1-2009
410-130-0595	7-1-2009	Amend	7-1-2009
410-132-0100	12-1-2008	Amend	1-1-2009
410-133-0000	7-1-2009	Amend	7-1-2009
410-133-0040	12-28-2008	Amend	2-1-2009
410-133-0040	7-1-2009	Amend	7-1-2009
410-133-0060	7-1-2009	Amend	7-1-2009
410-133-0080	7-1-2009	Amend	7-1-2009
410-133-0090	12-28-2008	Amend	2-1-2009
410-133-0090	7-1-2009	Amend	7-1-2009
410-133-0100	12-28-2008	Amend	2-1-2009
410-133-0100	7-1-2009	Amend	7-1-2009
410-133-0120	7-1-2009	Amend	7-1-2009
410-133-0140	12-28-2008	Amend	2-1-2009
410-133-0140	7-1-2009	Amend	7-1-2009
410-133-0160	7-1-2009	Amend	7-1-2009
410-133-0180	7-1-2009	Amend	7-1-2009
410-133-0200	7-1-2009	Amend	7-1-2009
410-133-0220	12-28-2008	Amend	2-1-2009
410-133-0220	7-1-2009	Amend	7-1-2009
410-133-0245	7-1-2009	Amend	7-1-2009
410-133-0280	12-28-2008	Amend	2-1-2009
410-133-0280	7-1-2009	Amend	7-1-2009
410-133-0320	7-1-2009	Amend	7-1-2009
410-136-0240	12-1-2008	Amend	1-1-2009
410-136-0240	4-1-2009	Amend(T)	5-1-2009
410-136-0260	12-1-2008	Amend	1-1-2009
410-136-0300	12-1-2008	Amend	1-1-2009
410-136-0300	4-1-2009	Amend(T)	5-1-2009
410-137-0080	7-1-2009	Repeal	7-1-2009
410-138-0000	12-28-2008	Amend	2-1-2009
410-138-0005	12-28-2008	Adopt	2-1-2009
410-138-0007	12-28-2008	Adopt	2-1-2009
410-138-0009	12-28-2008	Adopt	2-1-2009
410-138-0020	12-28-2008	Amend	2-1-2009
410-138-0080	12-28-2008	Amend	2-1-2009
410-138-0300	12-28-2008	Amend	2-1-2009
410-138-0320	12-28-2008	Amend	2-1-2009
410-138-0380	12-28-2008	Amend	2-1-2009
410-138-0500	12-28-2008	Amend	2-1-2009
410-138-0520	12-28-2008	Amend	2-1-2009
410-138-0560	12-28-2008	Amend	2-1-2009
410-138-0600	12-28-2008	Amend	2-1-2009
410-138-0620	12-28-2008	Amend	2-1-2009
410-138-0680	12-28-2008	Amend	2-1-2009
410-138-0700	12-28-2008	Amend	2-1-2009
410-138-0720	12-28-2008	Amend	2-1-2009
410-138-0740	12-28-2008	Amend	2-1-2009
410-138-0780	12-28-2008	Amend	2-1-2009
410-140-0140	7-1-2009	Amend	7-1-2009
410-140-0160	7-1-2009	Amend	7-1-2009
410-141-0000	12-1-2008	Amend	1-1-2009
410-141-0020	12-1-2008	Amend	1-1-2009
410-141-0120	1-1-2009	Amend	1-1-2009
410-141-0220	12-1-2008	Amend	1-1-2009
410-141-0266	1-1-2009	Amend	1-1-2009
410-141-0425	1-5-2009	Adopt(T)	2-1-2009
410-141-0520	1-1-2009	Amend	1-1-2009
410-141-0520	1-30-2009	Amend(T)	3-1-2009
410-141-0520	4-1-2009	Amend(T)	5-1-2009
410-141-0520	4-17-2009	Amend(T)	6-1-2009
410-141-0520(T)	1-1-2009	Repeal	1-1-2009
410-141-0520(T)	4-1-2009	Suspend	5-1-2009
410-141-0520(T)	4-17-2009	Suspend	6-1-2009
410-146-0021	12-1-2008	Amend	1-1-2009
410-146-0040	1-1-2009	Amend	1-1-2009
410-146-0060	12-1-2008	Amend	1-1-2009
410-146-0080	12-1-2008	Amend	1-1-2009
410-146-0085	12-1-2008	Amend	1-1-2009
410-146-0085	7-1-2009	Amend	7-1-2009
410-146-0086	12-1-2008	Amend	1-1-2009
410-146-0100	12-1-2008	Amend	1-1-2009
410-146-0120	12-1-2008	Amend	1-1-2009
410-146-0130	12-1-2008	Amend	1-1-2009
410-146-0140	12-1-2008	Amend	1-1-2009
410-146-0340	12-1-2008	Amend	1-1-2009
410-146-0380	12-1-2008	Amend	1-1-2009
410-146-0380	7-1-2009	Amend	7-1-2009
410-146-0440	12-1-2008	Amend	1-1-2009
410-147-0020	12-1-2008	Amend	1-1-2009
410-147-0040	1-1-2009	Amend	1-1-2009
410-147-0060	12-1-2008	Amend	1-1-2009
410-147-0120	12-1-2008	Amend	1-1-2009
410-147-0120	7-1-2009	Amend	7-1-2009
410-147-0125	12-1-2008	Amend	1-1-2009
410-147-0125	7-1-2009	Amend	7-1-2009
410-147-0140	12-1-2008	Amend	1-1-2009
410-147-0140	7-1-2009	Amend	7-1-2009

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410-147-0180	12-1-2008	Amend	1-1-2009
410-147-0200	12-1-2008	Amend	1-1-2009
410-147-0220	12-1-2008	Amend	1-1-2009
410-147-0320	12-1-2008	Amend	1-1-2009
410-147-0340	12-1-2008	Amend	1-1-2009
410-147-0360	12-1-2008	Amend	1-1-2009
410-147-0460	12-1-2008	Amend	1-1-2009
410-147-0480	12-1-2008	Amend	1-1-2009
410-147-0540	12-1-2008	Amend	1-1-2009
410-147-0560	12-1-2008	Amend	1-1-2009
410-147-0610	12-1-2008	Amend	1-1-2009
410-147-0620	12-1-2008	Amend	1-1-2009
410-148-0100	7-1-2009	Amend	7-1-2009
410-148-0140	7-1-2009	Amend	7-1-2009
410-148-0260	7-1-2009	Amend	7-1-2009
411-001-0010	3-3-2009	Repeal	4-1-2009
411-030-0002	1-1-2009	Amend	2-1-2009
411-030-0020	1-1-2009	Amend	2-1-2009
411-030-0033	1-1-2009	Amend	2-1-2009
411-030-0040	1-1-2009	Amend	2-1-2009
411-030-0050	1-1-2009	Amend	2-1-2009
411-030-0055	1-1-2009	Amend	2-1-2009
411-030-0070	1-1-2009	Amend	2-1-2009
411-030-0080	1-1-2009	Amend	2-1-2009
411-030-0090	1-1-2009	Amend	2-1-2009
411-030-0100	1-1-2009	Amend	2-1-2009
411-054-0005	1-1-2009	Amend	2-1-2009
411-054-0008	1-1-2009	Repeal	2-1-2009
411-054-0012	1-1-2009	Amend	2-1-2009
411-054-0105	1-1-2009	Amend	2-1-2009
411-054-0125	3-3-2009	Adopt	4-1-2009
411-054-0125(T)	3-3-2009	Repeal	4-1-2009
411-305-0010	6-1-2009	Amend	7-1-2009
411-305-0020	6-1-2009	Amend	7-1-2009
411-305-0030	6-1-2009	Amend	7-1-2009
411-305-0040	6-1-2009	Repeal	7-1-2009
411-305-0050	6-1-2009	Amend	7-1-2009
411-305-0060	6-1-2009	Am. & Ren.	7-1-2009
411-305-0070	6-1-2009	Am. & Ren.	7-1-2009
411-305-0080	6-1-2009	Amend	7-1-2009
411-305-0090	6-1-2009	Amend	7-1-2009
411-305-0100	6-1-2009	Am. & Ren.	7-1-2009
411-305-0110	6-1-2009	Amend	7-1-2009
411-305-0120	6-1-2009	Amend	7-1-2009
411-305-0130	6-1-2009	Am. & Ren.	7-1-2009
411-305-0140	6-1-2009	Amend	7-1-2009
411-305-0150	6-1-2009	Am. & Ren.	7-1-2009
411-305-0160	6-1-2009	Amend	7-1-2009
411-305-0170	6-1-2009	Amend	7-1-2009
411-305-0180	6-1-2009	Amend	7-1-2009
411-350-0010	3-1-2009	Amend	4-1-2009
411-350-0020	3-1-2009	Amend	4-1-2009
411-350-0030	3-1-2009	Amend	4-1-2009
411-350-0040	3-1-2009	Amend	4-1-2009
411-350-0050	3-1-2009	Amend	4-1-2009
411-350-0060	3-1-2009	Am. & Ren.	4-1-2009
411-350-0070	3-1-2009	Repeal	4-1-2009
411-350-0080	3-1-2009	Amend	4-1-2009
411-350-0090	3-1-2009	Repeal	4-1-2009
411-350-0100	3-1-2009	Amend	4-1-2009
411-350-0110	3-1-2009	Amend	4-1-2009
411-350-0115	3-1-2009	Adopt	4-1-2009
411-350-0120	3-1-2009	Amend	4-1-2009
413-050-0000	3-19-2009	Amend	4-1-2009
413-050-0005	3-19-2009	Amend	4-1-2009
413-050-0010	3-19-2009	Amend	4-1-2009
413-050-0020	3-19-2009	Amend	4-1-2009
413-050-0030	3-19-2009	Amend	4-1-2009
413-050-0040	3-19-2009	Amend	4-1-2009
413-050-0050	3-19-2009	Amend	4-1-2009
413-070-0900	3-31-2009	Amend(T)	5-1-2009
413-070-0905	3-31-2009	Amend(T)	5-1-2009
413-070-0910	3-31-2009	Suspend	5-1-2009
413-070-0915	3-31-2009	Amend(T)	5-1-2009
413-070-0917	3-31-2009	Amend(T)	5-1-2009
413-070-0920	3-31-2009	Amend(T)	5-1-2009
413-070-0925	3-31-2009	Amend(T)	5-1-2009
413-070-0930	3-31-2009	Amend(T)	5-1-2009
413-070-0935	3-31-2009	Amend(T)	5-1-2009
413-070-0937	3-31-2009	Amend(T)	5-1-2009
413-070-0940	3-31-2009	Amend(T)	5-1-2009
413-070-0945	3-31-2009	Amend(T)	5-1-2009
413-070-0950	3-31-2009	Suspend	5-1-2009
413-070-0955	3-31-2009	Amend(T)	5-1-2009
413-070-0960	3-31-2009	Amend(T)	5-1-2009
413-070-0965	3-31-2009	Amend(T)	5-1-2009
413-070-0970	3-31-2009	Amend(T)	5-1-2009
413-070-0980	3-31-2009	Amend(T)	5-1-2009
413-070-0981	3-31-2009	Suspend	5-1-2009
413-120-0400	2-2-2009	Amend	3-1-2009
413-120-0400(T)	2-2-2009	Repeal	3-1-2009
413-120-0410	2-2-2009	Repeal	3-1-2009
413-120-0420	2-2-2009	Amend	3-1-2009
413-120-0420(T)	2-2-2009	Repeal	3-1-2009
413-120-0440	2-2-2009	Amend	3-1-2009
413-120-0440(T)	2-2-2009	Repeal	3-1-2009
413-120-0450	2-2-2009	Amend	3-1-2009
413-120-0450(T)	2-2-2009	Repeal	3-1-2009
413-120-0455	2-2-2009	Amend	3-1-2009
413-120-0455(T)	2-2-2009	Repeal	3-1-2009
413-120-0460	2-2-2009	Amend	3-1-2009
413-120-0460(T)	2-2-2009	Repeal	3-1-2009
413-120-0470	2-2-2009	Amend	3-1-2009
413-120-0470(T)	2-2-2009	Repeal	3-1-2009
413-200-0270	2-2-2009	Amend	3-1-2009
413-200-0272	2-2-2009	Amend	3-1-2009
413-200-0272(T)	2-2-2009	Repeal	3-1-2009
413-200-0274	2-2-2009	Amend	3-1-2009
413-200-0274(T)	2-2-2009	Repeal	3-1-2009
413-200-0276	2-2-2009	Amend	3-1-2009
413-200-0278	2-2-2009	Amend	3-1-2009
413-200-0278(T)	2-2-2009	Repeal	3-1-2009
413-200-0281	2-2-2009	Amend	3-1-2009
413-200-0281(T)	2-2-2009	Repeal	3-1-2009
413-200-0283	2-2-2009	Amend	3-1-2009
413-200-0283(T)	2-2-2009	Repeal	3-1-2009
413-200-0287	2-2-2009	Amend	3-1-2009

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413-200-0292(T)	2-2-2009	Repeal	3-1-2009
413-200-0296	2-2-2009	Amend	3-1-2009
413-200-0301	2-2-2009	Amend	3-1-2009
413-200-0305	2-2-2009	Amend	3-1-2009
413-200-0306	2-2-2009	Amend	3-1-2009
413-200-0306(T)	2-2-2009	Repeal	3-1-2009
413-200-0308	2-2-2009	Amend	3-1-2009
413-200-0314	2-2-2009	Amend	3-1-2009
413-200-0314(T)	2-2-2009	Repeal	3-1-2009
413-200-0335	2-2-2009	Amend	3-1-2009
413-200-0354	2-2-2009	Amend	3-1-2009
413-200-0358	2-2-2009	Amend	3-1-2009
413-200-0362	2-2-2009	Amend	3-1-2009
413-200-0371	2-2-2009	Amend	3-1-2009
413-200-0371(T)	2-2-2009	Repeal	3-1-2009
413-200-0379	2-2-2009	Amend	3-1-2009
413-200-0383	2-2-2009	Amend	3-1-2009
413-200-0383(T)	2-2-2009	Repeal	3-1-2009
413-200-0386	2-2-2009	Amend	3-1-2009
413-200-0388	2-2-2009	Amend	3-1-2009
413-200-0390	2-2-2009	Amend	3-1-2009
413-200-0393	2-2-2009	Amend	3-1-2009
413-200-0395	2-2-2009	Amend	3-1-2009
413-200-0396	2-2-2009	Amend	3-1-2009
416-340-0010	4-17-2009	Amend	5-1-2009
416-340-0020	4-17-2009	Amend	5-1-2009
416-340-0030	4-17-2009	Amend	5-1-2009
416-340-0040	4-17-2009	Amend	5-1-2009
416-340-0060	4-17-2009	Amend	5-1-2009
416-340-0070	4-17-2009	Amend	5-1-2009
416-530-0070	2-2-2009	Amend	3-1-2009
423-001-0006	12-12-2008	Amend(T)	1-1-2009
423-010-0023	12-12-2008	Amend	1-1-2009
436-009-0004	7-1-2009	Amend	7-1-2009
436-009-0005	1-1-2009	Amend	1-1-2009
436-009-0008	1-1-2009	Amend	1-1-2009
436-009-0010	7-1-2009	Amend	7-1-2009
436-009-0015	7-1-2009	Amend	7-1-2009
436-009-0018	1-1-2009	Adopt	1-1-2009
436-009-0018	7-1-2009	Amend	7-1-2009
436-009-0020	1-1-2009	Amend	1-1-2009
436-009-0020	7-1-2009	Amend	7-1-2009
436-009-0022	1-1-2009	Amend	1-1-2009
436-009-0022	7-1-2009	Amend	7-1-2009
436-009-0030	1-1-2009	Amend	1-1-2009
436-009-0030	7-1-2009	Amend	7-1-2009
436-009-0035	1-1-2009	Amend	1-1-2009
436-009-0040	1-1-2009	Amend	1-1-2009
436-009-0040	7-1-2009	Amend	7-1-2009
436-009-0050	7-1-2009	Amend	7-1-2009
436-009-0060	7-1-2009	Amend	7-1-2009
436-009-0070	1-1-2009	Amend	1-1-2009
436-009-0080	1-1-2009	Amend	1-1-2009
436-009-0090	1-1-2009	Amend	1-1-2009
436-009-0090	7-1-2009	Amend	7-1-2009
436-009-0095	1-1-2009	Adopt	1-1-2009
436-009-0100	1-1-2009	Amend	1-1-2009
436-010-0230	7-1-2009	Amend	7-1-2009
436-010-0275	7-1-2009	Amend	7-1-2009
436-015-0007	1-1-2009	Adopt	1-1-2009
436-015-0120	1-1-2009	Amend	1-1-2009
436-060-0005	1-1-2009	Amend	1-1-2009
436-060-0009	1-1-2009	Amend	1-1-2009
436-060-0010	1-1-2009	Amend	1-1-2009
436-060-0015	1-1-2009	Amend	1-1-2009
436-060-0017	1-1-2009	Amend	1-1-2009
436-060-0018	1-1-2009	Amend	1-1-2009
436-060-0020	1-1-2009	Amend	1-1-2009
436-060-0025	1-1-2009	Amend	1-1-2009
436-060-0035	1-1-2009	Amend	1-1-2009
436-060-0060	1-1-2009	Amend	1-1-2009
436-060-0105	1-1-2009	Amend	1-1-2009
436-060-0135	1-1-2009	Amend	1-1-2009
436-060-0137	1-1-2009	Amend	1-1-2009
436-060-0147	1-1-2009	Amend	1-1-2009
436-060-0150	1-1-2009	Amend	1-1-2009
436-060-0153	1-1-2009	Adopt	1-1-2009
436-060-0155	1-1-2009	Amend	1-1-2009
436-060-0500	1-1-2009	Amend	1-1-2009
437-001-0015	2-3-2009	Amend	3-1-2009
437-001-0160	2-3-2009	Amend	3-1-2009
437-001-0205	2-3-2009	Amend	3-1-2009
437-001-0760	2-3-2009	Amend	3-1-2009
437-001-1015	2-3-2009	Amend	3-1-2009
437-001-1020	2-3-2009	Amend	3-1-2009
437-002-0005	5-29-2009	Amend	7-1-2009
437-002-0067	4-17-2009	Repeal	5-1-2009
437-002-0069	4-17-2009	Repeal	5-1-2009
437-002-0071	4-17-2009	Repeal	5-1-2009
437-002-0072	4-17-2009	Adopt	5-1-2009
437-002-0073	4-17-2009	Repeal	5-1-2009
437-002-0074	4-17-2009	Adopt	5-1-2009
437-002-0075	4-17-2009	Repeal	5-1-2009
437-002-0076	4-17-2009	Adopt	5-1-2009
437-002-0080	5-29-2009	Amend	7-1-2009
437-002-0120	5-29-2009	Amend	7-1-2009
437-002-0180	5-29-2009	Amend	7-1-2009
437-002-0187	12-31-2008	Amend	2-1-2009
437-002-0320	4-17-2009	Amend	5-1-2009
437-002-0360	5-29-2009	Amend	7-1-2009
437-003-0001	5-29-2009	Amend	7-1-2009
437-004-1120	1-26-2009	Amend	3-1-2009
437-005-0001	5-29-2009	Amend	7-1-2009
437-005-0002	5-29-2009	Amend	7-1-2009
437-005-0002	6-5-2009	Amend	7-1-2009
437-005-0003	5-29-2009	Amend	7-1-2009
437-005-0003	6-5-2009	Amend	7-1-2009
441-025-0060	2-3-2009	Adopt	3-1-2009
441-500-0020	2-3-2009	Amend	3-1-2009
441-730-0010	6-2-2009	Amend	7-1-2009
441-730-0015	6-2-2009	Amend	7-1-2009
441-730-0025	6-2-2009	Amend	7-1-2009
441-730-0030	2-3-2009	Amend	3-1-2009
441-730-0030	6-2-2009	Amend	7-1-2009
441-730-0050	6-2-2009	Amend	7-1-2009
441-730-0070	6-2-2009	Amend	7-1-2009

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441-730-0100	6-2-2009	Amend	7-1-2009
441-730-0110	6-2-2009	Amend	7-1-2009
441-730-0120	6-2-2009	Amend	7-1-2009
441-730-0150	6-2-2009	Amend	7-1-2009
441-730-0165	6-2-2009	Adopt	7-1-2009
441-730-0170	6-2-2009	Amend	7-1-2009
441-730-0180	6-2-2009	Amend	7-1-2009
441-730-0200	6-2-2009	Amend	7-1-2009
441-730-0205	6-2-2009	Amend	7-1-2009
441-730-0210	6-2-2009	Amend	7-1-2009
441-730-0250	6-2-2009	Amend	7-1-2009
441-730-0255	6-2-2009	Amend	7-1-2009
441-730-0270	6-2-2009	Repeal	7-1-2009
441-730-0271	6-2-2009	Adopt	7-1-2009
441-730-0272	6-2-2009	Adopt	7-1-2009
441-730-0275	6-2-2009	Amend	7-1-2009
441-730-0280	6-2-2009	Amend	7-1-2009
441-730-0310	6-2-2009	Amend	7-1-2009
441-730-0320	6-2-2009	Amend	7-1-2009
441-865-0025	12-10-2008	Adopt	1-1-2009
442-001-0000	1-1-2009	Amend	2-1-2009
442-001-0005	1-1-2009	Amend	2-1-2009
442-001-0010	1-1-2009	Repeal	2-1-2009
442-001-0015	1-1-2009	Repeal	2-1-2009
442-001-0050	1-1-2009	Adopt	2-1-2009
442-001-0060	1-1-2009	Adopt	2-1-2009
442-001-0070	1-1-2009	Adopt	2-1-2009
442-001-0080	1-1-2009	Adopt	2-1-2009
442-001-0090	1-1-2009	Adopt	2-1-2009
442-001-0100	1-1-2009	Adopt	2-1-2009
442-001-0110	1-1-2009	Adopt	2-1-2009
442-001-0120	1-1-2009	Adopt	2-1-2009
442-001-0130	1-1-2009	Adopt	2-1-2009
442-001-0140	1-1-2009	Adopt	2-1-2009
442-001-0150	1-1-2009	Adopt	2-1-2009
442-001-0160	1-1-2009	Adopt	2-1-2009
443-002-0070	2-12-2009	Amend(T)	3-1-2009
443-002-0070	4-15-2009	Amend	5-1-2009
443-002-0070(T)	4-15-2009	Repeal	5-1-2009
443-002-0180	4-15-2009	Amend	5-1-2009
459-005-0001	2-12-2009	Amend	3-1-2009
459-005-0525	11-26-2008	Amend	1-1-2009
459-005-0535	11-26-2008	Amend	1-1-2009
459-005-0545	11-26-2008	Amend	1-1-2009
459-007-0001	4-6-2009	Amend	5-1-2009
459-007-0005	4-6-2009	Amend	6-1-2009
459-007-0015	4-6-2009	Amend	5-1-2009
459-007-0020	4-6-2009	Amend	5-1-2009
459-007-0025	4-6-2009	Amend	5-1-2009
459-007-0050	4-6-2009	Amend	5-1-2009
459-007-0060	4-6-2009	Amend	5-1-2009
459-007-0080	4-6-2009	Amend	5-1-2009
459-007-0110	4-6-2009	Amend	5-1-2009
459-007-0230	4-6-2009	Amend	5-1-2009
459-007-0240	4-6-2009	Amend	5-1-2009
459-007-0250	4-6-2009	Amend	5-1-2009
459-007-0300	4-6-2009	Amend	5-1-2009
459-007-0320	4-6-2009	Adopt	6-1-2009
459-007-0330	4-6-2009	Adopt	6-1-2009
459-007-0340	4-6-2009	Adopt	6-1-2009
459-007-0400	4-6-2009	Adopt	6-1-2009
459-007-0410	4-6-2009	Adopt	6-1-2009
459-007-0420	4-6-2009	Adopt	6-1-2009
459-007-0900	4-6-2009	Amend	5-1-2009
459-010-0010	11-26-2008	Amend	1-1-2009
459-010-0300	6-3-2009	Adopt	7-1-2009
459-011-0100	2-12-2009	Amend	3-1-2009
459-011-0110	2-12-2009	Amend	3-1-2009
459-013-0260	11-26-2008	Amend	1-1-2009
459-015-0001	2-12-2009	Amend	3-1-2009
459-017-0060	4-6-2009	Amend	5-1-2009
459-030-0011	2-12-2009	Amend	3-1-2009
459-030-0025	2-12-2009	Amend	3-1-2009
459-030-0030	2-12-2009	Amend	3-1-2009
459-050-0037	11-26-2008	Amend	1-1-2009
459-050-0075	2-12-2009	Amend	3-1-2009
459-070-0001	2-12-2009	Amend	3-1-2009
459-075-0175	11-26-2008	Adopt	1-1-2009
459-076-0001	2-12-2009	Amend	3-1-2009
459-080-0100	2-12-2009	Amend	3-1-2009
459-080-0200	4-6-2009	Amend	6-1-2009
459-080-0250	4-6-2009	Amend	6-1-2009
461-001-0000	1-1-2009	Amend	2-1-2009
461-001-0000	4-1-2009	Amend	5-1-2009
461-001-0025	1-1-2009	Amend	2-1-2009
461-101-0010	1-1-2009	Amend	2-1-2009
461-110-0330	1-1-2009	Amend	2-1-2009
461-110-0330	5-1-2009	Amend(T)	6-1-2009
461-110-0350	1-1-2009	Amend	2-1-2009
461-110-0350	4-1-2009	Amend	5-1-2009
461-110-0370	4-1-2009	Amend	5-1-2009
461-110-0530	5-1-2009	Amend(T)	6-1-2009
461-115-0050	1-1-2009	Amend	2-1-2009
461-115-0530	1-1-2009	Amend	2-1-2009
461-115-0705	5-6-2009	Amend(T)	6-1-2009
461-120-0110	4-1-2009	Amend(T)	4-1-2009
461-120-0110	4-1-2009	Amend(T)	5-1-2009
461-120-0110(T)	4-1-2009	Suspend	5-1-2009
461-120-0125	1-1-2009	Amend(T)	2-1-2009
461-120-0125	4-1-2009	Amend	5-1-2009
461-120-0125	5-1-2009	Amend(T)	6-1-2009
461-120-0125(T)	4-1-2009	Repeal	5-1-2009
461-130-0335	1-1-2009	Amend	2-1-2009
461-135-0010	1-1-2009	Amend	2-1-2009
461-135-0010	4-1-2009	Amend(T)	5-1-2009
461-135-0010	5-6-2009	Amend(T)	6-1-2009
461-135-0010(T)	5-6-2009	Suspend	6-1-2009
461-135-0070	5-1-2009	Amend(T)	6-1-2009
461-135-0075	1-1-2009	Amend	2-1-2009
461-135-0075(T)	1-1-2009	Repeal	2-1-2009
461-135-0082	5-1-2009	Amend(T)	6-1-2009
461-135-0085	1-1-2009	Amend	2-1-2009
461-135-0089	1-1-2009	Amend	2-1-2009
461-135-0400	4-1-2009	Amend(T)	4-1-2009
461-135-0400	4-1-2009	Amend(T)	5-1-2009
461-135-0400(T)	4-1-2009	Suspend	5-1-2009
461-135-0405	5-1-2009	Amend(T)	6-1-2009

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461-135-0730	1-1-2009	Amend	2-1-2009
461-135-0745	1-1-2009	Amend	2-1-2009
461-135-0780	1-1-2009	Amend	2-1-2009
461-135-0832	1-1-2009	Amend	2-1-2009
461-135-0900	5-1-2009	Amend(T)	6-1-2009
461-135-1102	1-1-2009	Amend	2-1-2009
461-135-1175	4-1-2009	Amend	5-1-2009
461-135-1175	6-1-2009	Amend(T)	7-1-2009
461-135-1195	1-1-2009	Amend	2-1-2009
461-135-1230	4-1-2009	Amend	5-1-2009
461-135-1250	1-1-2009	Amend(T)	2-1-2009
461-135-1250	4-1-2009	Amend	5-1-2009
461-135-1250(T)	4-1-2009	Repeal	5-1-2009
461-140-0040	4-1-2009	Amend	5-1-2009
461-145-0143	3-3-2009	Adopt(T)	4-1-2009
461-145-0380	1-1-2009	Amend	2-1-2009
461-145-0455	4-1-2009	Amend	5-1-2009
461-145-0460	4-1-2009	Amend	5-1-2009
461-145-0540	1-1-2009	Amend	2-1-2009
461-145-0550	3-3-2009	Amend(T)	4-1-2009
461-145-0580	4-1-2009	Amend	5-1-2009
461-145-0820	1-1-2009	Amend	2-1-2009
461-145-0830	1-1-2009	Amend	2-1-2009
461-145-0840	1-1-2009	Repeal	2-1-2009
461-150-0048	1-1-2009	Repeal	2-1-2009
461-150-0049	1-1-2009	Amend	2-1-2009
461-150-0050	1-1-2009	Amend	2-1-2009
461-155-0030	5-1-2009	Amend(T)	6-1-2009
461-155-0150	4-1-2009	Amend(T)	4-1-2009
461-155-0180	1-27-2009	Amend	3-1-2009
461-155-0190	4-1-2009	Amend(T)	5-1-2009
461-155-0235	1-27-2009	Amend	3-1-2009
461-155-0250	1-1-2009	Amend	2-1-2009
461-155-0250	3-1-2009	Amend(T)	4-1-2009
461-155-0270	1-1-2009	Amend	2-1-2009
461-155-0290	4-1-2009	Amend(T)	5-1-2009
461-155-0291	4-1-2009	Amend(T)	5-1-2009
461-155-0295	1-1-2009	Amend	2-1-2009
461-155-0295	4-1-2009	Amend(T)	5-1-2009
461-155-0300	1-1-2009	Amend	2-1-2009
461-155-0320	1-1-2009	Amend	2-1-2009
461-155-0500	1-1-2009	Amend	2-1-2009
461-155-0500(T)	1-1-2009	Repeal	2-1-2009
461-155-0526	1-1-2009	Amend	2-1-2009
461-155-0526(T)	1-1-2009	Repeal	2-1-2009
461-155-0600	1-1-2009	Amend	2-1-2009
461-155-0600(T)	1-1-2009	Repeal	2-1-2009
461-155-0610	1-1-2009	Amend	2-1-2009
461-155-0610(T)	1-1-2009	Repeal	2-1-2009
461-155-0700	1-1-2009	Adopt	2-1-2009
461-155-0700(T)	1-1-2009	Repeal	2-1-2009
461-155-0710	1-1-2009	Adopt	2-1-2009
461-155-0710(T)	1-1-2009	Repeal	2-1-2009
461-160-0040	4-1-2009	Amend(T)	4-1-2009
461-160-0060	4-1-2009	Amend	5-1-2009
461-160-0100	1-1-2009	Amend	2-1-2009
461-160-0410	1-1-2009	Amend	2-1-2009
461-160-0410	4-1-2009	Amend	5-1-2009
461-160-0550	1-1-2009	Amend(T)	2-1-2009
461-160-0550	4-1-2009	Amend	5-1-2009
461-160-0550(T)	4-1-2009	Repeal	5-1-2009
461-160-0551	1-1-2009	Amend(T)	2-1-2009
461-160-0551	4-1-2009	Amend	5-1-2009
461-160-0551(T)	4-1-2009	Repeal	5-1-2009
461-160-0580	1-1-2009	Amend	2-1-2009
461-160-0620	1-1-2009	Amend	2-1-2009
461-165-0030	1-1-2009	Amend	2-1-2009
461-165-0060	4-1-2009	Amend	5-1-2009
461-165-0060	4-1-2009	Amend(T)	5-1-2009
461-165-0060(T)	4-1-2009	Repeal	5-1-2009
461-165-0180	4-1-2009	Amend	5-1-2009
461-165-0410	4-1-2009	Amend	5-1-2009
461-165-0420	4-1-2009	Amend	5-1-2009
461-170-0010	1-1-2009	Amend	2-1-2009
461-170-0011	4-1-2009	Amend	5-1-2009
461-170-0015	1-1-2009	Am. & Ren.	2-1-2009
461-170-0020	1-1-2009	Am. & Ren.	2-1-2009
461-170-0025	1-1-2009	Am. & Ren.	2-1-2009
461-170-0030	1-1-2009	Am. & Ren.	2-1-2009
461-170-0035	1-1-2009	Am. & Ren.	2-1-2009
461-170-0100	1-1-2009	Amend	2-1-2009
461-170-0101	1-1-2009	Amend	2-1-2009
461-170-0101	4-1-2009	Amend	5-1-2009
461-170-0102	1-1-2009	Amend	2-1-2009
461-170-0102	4-1-2009	Amend	5-1-2009
461-170-0103	4-1-2009	Amend	5-1-2009
461-170-0104	4-1-2009	Amend	5-1-2009
461-170-0120	1-1-2009	Amend	2-1-2009
461-170-0150	1-1-2009	Amend	2-1-2009
461-170-0150	4-1-2009	Amend	5-1-2009
461-170-0160	1-1-2009	Amend	2-1-2009
461-170-0160	4-1-2009	Amend	5-1-2009
461-170-0170	1-1-2009	Repeal	2-1-2009
461-170-0200	1-1-2009	Amend	2-1-2009
461-175-0220	1-1-2009	Amend	2-1-2009
461-175-0240	1-1-2009	Amend	2-1-2009
461-175-0270	1-1-2009	Amend	2-1-2009
461-175-0280	1-1-2009	Amend	2-1-2009
461-175-0280	4-1-2009	Amend	5-1-2009
461-175-0305	1-1-2009	Amend	2-1-2009
461-180-0005	1-1-2009	Amend	2-1-2009
461-180-0006	4-1-2009	Amend	5-1-2009
461-180-0070	4-1-2009	Amend	5-1-2009
461-180-0090	1-1-2009	Amend	2-1-2009
461-180-0125	1-1-2009	Amend	2-1-2009
461-190-0360	5-1-2009	Amend(T)	6-1-2009
461-193-0000	4-1-2009	Amend	5-1-2009
461-193-0001	4-1-2009	Repeal	5-1-2009
461-193-0005	4-1-2009	Repeal	5-1-2009
461-193-0007	4-1-2009	Repeal	5-1-2009
461-193-0010	4-1-2009	Amend	5-1-2009
461-193-0016	4-1-2009	Repeal	5-1-2009
461-193-0026	4-1-2009	Repeal	5-1-2009
461-193-0031	4-1-2009	Amend	5-1-2009
461-193-0031	5-1-2009	Amend(T)	6-1-2009
461-193-0040	4-1-2009	Repeal	5-1-2009
461-193-0042	4-1-2009	Amend	5-1-2009

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461-193-0185	4-1-2009	Amend	5-1-2009
461-193-0190	4-1-2009	Amend	5-1-2009
461-193-0221	4-1-2009	Amend	5-1-2009
461-193-0240	4-1-2009	Amend	5-1-2009
461-193-0246	4-1-2009	Amend	5-1-2009
461-193-0470	4-1-2009	Amend	5-1-2009
461-193-0560	4-1-2009	Amend	5-1-2009
461-193-0610	4-1-2009	Repeal	5-1-2009
461-193-0640	4-1-2009	Repeal	5-1-2009
461-193-0650	4-1-2009	Amend	5-1-2009
461-193-0660	4-1-2009	Repeal	5-1-2009
461-193-0670	4-1-2009	Amend	5-1-2009
461-193-0690	4-1-2009	Amend	5-1-2009
461-193-0890	4-1-2009	Amend	5-1-2009
461-193-0940	4-1-2009	Amend	5-1-2009
461-193-0960	4-1-2009	Amend	5-1-2009
461-193-1200	4-1-2009	Amend	5-1-2009
461-193-1230	4-1-2009	Amend	5-1-2009
461-193-1610	4-1-2009	Repeal	5-1-2009
461-195-0521	4-1-2009	Amend(T)	5-1-2009
462-210-0030	7-1-2009	Amend	6-1-2009
462-220-0030	7-1-2009	Amend	6-1-2009
462-220-0070	7-1-2009	Amend	6-1-2009
471-010-0025	12-1-2008	Adopt	1-1-2009
471-010-0045	12-1-2008	Adopt	1-1-2009
471-031-0072	12-1-2008	Amend	1-1-2009
471-031-0151	12-1-2008	Amend	1-1-2009
471-031-0190	12-1-2008	Adopt	1-1-2009
471-031-0195	12-1-2008	Adopt	1-1-2009
471-031-0200	12-1-2008	Adopt	1-1-2009
471-031-0205	12-1-2008	Adopt	1-1-2009
471-031-0210	12-1-2008	Adopt	1-1-2009
471-031-0215	12-1-2008	Adopt	1-1-2009
471-031-0220	12-1-2008	Adopt	1-1-2009
471-031-0225	12-1-2008	Adopt	1-1-2009
471-031-0230	12-1-2008	Adopt	1-1-2009
543-060-0000	3-2-2009	Amend	4-1-2009
543-060-0010	3-2-2009	Amend	4-1-2009
543-060-0020	3-2-2009	Amend	4-1-2009
543-060-0030	3-2-2009	Amend	4-1-2009
543-060-0040	3-2-2009	Amend	4-1-2009
543-060-0060	3-2-2009	Amend	4-1-2009
543-060-0070	3-2-2009	Adopt	4-1-2009
571-060-0005	7-1-2009	Amend	6-1-2009
573-040-0005	6-15-2009	Amend	7-1-2009
574-050-0005	2-13-2009	Amend	3-1-2009
576-003-0000	6-9-2009	Adopt(T)	7-1-2009
576-003-0005	6-9-2009	Adopt(T)	7-1-2009
576-003-0010	6-9-2009	Adopt(T)	7-1-2009
576-003-0020	6-9-2009	Adopt(T)	7-1-2009
576-003-0040	6-9-2009	Adopt(T)	7-1-2009
576-003-0050	6-9-2009	Adopt(T)	7-1-2009
576-003-0060	6-9-2009	Adopt(T)	7-1-2009
576-003-0070	6-9-2009	Adopt(T)	7-1-2009
576-003-0080	6-9-2009	Adopt(T)	7-1-2009
576-003-0090	6-9-2009	Adopt(T)	7-1-2009
576-003-0100	6-9-2009	Adopt(T)	7-1-2009
576-003-0110	6-9-2009	Adopt(T)	7-1-2009
576-003-0120	6-9-2009	Adopt(T)	7-1-2009
577-060-0020	5-14-2009	Amend(T)	6-1-2009
579-020-0006	3-12-2009	Amend	4-1-2009
580-021-0027	3-13-2009	Adopt(T)	4-1-2009
580-040-0035	1-22-2009	Amend	3-1-2009
580-040-0040	2-20-2009	Amend(T)	4-1-2009
580-040-0040	3-13-2009	Amend(T)	4-1-2009
580-040-0040(T)	3-13-2009	Suspend	4-1-2009
581-001-0100	12-19-2008	Amend	2-1-2009
581-011-0136	2-24-2009	Adopt(T)	4-1-2009
581-011-0142	2-24-2009	Adopt(T)	4-1-2009
581-022-0610	12-19-2008	Amend	2-1-2009
581-022-0711	12-19-2008	Adopt	2-1-2009
581-022-1131	4-23-2009	Amend	6-1-2009
582-001-0003	12-19-2008	Amend(T)	2-1-2009
582-001-0003	3-27-2009	Amend	5-1-2009
582-001-0003(T)	3-27-2009	Repeal	5-1-2009
582-001-0005	12-19-2008	Amend(T)	2-1-2009
582-001-0005	3-27-2009	Amend	5-1-2009
582-001-0005(T)	3-27-2009	Repeal	5-1-2009
582-001-0010	12-19-2008	Amend(T)	2-1-2009
582-001-0010	3-27-2009	Amend	5-1-2009
582-001-0010(T)	3-27-2009	Repeal	5-1-2009
582-010-0005	2-11-2009	Suspend	3-1-2009
582-010-0010	2-11-2009	Suspend	3-1-2009
582-010-0015	2-11-2009	Suspend	3-1-2009
582-010-0020	2-11-2009	Suspend	3-1-2009
582-010-0021	2-11-2009	Suspend	3-1-2009
582-010-0022	2-11-2009	Suspend	3-1-2009
582-010-0025	2-11-2009	Suspend	3-1-2009
582-010-0030	2-11-2009	Suspend	3-1-2009
582-050-0000	3-27-2009	Amend	5-1-2009
582-070-0010	2-11-2009	Amend(T)	3-1-2009
582-070-0020	2-11-2009	Amend(T)	3-1-2009
582-080-0010	2-11-2009	Amend(T)	3-1-2009
582-080-0020	2-11-2009	Amend(T)	3-1-2009
582-080-0030	2-11-2009	Amend(T)	3-1-2009
582-080-0040	2-11-2009	Amend(T)	3-1-2009
582-080-0050	2-11-2009	Amend(T)	3-1-2009
582-085-0004	2-11-2009	Suspend	3-1-2009
582-100-0040	12-19-2008	Amend(T)	2-1-2009
582-100-0040	3-27-2009	Amend	5-1-2009
582-100-0040(T)	3-27-2009	Repeal	5-1-2009
584-005-0005	5-15-2009	Amend(T)	6-1-2009
584-021-0105	5-15-2009	Amend(T)	6-1-2009
584-021-0140	5-15-2009	Amend(T)	6-1-2009
584-021-0150	5-15-2009	Amend(T)	6-1-2009
584-021-0210	5-15-2009	Amend(T)	6-1-2009
584-036-0010	3-12-2009	Amend	4-1-2009
584-036-0015	3-12-2009	Amend	4-1-2009
584-036-0055	2-27-2009	Amend(T)	4-1-2009
584-036-0080	3-12-2009	Amend	4-1-2009
584-036-0083	3-12-2009	Adopt	4-1-2009
584-040-0005	5-15-2009	Amend(T)	6-1-2009
584-048-0006	5-15-2009	Amend(T)	6-1-2009
584-048-0010	5-15-2009	Suspend	6-1-2009
584-048-0015	5-15-2009	Suspend	6-1-2009
584-048-0020	5-15-2009	Suspend	6-1-2009

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584-048-0030	5-15-2009	Amend(T)	6-1-2009
584-048-0035	5-15-2009	Amend(T)	6-1-2009
584-048-0067	5-15-2009	Suspend	6-1-2009
584-048-0070	5-15-2009	Amend(T)	6-1-2009
584-048-0085	5-15-2009	Amend(T)	6-1-2009
584-048-0090	5-15-2009	Suspend	6-1-2009
584-048-0095	5-15-2009	Amend(T)	6-1-2009
584-048-0105	5-15-2009	Suspend	6-1-2009
584-048-0110	5-15-2009	Amend(T)	6-1-2009
584-048-0115	5-15-2009	Suspend	6-1-2009
584-050-0004	3-12-2009	Am. & Ren.	4-1-2009
584-050-0040	3-12-2009	Amend	4-1-2009
584-050-0042	3-12-2009	Am. & Ren.	4-1-2009
584-050-0043	3-12-2009	Am. & Ren.	4-1-2009
584-050-0100	3-12-2009	Adopt	4-1-2009
584-052-0027	3-12-2009	Amend	4-1-2009
584-052-0030	3-12-2009	Amend	4-1-2009
584-052-0031	3-12-2009	Amend	4-1-2009
584-052-0032	3-12-2009	Amend	4-1-2009
584-052-0033	3-12-2009	Amend	4-1-2009
584-060-0002	5-15-2009	Amend(T)	6-1-2009
584-060-0012	5-15-2009	Amend(T)	6-1-2009
584-060-0013	5-15-2009	Amend(T)	6-1-2009
584-060-0014	5-15-2009	Amend(T)	6-1-2009
584-060-0022	5-15-2009	Amend(T)	6-1-2009
584-060-0040	3-12-2009	Repeal	4-1-2009
584-060-0091	3-12-2009	Repeal	4-1-2009
584-060-0171	3-12-2009	Amend	4-1-2009
584-060-0171	5-15-2009	Amend(T)	6-1-2009
584-060-0181	3-12-2009	Amend	4-1-2009
584-060-0182	3-12-2009	Adopt	4-1-2009
584-060-0210	3-12-2009	Amend	4-1-2009
584-070-0012	5-15-2009	Amend(T)	6-1-2009
584-070-0014	5-15-2009	Amend(T)	6-1-2009
584-070-0022	5-15-2009	Amend(T)	6-1-2009
584-070-0211	5-15-2009	Amend(T)	6-1-2009
584-070-0221	5-15-2009	Amend(T)	6-1-2009
584-070-0310	5-15-2009	Amend(T)	6-1-2009
584-080-0002	5-15-2009	Amend(T)	6-1-2009
584-080-0012	5-15-2009	Amend(T)	6-1-2009
584-080-0022	5-15-2009	Amend(T)	6-1-2009
584-080-0031	5-15-2009	Amend(T)	6-1-2009
584-080-0161	5-15-2009	Amend(T)	6-1-2009
584-100-0006	3-12-2009	Amend	4-1-2009
585-005-0015	6-11-2009	Adopt	7-1-2009
585-005-0020	6-11-2009	Adopt	7-1-2009
585-005-0025	6-11-2009	Adopt	7-1-2009
585-005-0030	6-11-2009	Adopt	7-1-2009
585-005-0035	6-11-2009	Adopt	7-1-2009
585-005-0040	6-11-2009	Adopt	7-1-2009
585-005-0045	6-11-2009	Adopt	7-1-2009
585-005-0050	6-11-2009	Adopt	7-1-2009
585-005-0055	6-11-2009	Adopt	7-1-2009
585-005-0060	6-11-2009	Adopt	7-1-2009
585-005-0065	6-11-2009	Adopt	7-1-2009
585-005-0070	6-11-2009	Adopt	7-1-2009
585-005-0075	6-11-2009	Adopt	7-1-2009
585-010-0310	4-13-2009	Amend	5-1-2009
585-020-0005	4-13-2009	Amend	5-1-2009
585-020-0020	4-13-2009	Amend	5-1-2009
585-020-0025	4-13-2009	Amend	5-1-2009
585-020-0030	4-13-2009	Amend	5-1-2009
585-020-0040	4-13-2009	Amend	5-1-2009
585-020-0045	4-13-2009	Amend	5-1-2009
585-020-0055	4-13-2009	Repeal	5-1-2009
585-020-0060	4-13-2009	Amend	5-1-2009
589-020-0225	12-29-2008	Amend	2-1-2009
603-052-0129	2-13-2009	Amend	3-1-2009
603-052-0153	2-13-2009	Amend	3-1-2009
603-052-0160	2-13-2009	Amend	3-1-2009
603-052-0201	2-13-2009	Amend	3-1-2009
603-052-0265	2-13-2009	Amend	3-1-2009
603-052-0360	2-13-2009	Amend	3-1-2009
603-052-1020	4-9-2009	Amend	5-1-2009
603-052-1230	4-9-2009	Amend	5-1-2009
603-052-1250	4-9-2009	Amend	5-1-2009
603-057-0500	1-23-2009	Amend(T)	3-1-2009
603-057-0500	5-7-2009	Amend	6-1-2009
603-057-0500(T)	5-7-2009	Repeal	6-1-2009
603-057-0502	1-23-2009	Adopt(T)	3-1-2009
603-057-0502	5-7-2009	Adopt	6-1-2009
603-057-0502(T)	5-7-2009	Repeal	6-1-2009
603-057-0510	1-23-2009	Amend(T)	3-1-2009
603-057-0510	5-7-2009	Amend	6-1-2009
603-057-0510(T)	5-7-2009	Repeal	6-1-2009
603-057-0515	1-23-2009	Suspend	3-1-2009
603-057-0515	5-7-2009	Repeal	6-1-2009
603-057-0520	1-23-2009	Amend(T)	3-1-2009
603-057-0520	5-7-2009	Amend	6-1-2009
603-057-0520(T)	5-7-2009	Repeal	6-1-2009
603-057-0525	1-23-2009	Amend(T)	3-1-2009
603-057-0525	5-7-2009	Amend	6-1-2009
603-057-0525(T)	5-7-2009	Repeal	6-1-2009
603-057-0530	1-23-2009	Amend(T)	3-1-2009
603-057-0530	5-7-2009	Amend	6-1-2009
603-057-0530(T)	5-7-2009	Repeal	6-1-2009
603-057-0532	1-23-2009	Adopt(T)	3-1-2009
603-057-0532	5-7-2009	Adopt	6-1-2009
603-057-0532(T)	5-7-2009	Repeal	6-1-2009
603-074-0080	1-30-2009	Amend	3-1-2009
619-005-0010	12-17-2008	Adopt	2-1-2009
619-005-0020	12-17-2008	Adopt	2-1-2009
619-005-0030	12-17-2008	Adopt	2-1-2009
619-005-0040	12-17-2008	Adopt	2-1-2009
619-005-0050	12-17-2008	Adopt	2-1-2009
619-005-0060	12-17-2008	Adopt	2-1-2009
620-010-0020	3-1-2009	Amend	2-1-2009
620-010-0020(T)	3-1-2009	Repeal	2-1-2009
629-021-0700	5-11-2009	Amend	6-1-2009
629-022-0030	2-1-2009	Amend	2-1-2009
629-022-0035	2-1-2009	Adopt	2-1-2009
629-022-0040	2-1-2009	Amend	2-1-2009
629-022-0050	2-1-2009	Adopt	2-1-2009
629-022-0060	2-1-2009	Adopt	2-1-2009
629-022-0070	2-1-2009	Adopt	2-1-2009
629-022-0080	2-1-2009	Adopt	2-1-2009
629-022-0100	2-1-2009	Repeal	2-1-2009

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629-022-0120	2-1-2009	Amend	2-1-2009
629-022-0130	2-1-2009	Amend	2-1-2009
629-022-0140	2-1-2009	Amend	2-1-2009
629-022-0150	2-1-2009	Amend	2-1-2009
629-022-0160	2-1-2009	Amend	2-1-2009
629-022-0200	2-1-2009	Amend	2-1-2009
629-022-0210	2-1-2009	Amend	2-1-2009
629-022-0220	2-1-2009	Amend	2-1-2009
629-022-0230	2-1-2009	Amend	2-1-2009
629-022-0250	2-1-2009	Amend	2-1-2009
629-022-0300	2-1-2009	Amend	2-1-2009
629-022-0320	2-1-2009	Amend	2-1-2009
629-022-0380	2-1-2009	Amend	2-1-2009
629-022-0390	2-1-2009	Amend	2-1-2009
629-022-0400	2-1-2009	Amend	2-1-2009
629-022-0410	2-1-2009	Amend	2-1-2009
629-022-0500	2-1-2009	Repeal	2-1-2009
629-022-0600	2-1-2009	Repeal	2-1-2009
629-022-0700	2-1-2009	Repeal	2-1-2009
629-022-0800	2-1-2009	Adopt	2-1-2009
629-022-0810	2-1-2009	Adopt	2-1-2009
629-022-0820	2-1-2009	Adopt	2-1-2009
629-022-0830	2-1-2009	Adopt	2-1-2009
629-022-0840	2-1-2009	Adopt	2-1-2009
629-022-0850	2-1-2009	Adopt	2-1-2009
629-041-0100	3-25-2009	Amend(T)	5-1-2009
632-030-0005	5-15-2009	Amend	6-1-2009
632-030-0010	5-15-2009	Amend	6-1-2009
632-030-0015	5-15-2009	Amend	6-1-2009
632-030-0016	5-15-2009	Amend	6-1-2009
632-030-0017	5-15-2009	Amend	6-1-2009
632-030-0018	5-15-2009	Amend	6-1-2009
632-030-0019	5-15-2009	Amend	6-1-2009
632-030-0020	5-15-2009	Amend	6-1-2009
632-030-0021	5-15-2009	Amend	6-1-2009
632-030-0022	5-15-2009	Amend	6-1-2009
632-030-0024	5-15-2009	Amend	6-1-2009
632-030-0025	5-15-2009	Amend	6-1-2009
632-030-0026	5-15-2009	Adopt	6-1-2009
632-030-0027	5-15-2009	Amend	6-1-2009
632-030-0030	5-15-2009	Amend	6-1-2009
632-030-0033	5-15-2009	Amend	6-1-2009
632-030-0035	5-15-2009	Amend	6-1-2009
632-030-0040	5-15-2009	Amend	6-1-2009
632-030-0041	5-15-2009	Adopt	6-1-2009
632-030-0042	5-15-2009	Amend	6-1-2009
632-030-0045	5-15-2009	Amend	6-1-2009
632-030-0049	5-15-2009	Adopt	6-1-2009
632-030-0052	5-15-2009	Adopt	6-1-2009
632-030-0056	5-15-2009	Amend	6-1-2009
632-030-0070	5-15-2009	Amend	6-1-2009
635-001-0050	1-14-2009	Amend(T)	2-1-2009
635-003-0003	5-18-2009	Amend	7-1-2009
635-003-0004	3-15-2009	Amend(T)	4-1-2009
635-003-0004	5-18-2009	Amend	7-1-2009
635-003-0004(T)	5-18-2009	Repeal	7-1-2009
635-003-0074	5-18-2009	Amend	7-1-2009
635-003-0077	5-18-2009	Amend	7-1-2009
635-003-0085	5-18-2009	Amend	7-1-2009
635-004-0005	4-27-2009	Amend	6-1-2009
635-004-0009	4-27-2009	Amend	6-1-2009
635-004-0012	4-22-2009	Adopt	6-1-2009
635-004-0014	11-21-2008	Amend	1-1-2009
635-004-0016	1-1-2009	Amend(T)	2-1-2009
635-004-0016	2-23-2009	Amend(T)	4-1-2009
635-004-0016	4-22-2009	Amend	6-1-2009
635-004-0016(T)	2-23-2009	Suspend	4-1-2009
635-004-0016(T)	4-22-2009	Repeal	6-1-2009
635-004-0017	4-22-2009	Adopt	6-1-2009
635-004-0018	4-27-2009	Amend	6-1-2009
635-004-0019	12-4-2008	Amend(T)	1-1-2009
635-004-0019	1-5-2009	Amend(T)	2-1-2009
635-004-0019	3-18-2009	Amend(T)	5-1-2009
635-004-0019	4-27-2009	Amend	6-1-2009
635-004-0019	5-1-2009	Amend(T)	6-1-2009
635-004-0019(T)	12-4-2008	Suspend	1-1-2009
635-004-0019(T)	3-18-2009	Suspend	5-1-2009
635-004-0019(T)	4-27-2009	Repeal	6-1-2009
635-004-0020	11-21-2008	Amend	1-1-2009
635-004-0027	1-1-2009	Amend(T)	2-1-2009
635-004-0033	1-1-2009	Amend(T)	2-1-2009
635-004-0033	3-1-2009	Amend(T)	4-1-2009
635-004-0033	4-27-2009	Amend	6-1-2009
635-004-0033(T)	3-1-2009	Suspend	4-1-2009
635-004-0033(T)	4-27-2009	Repeal	6-1-2009
635-004-0035	11-21-2008	Amend	1-1-2009
635-004-0042	6-1-2009	Adopt(T)	6-1-2009
635-004-0048	11-21-2008	Amend	1-1-2009
635-004-0050	11-21-2008	Amend	1-1-2009
635-004-0060	11-21-2008	Amend	1-1-2009
635-004-0090	1-1-2009	Amend(T)	2-1-2009
635-004-0090	4-27-2009	Amend	6-1-2009
635-004-0090(T)	4-27-2009	Repeal	6-1-2009
635-004-0135	11-21-2008	Amend	1-1-2009
635-004-0170	11-21-2008	Amend	1-1-2009
635-005-0001	11-21-2008	Amend	1-1-2009
635-005-0005	11-21-2008	Amend	1-1-2009
635-005-0005	12-17-2008	Amend	2-1-2009
635-005-0016	11-21-2008	Amend	1-1-2009
635-005-0045	11-21-2008	Amend	1-1-2009
635-005-0047	11-21-2008	Amend	1-1-2009
635-005-0048	11-21-2008	Amend	1-1-2009
635-005-0055	11-21-2008	Amend	1-1-2009
635-005-0055	12-1-2008	Amend(T)	1-1-2009
635-005-0055	5-29-2009	Amend(T)	7-1-2009
635-005-0055(T)	5-29-2009	Suspend	7-1-2009
635-005-0064	12-17-2008	Amend	2-1-2009
635-005-0065	11-21-2008	Amend	1-1-2009
635-005-0065	12-17-2008	Amend	2-1-2009
635-005-0067	12-17-2008	Amend	2-1-2009
635-005-0068	12-17-2008	Adopt	2-1-2009
635-005-0069	12-17-2008	Adopt	2-1-2009
635-005-0084	11-21-2008	Amend	1-1-2009
635-005-0090	11-21-2008	Amend	1-1-2009
635-005-0095	11-21-2008	Amend	1-1-2009
635-005-0100	11-21-2008	Amend	1-1-2009
635-005-0135	11-21-2008	Amend	1-1-2009

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635-005-0145	11-21-2008	Amend	1-1-2009
635-005-0180	11-21-2008	Amend	1-1-2009
635-006-0001	11-21-2008	Amend	1-1-2009
635-006-0132	11-21-2008	Amend	1-1-2009
635-006-0133	11-21-2008	Amend	1-1-2009
635-006-0145	11-21-2008	Amend	1-1-2009
635-006-0150	11-21-2008	Amend	1-1-2009
635-006-0165	11-21-2008	Amend	1-1-2009
635-006-0200	11-21-2008	Amend	1-1-2009
635-006-0205	11-21-2008	Amend	1-1-2009
635-006-0207	11-21-2008	Amend	1-1-2009
635-006-0210	11-21-2008	Amend	1-1-2009
635-006-0211	11-21-2008	Amend	1-1-2009
635-006-0212	6-16-2009	Amend(T)	7-1-2009
635-006-0213	11-21-2008	Amend	1-1-2009
635-006-0215	11-21-2008	Amend	1-1-2009
635-006-0215	6-16-2009	Amend(T)	7-1-2009
635-006-0225	11-21-2008	Amend	1-1-2009
635-006-0225	6-16-2009	Amend(T)	7-1-2009
635-006-0230	11-21-2008	Amend	1-1-2009
635-006-0232	1-13-2009	Amend	2-1-2009
635-006-0235	11-21-2008	Amend	1-1-2009
635-006-0412	11-21-2008	Amend	1-1-2009
635-006-0425	11-21-2008	Amend	1-1-2009
635-006-0810	11-21-2008	Amend	1-1-2009
635-006-0850	12-17-2008	Amend	2-1-2009
635-006-0910	12-17-2008	Amend	2-1-2009
635-006-1015	4-22-2009	Amend	6-1-2009
635-006-1035	11-21-2008	Amend	1-1-2009
635-006-1035	12-17-2008	Amend	2-1-2009
635-006-1035	4-22-2009	Amend	6-1-2009
635-006-1075	11-21-2008	Amend	1-1-2009
635-006-1075	4-22-2009	Amend	6-1-2009
635-006-1085	12-17-2008	Amend	2-1-2009
635-006-1085	2-26-2009	Amend(T)	4-1-2009
635-006-1085	4-22-2009	Amend	6-1-2009
635-006-1085(T)	4-22-2009	Repeal	6-1-2009
635-008-0055	4-27-2009	Amend	6-1-2009
635-008-0095	6-10-2009	Amend	7-1-2009
635-008-0123	4-27-2009	Amend	6-1-2009
635-008-0140	4-27-2009	Amend	6-1-2009
635-008-0145	1-15-2009	Amend	2-1-2009
635-008-0147	3-11-2009	Amend(T)	4-1-2009
635-008-0147	3-30-2009	Amend(T)	5-1-2009
635-010-0170	12-9-2008	Amend(T)	1-1-2009
635-010-0170	5-14-2009	Amend(T)	6-1-2009
635-010-0170(T)	5-14-2009	Suspend	6-1-2009
635-011-0100	1-1-2009	Amend	2-1-2009
635-013-0003	1-1-2009	Amend	2-1-2009
635-013-0003	5-18-2009	Amend	7-1-2009
635-013-0004	1-1-2009	Amend	2-1-2009
635-013-0007	5-18-2009	Amend	7-1-2009
635-013-0009	3-15-2009	Amend(T)	4-1-2009
635-014-0080	1-1-2009	Amend	2-1-2009
635-014-0090	1-1-2009	Amend	2-1-2009
635-014-0090	5-22-2009	Amend(T)	6-1-2009
635-014-0090	6-15-2009	Amend(T)	7-1-2009
635-014-0090(T)	6-15-2009	Suspend	7-1-2009
635-016-0080	1-1-2009	Amend	2-1-2009
635-016-0090	1-1-2009	Amend	2-1-2009
635-016-0090	6-1-2009	Amend(T)	7-1-2009
635-017-0080	1-1-2009	Amend	2-1-2009
635-017-0090	1-1-2009	Amend	2-1-2009
635-017-0090	2-25-2009	Amend	4-1-2009
635-017-0090	3-1-2009	Amend(T)	3-1-2009
635-017-0090(T)	2-25-2009	Repeal	4-1-2009
635-017-0095	1-1-2009	Amend	2-1-2009
635-017-0095	1-1-2009	Amend(T)	2-1-2009
635-017-0095	2-25-2009	Amend	4-1-2009
635-017-0095(T)	2-25-2009	Repeal	4-1-2009
635-018-0080	1-1-2009	Amend	2-1-2009
635-018-0090	1-1-2009	Amend	2-1-2009
635-018-0090	4-15-2009	Amend(T)	4-1-2009
635-018-0090	8-1-2009	Amend(T)	7-1-2009
635-019-0080	1-1-2009	Amend	2-1-2009
635-019-0090	1-1-2009	Amend	2-1-2009
635-021-0080	1-1-2009	Amend	2-1-2009
635-021-0090	1-1-2009	Amend	2-1-2009
635-021-0090	5-30-2009	Amend(T)	7-1-2009
635-021-0090	6-13-2009	Amend(T)	7-1-2009
635-021-0090(T)	6-13-2009	Suspend	7-1-2009
635-023-0080	1-1-2009	Amend	2-1-2009
635-023-0090	1-1-2009	Amend	2-1-2009
635-023-0095	1-1-2009	Amend	2-1-2009
635-023-0095	1-1-2009	Amend(T)	2-1-2009
635-023-0095	2-26-2009	Amend	4-1-2009
635-023-0095	4-13-2009	Amend(T)	5-1-2009
635-023-0095	6-6-2009	Amend(T)	7-1-2009
635-023-0095(T)	2-26-2009	Repeal	4-1-2009
635-023-0095(T)	6-6-2009	Suspend	7-1-2009
635-023-0125	1-1-2009	Amend	2-1-2009
635-023-0125	2-26-2009	Amend	4-1-2009
635-023-0125	3-1-2009	Amend(T)	3-1-2009
635-023-0125	5-15-2009	Amend(T)	6-1-2009
635-023-0125	6-12-2009	Amend(T)	7-1-2009
635-023-0125(T)	2-26-2009	Repeal	4-1-2009
635-023-0125(T)	6-12-2009	Suspend	7-1-2009
635-023-0128	1-1-2009	Amend	2-1-2009
635-023-0128	5-18-2009	Amend	7-1-2009
635-023-0128	6-16-2009	Amend(T)	7-1-2009
635-023-0130	1-1-2009	Amend	2-1-2009
635-023-0130	5-18-2009	Amend	7-1-2009
635-023-0134	1-1-2009	Amend	2-1-2009
635-023-0134	5-30-2009	Amend(T)	7-1-2009
635-039-0080	1-1-2009	Amend	2-1-2009
635-039-0080	4-27-2009	Amend	6-1-2009
635-039-0085	1-1-2009	Amend	2-1-2009
635-039-0085	4-27-2009	Amend	6-1-2009
635-039-0085	5-22-2009	Amend(T)	7-1-2009
635-039-0090	1-1-2009	Amend	2-1-2009
635-039-0090	2-2-2009	Amend(T)	3-1-2009
635-039-0090	4-27-2009	Amend	6-1-2009
635-039-0090(T)	4-27-2009	Repeal	6-1-2009
635-041-0005	11-21-2008	Amend	1-1-2009
635-041-0010	11-21-2008	Amend	1-1-2009
635-041-0030	11-21-2008	Amend	1-1-2009
635-041-0030	2-26-2009	Amend	4-1-2009

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635-041-0045	11-21-2008	Amend	1-1-2009
635-041-0060	11-21-2008	Amend	1-1-2009
635-041-0061	11-21-2008	Amend	1-1-2009
635-041-0061	2-26-2009	Amend	4-1-2009
635-041-0063	11-21-2008	Amend	1-1-2009
635-041-0063	2-26-2009	Amend	4-1-2009
635-041-0065	11-21-2008	Amend	1-1-2009
635-041-0065	2-2-2009	Amend(T)	3-1-2009
635-041-0065	2-16-2009	Amend(T)	3-1-2009
635-041-0065	3-6-2009	Amend(T)	4-1-2009
635-041-0065(T)	2-16-2009	Suspend	3-1-2009
635-041-0065(T)	3-6-2009	Suspend	4-1-2009
635-041-0076	5-16-2009	Amend(T)	6-1-2009
635-041-0076	5-27-2009	Amend(T)	7-1-2009
635-041-0076	6-16-2009	Amend(T)	7-1-2009
635-041-0076(T)	5-27-2009	Suspend	7-1-2009
635-041-0076(T)	6-16-2009	Suspend	7-1-2009
635-041-0510	11-21-2008	Amend	1-1-2009
635-041-0520	11-21-2008	Amend	1-1-2009
635-041-0600	11-21-2008	Amend	1-1-2009
635-042-0001	11-21-2008	Amend	1-1-2009
635-042-0007	11-21-2008	Amend	1-1-2009
635-042-0022	11-21-2008	Amend	1-1-2009
635-042-0022	3-27-2009	Amend(T)	5-1-2009
635-042-0022	4-7-2009	Amend(T)	5-1-2009
635-042-0022	4-14-2009	Amend(T)	5-1-2009
635-042-0022(T)	4-7-2009	Suspend	5-1-2009
635-042-0022(T)	4-14-2009	Suspend	5-1-2009
635-042-0027	6-18-2009	Amend(T)	7-1-2009
635-042-0110	11-21-2008	Amend	1-1-2009
635-042-0110	6-1-2009	Amend(T)	7-1-2009
635-042-0130	1-1-2009	Amend(T)	2-1-2009
635-042-0130	2-26-2009	Amend	4-1-2009
635-042-0130(T)	2-26-2009	Repeal	4-1-2009
635-042-0133	2-26-2009	Amend	4-1-2009
635-042-0135	1-1-2009	Amend(T)	2-1-2009
635-042-0135	2-2-2009	Amend(T)	3-1-2009
635-042-0135(T)	2-2-2009	Suspend	3-1-2009
635-042-0145	2-15-2009	Amend(T)	3-1-2009
635-042-0145	3-11-2009	Amend(T)	4-1-2009
635-042-0145	5-17-2009	Amend(T)	6-1-2009
635-042-0145(T)	3-11-2009	Suspend	4-1-2009
635-042-0145(T)	5-17-2009	Suspend	6-1-2009
635-042-0160	2-15-2009	Amend(T)	3-1-2009
635-042-0160	5-17-2009	Amend(T)	6-1-2009
635-042-0160(T)	5-17-2009	Suspend	6-1-2009
635-042-0170	2-15-2009	Amend(T)	3-1-2009
635-042-0180	2-15-2009	Amend(T)	3-1-2009
635-042-0180	3-6-2009	Amend(T)	4-1-2009
635-042-0180	4-7-2009	Amend(T)	5-1-2009
635-042-0180	5-17-2009	Amend(T)	6-1-2009
635-042-0180(T)	3-6-2009	Suspend	4-1-2009
635-042-0180(T)	4-7-2009	Suspend	5-1-2009
635-042-0180(T)	5-17-2009	Suspend	6-1-2009
635-043-0105	4-13-2009	Amend(T)	5-1-2009
635-045-0000	1-1-2009	Amend	2-1-2009
635-045-0002	1-1-2009	Amend	2-1-2009
635-048-0080	5-7-2009	Amend(T)	6-1-2009
635-049-0025	6-10-2009	Amend	7-1-2009
635-049-0055	6-10-2009	Repeal	7-1-2009
635-049-0065	6-10-2009	Adopt	7-1-2009
635-049-0067	6-10-2009	Adopt	7-1-2009
635-049-0069	6-10-2009	Adopt	7-1-2009
635-049-0071	6-10-2009	Adopt	7-1-2009
635-049-0073	6-10-2009	Adopt	7-1-2009
635-049-0090	6-10-2009	Repeal	7-1-2009
635-049-0200	5-6-2009	Repeal	6-1-2009
635-049-0205	11-24-2008	Amend	1-1-2009
635-049-0210	1-1-2009	Repeal	2-1-2009
635-049-0235	1-1-2009	Adopt	2-1-2009
635-049-0255	5-6-2009	Adopt	6-1-2009
635-055-0035	1-1-2009	Amend	2-1-2009
635-055-0035	5-15-2009	Amend(T)	4-1-2009
635-055-0037	1-1-2009	Adopt	2-1-2009
635-060-0000	1-1-2009	Amend	2-1-2009
635-060-0008	5-12-2009	Amend(T)	6-1-2009
635-060-0008	5-14-2009	Amend(T)	6-1-2009
635-060-0009	1-1-2009	Amend	2-1-2009
635-060-0009	5-28-2009	Amend(T)	7-1-2009
635-060-0046	6-10-2009	Amend	7-1-2009
635-060-0055	1-1-2009	Amend	2-1-2009
635-065-0001	1-1-2009	Amend	2-1-2009
635-065-0015	6-10-2009	Amend	7-1-2009
635-065-0401	1-1-2009	Amend	2-1-2009
635-065-0625	1-1-2009	Amend	2-1-2009
635-065-0740	1-1-2009	Amend	2-1-2009
635-065-0760	1-1-2009	Amend	2-1-2009
635-065-0765	1-9-2009	Amend	2-1-2009
635-066-0000	1-1-2009	Amend	2-1-2009
635-066-0010	1-1-2009	Amend	2-1-2009
635-066-0020	1-1-2009	Amend	2-1-2009
635-067-0000	1-1-2009	Amend	2-1-2009
635-067-0000	6-10-2009	Amend	7-1-2009
635-067-0004	1-1-2009	Amend	2-1-2009
635-068-0000	3-1-2009	Amend	4-1-2009
635-068-0000	6-10-2009	Amend	7-1-2009
635-069-0000	2-3-2009	Amend	3-1-2009
635-069-0000	6-10-2009	Amend	7-1-2009
635-070-0000	4-1-2009	Amend	5-1-2009
635-070-0000	6-10-2009	Amend	7-1-2009
635-071-0000	4-1-2009	Amend	5-1-2009
635-071-0000	6-10-2009	Amend	7-1-2009
635-072-0000	1-1-2009	Amend	2-1-2009
635-073-0000	2-3-2009	Amend	3-1-2009
635-073-0000	6-10-2009	Amend	7-1-2009
635-073-0065	2-3-2009	Amend	3-1-2009
635-073-0070	2-3-2009	Amend	3-1-2009
635-075-0005	5-5-2009	Amend(T)	6-1-2009
635-075-0005	6-10-2009	Amend	7-1-2009
635-075-0005(T)	6-10-2009	Repeal	7-1-2009
635-080-0050	1-1-2009	Amend	2-1-2009
635-080-0051	1-1-2009	Amend	2-1-2009
635-080-0062	1-1-2009	Amend	2-1-2009
635-080-0063	1-1-2009	Amend	2-1-2009
635-195-0000	11-24-2008	Adopt	1-1-2009
635-195-0010	11-24-2008	Adopt	1-1-2009
647-010-0010	7-1-2009	Amend	6-1-2009

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660-024-0000	4-16-2009	Amend	5-1-2009
660-024-0010	4-16-2009	Amend	5-1-2009
660-024-0020	4-16-2009	Amend	5-1-2009
660-024-0030	4-16-2009	Amend	5-1-2009
660-024-0040	4-16-2009	Amend	5-1-2009
660-024-0050	4-16-2009	Amend	5-1-2009
660-024-0060	4-16-2009	Amend	5-1-2009
660-024-0070	4-16-2009	Amend	5-1-2009
660-024-0080	4-16-2009	Adopt	5-1-2009
660-033-0120	1-2-2009	Amend	2-1-2009
660-033-0130	1-2-2009	Amend	2-1-2009
660-041-0010	4-2-2009	Amend	5-1-2009
660-041-0110	4-2-2009	Amend	5-1-2009
660-041-0170	4-2-2009	Adopt	5-1-2009
670-010-0005	7-1-2009	Amend	7-1-2009
670-010-0006	7-1-2009	Repeal	7-1-2009
670-010-0010	7-1-2009	Amend	7-1-2009
670-010-0011	7-1-2009	Amend	7-1-2009
690-200-0050	1-2-2009	Amend	2-1-2009
690-205-0200	1-2-2009	Amend	2-1-2009
690-205-0205	1-2-2009	Adopt	2-1-2009
690-215-0005	1-2-2009	Amend	2-1-2009
690-215-0006	1-2-2009	Adopt	2-1-2009
690-215-0025	1-2-2009	Adopt	2-1-2009
690-215-0030	1-2-2009	Amend	2-1-2009
690-215-0035	1-2-2009	Adopt	2-1-2009
690-215-0040	1-2-2009	Amend	2-1-2009
690-220-0030	1-2-2009	Amend	2-1-2009
690-220-0040	1-2-2009	Amend	2-1-2009
690-220-0050	1-2-2009	Amend	2-1-2009
690-220-0060	1-2-2009	Repeal	2-1-2009
690-220-0070	1-2-2009	Amend	2-1-2009
690-220-0080	1-2-2009	Amend	2-1-2009
690-220-0115	1-2-2009	Adopt	2-1-2009
690-240-0010	1-2-2009	Amend	2-1-2009
690-240-0035	1-2-2009	Amend	2-1-2009
690-240-0375	1-2-2009	Amend	2-1-2009
690-240-0385	1-2-2009	Adopt	2-1-2009
731-050-0030	5-20-2009	Adopt(T)	7-1-2009
733-030-0006	4-3-2009	Amend	5-1-2009
733-030-0011	4-3-2009	Amend	5-1-2009
733-030-0016	4-3-2009	Amend	5-1-2009
733-030-0021	4-3-2009	Amend	5-1-2009
733-030-0026	4-3-2009	Amend	5-1-2009
733-030-0036	4-3-2009	Amend	5-1-2009
733-030-0045	4-3-2009	Amend	5-1-2009
733-030-0050	4-3-2009	Amend	5-1-2009
733-030-0055	4-3-2009	Amend	5-1-2009
733-030-0060	4-3-2009	Amend	5-1-2009
733-030-0065	4-3-2009	Amend	5-1-2009
733-030-0080	4-3-2009	Amend	5-1-2009
733-030-0085	4-3-2009	Amend	5-1-2009
733-030-0090	4-3-2009	Amend	5-1-2009
733-030-0095	4-3-2009	Amend	5-1-2009
733-030-0100	4-3-2009	Amend	5-1-2009
733-030-0105	4-3-2009	Amend	5-1-2009
733-030-0110	4-3-2009	Amend	5-1-2009
733-030-0115	4-3-2009	Amend	5-1-2009
733-030-0120	4-3-2009	Amend	5-1-2009
733-030-0125	4-3-2009	Amend	5-1-2009
733-030-0130	4-3-2009	Amend	5-1-2009
733-030-0135	4-3-2009	Amend	5-1-2009
733-030-0140	4-3-2009	Repeal	5-1-2009
733-030-0150	4-3-2009	Amend	5-1-2009
733-030-0155	4-3-2009	Amend	5-1-2009
733-030-0160	4-3-2009	Amend	5-1-2009
733-030-0180	4-3-2009	Amend	5-1-2009
733-030-0190	4-3-2009	Amend	5-1-2009
733-030-0250	4-3-2009	Amend	5-1-2009
733-030-0260	4-3-2009	Amend	5-1-2009
733-030-0270	4-3-2009	Amend	5-1-2009
733-030-0280	4-3-2009	Amend	5-1-2009
733-030-0290	4-3-2009	Amend	5-1-2009
733-030-0300	4-3-2009	Amend	5-1-2009
733-030-0320	4-3-2009	Amend	5-1-2009
733-030-0330	4-3-2009	Amend	5-1-2009
733-030-0340	4-3-2009	Amend	5-1-2009
733-030-0350	4-3-2009	Amend	5-1-2009
733-030-0400	6-1-2009	Adopt	7-1-2009
733-030-0410	6-1-2009	Adopt	7-1-2009
733-030-0420	6-1-2009	Adopt	7-1-2009
733-030-0430	6-1-2009	Adopt	7-1-2009
733-030-0440	6-1-2009	Adopt	7-1-2009
733-030-0450	6-1-2009	Adopt	7-1-2009
733-030-0460	6-1-2009	Adopt	7-1-2009
733-030-0470	6-1-2009	Adopt	7-1-2009
733-030-0480	6-1-2009	Adopt	7-1-2009
734-059-0015	2-20-2009	Amend	4-1-2009
734-060-0000	3-23-2009	Adopt	5-1-2009
734-060-0010	2-20-2009	Amend	4-1-2009
734-060-0105	2-20-2009	Amend	4-1-2009
734-060-0175	2-20-2009	Amend	4-1-2009
734-060-0185	2-20-2009	Amend	4-1-2009
734-062-0100	3-23-2009	Adopt	5-1-2009
734-062-0105	3-23-2009	Adopt	5-1-2009
734-062-0110	3-23-2009	Adopt	5-1-2009
734-062-0115	3-23-2009	Adopt	5-1-2009
734-062-0120	3-23-2009	Adopt	5-1-2009
734-062-0125	3-23-2009	Adopt	5-1-2009
734-071-0010	12-15-2008	Amend	1-1-2009
734-072-0010	3-20-2009	Amend	5-1-2009
734-072-0020	3-20-2009	Amend	5-1-2009
734-072-0022	3-20-2009	Amend	5-1-2009
734-072-0030	3-20-2009	Amend	5-1-2009
734-073-0110	12-15-2008	Amend	1-1-2009
734-073-0120	12-15-2008	Repeal	1-1-2009
734-075-0010	3-20-2009	Amend	5-1-2009
734-078-0015	4-17-2009	Amend	6-1-2009
734-078-0017	4-17-2009	Adopt	6-1-2009
734-082-0015	3-20-2009	Amend	5-1-2009
734-082-0025	3-20-2009	Amend	5-1-2009
734-082-0040	3-20-2009	Amend	5-1-2009
735-010-0130	1-1-2009	Amend	1-1-2009
735-010-0130(T)	1-1-2009	Repeal	1-1-2009
735-016-0030	6-1-2009	Amend	7-1-2009
735-016-0070	6-1-2009	Amend	7-1-2009
735-032-0036	2-20-2009	Adopt	4-1-2009
735-062-0005	1-1-2009	Amend	1-1-2009

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735-062-0014(T)	1-1-2009	Repeal	1-1-2009
735-062-0015	1-1-2009	Amend	1-1-2009
735-062-0015(T)	1-1-2009	Repeal	1-1-2009
735-062-0020	1-1-2009	Amend	1-1-2009
735-062-0020(T)	1-1-2009	Repeal	1-1-2009
735-062-0040	2-20-2009	Amend	4-1-2009
735-062-0078	2-20-2009	Adopt	4-1-2009
735-062-0080	2-20-2009	Amend	4-1-2009
735-062-0096	3-20-2009	Adopt	5-1-2009
735-062-0140	2-20-2009	Amend	4-1-2009
735-063-0000	2-20-2009	Adopt	4-1-2009
735-063-0050	2-20-2009	Amend	4-1-2009
735-063-0055	2-20-2009	Repeal	4-1-2009
735-063-0060	2-20-2009	Amend	4-1-2009
735-063-0065	2-20-2009	Amend	4-1-2009
735-063-0070	2-20-2009	Amend	4-1-2009
735-063-0075	2-20-2009	Amend	4-1-2009
735-064-0110	12-15-2008	Amend	1-1-2009
735-070-0043	1-26-2009	Adopt	3-1-2009
735-070-0043(T)	1-26-2009	Repeal	3-1-2009
735-150-0005	3-20-2009	Amend	5-1-2009
735-158-0000	3-20-2009	Amend	5-1-2009
735-158-0005	3-20-2009	Adopt	5-1-2009
735-158-0010	3-20-2009	Adopt	5-1-2009
735-160-0010	2-20-2009	Amend	4-1-2009
735-160-0011	2-20-2009	Amend	4-1-2009
735-160-0012	2-20-2009	Repeal	4-1-2009
735-160-0013	2-20-2009	Repeal	4-1-2009
735-160-0075	2-20-2009	Amend	4-1-2009
735-160-0080	2-20-2009	Amend	4-1-2009
735-160-0085	2-20-2009	Repeal	4-1-2009
735-160-0093	2-20-2009	Repeal	4-1-2009
735-160-0125	2-20-2009	Amend	4-1-2009
735-170-0000	7-1-2009	Amend	7-1-2009
735-170-0010	7-1-2009	Amend	7-1-2009
735-170-0020	7-1-2009	Amend	7-1-2009
735-170-0030	7-1-2009	Repeal	7-1-2009
735-170-0040	7-1-2009	Amend	7-1-2009
735-170-0045	7-1-2009	Amend	7-1-2009
735-170-0050	7-1-2009	Amend	7-1-2009
735-170-0060	7-1-2009	Repeal	7-1-2009
735-170-0070	7-1-2009	Repeal	7-1-2009
735-170-0080	7-1-2009	Repeal	7-1-2009
735-170-0090	7-1-2009	Amend	7-1-2009
735-170-0100	7-1-2009	Amend	7-1-2009
735-170-0105	7-1-2009	Adopt	7-1-2009
735-170-0110	7-1-2009	Amend	7-1-2009
735-170-0115	7-1-2009	Adopt	7-1-2009
735-170-0120	7-1-2009	Amend	7-1-2009
735-170-0130	7-1-2009	Amend	7-1-2009
735-170-0140	7-1-2009	Amend	7-1-2009
735-174-0000	7-1-2009	Amend	7-1-2009
735-174-0010	7-1-2009	Amend	7-1-2009
735-174-0020	7-1-2009	Amend	7-1-2009
735-174-0030	7-1-2009	Amend	7-1-2009
735-174-0035	7-1-2009	Adopt	7-1-2009
735-174-0040	7-1-2009	Amend	7-1-2009
735-174-0045	7-1-2009	Adopt	7-1-2009
735-176-0000	7-1-2009	Amend	7-1-2009
735-176-0010	7-1-2009	Amend	7-1-2009
735-176-0015	7-1-2009	Repeal	7-1-2009
735-176-0017	7-1-2009	Adopt	7-1-2009
735-176-0018	7-1-2009	Repeal	7-1-2009
735-176-0019	7-1-2009	Adopt	7-1-2009
735-176-0020	7-1-2009	Amend	7-1-2009
735-176-0021	7-1-2009	Adopt	7-1-2009
735-176-0022	7-1-2009	Adopt	7-1-2009
735-176-0030	7-1-2009	Amend	7-1-2009
735-176-0040	7-1-2009	Amend	7-1-2009
735-176-0045	7-1-2009	Adopt	7-1-2009
736-004-0062	12-15-2008	Amend	1-1-2009
736-010-0040	12-15-2008	Amend	1-1-2009
736-010-0055	12-15-2008	Amend	1-1-2009
736-015-0015	8-1-2009	Amend	7-1-2009
736-015-0020	2-10-2009	Amend	3-1-2009
736-015-0035	6-2-2009	Amend	7-1-2009
736-015-0040	2-10-2009	Amend	3-1-2009
736-018-0045	2-1-2009	Amend	2-1-2009
736-018-0045	4-1-2009	Amend	4-1-2009
736-018-0045	5-1-2009	Amend	5-1-2009
736-018-0045	5-1-2009	Amend	5-1-2009
736-018-0045	6-1-2009	Amend	6-1-2009
736-140-0010	6-2-2009	Adopt(T)	7-1-2009
736-140-0020	6-2-2009	Adopt(T)	7-1-2009
736-146-0010	12-15-2008	Amend	1-1-2009
736-146-0012	12-15-2008	Amend	1-1-2009
736-146-0015	12-15-2008	Amend	1-1-2009
736-146-0020	12-15-2008	Amend	1-1-2009
736-146-0025	12-15-2008	Repeal	1-1-2009
736-146-0030	12-15-2008	Repeal	1-1-2009
736-146-0040	12-15-2008	Repeal	1-1-2009
736-146-0050	12-15-2008	Amend	1-1-2009
736-146-0060	12-15-2008	Amend	1-1-2009
736-146-0070	12-15-2008	Amend	1-1-2009
736-146-0080	12-15-2008	Amend	1-1-2009
736-146-0090	12-15-2008	Amend	1-1-2009
736-146-0100	12-15-2008	Amend	1-1-2009
736-146-0110	12-15-2008	Amend	1-1-2009
736-146-0120	12-15-2008	Amend	1-1-2009
736-146-0130	12-15-2008	Amend	1-1-2009
736-146-0140	12-15-2008	Amend	1-1-2009
736-147-0010	12-15-2008	Amend	1-1-2009
736-147-0020	12-15-2008	Repeal	1-1-2009
736-147-0030	12-15-2008	Amend	1-1-2009
736-147-0040	12-15-2008	Adopt	1-1-2009
736-147-0050	12-15-2008	Amend	1-1-2009
736-147-0060	12-15-2008	Amend	1-1-2009
736-147-0070	12-15-2008	Adopt	1-1-2009
736-148-0010	12-15-2008	Amend	1-1-2009
736-148-0020	12-15-2008	Amend	1-1-2009
736-149-0010	12-15-2008	Amend	1-1-2009
740-015-0020	12-15-2008	Amend	1-1-2009
740-015-0040	12-15-2008	Amend	1-1-2009
740-100-0010	4-1-2009	Amend	5-1-2009
740-100-0060	4-1-2009	Amend	5-1-2009
740-100-0065	4-1-2009	Adopt	5-1-2009
740-100-0070	4-1-2009	Amend	5-1-2009

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740-100-0090	4-1-2009	Amend	5-1-2009
740-100-0100	4-1-2009	Amend	5-1-2009
740-110-0010	4-1-2009	Amend	5-1-2009
740-110-0080	4-1-2009	Amend	5-1-2009
741-100-0005	2-20-2009	Adopt	4-1-2009
741-100-0020	2-20-2009	Amend	4-1-2009
741-100-0030	2-20-2009	Amend	4-1-2009
741-100-0040	2-20-2009	Adopt	4-1-2009
741-105-0010	2-20-2009	Repeal	4-1-2009
741-105-0020	2-20-2009	Repeal	4-1-2009
741-105-0030	2-20-2009	Repeal	4-1-2009
741-110-0020	2-20-2009	Amend	4-1-2009
741-110-0030	2-20-2009	Amend	4-1-2009
741-110-0040	2-20-2009	Amend	4-1-2009
741-110-0050	2-20-2009	Amend	4-1-2009
741-110-0060	2-20-2009	Amend	4-1-2009
741-110-0070	2-20-2009	Amend	4-1-2009
741-110-0080	2-20-2009	Amend	4-1-2009
741-110-0090	2-20-2009	Amend	4-1-2009
741-115-0030	2-20-2009	Amend	4-1-2009
741-115-0040	2-20-2009	Amend	4-1-2009
741-115-0060	2-20-2009	Amend	4-1-2009
741-115-0070	2-20-2009	Amend	4-1-2009
741-120-0020	2-20-2009	Amend	4-1-2009
741-120-0040	2-20-2009	Amend	4-1-2009
741-125-0020	2-20-2009	Repeal	4-1-2009
741-200-0010	2-20-2009	Amend	4-1-2009
741-200-0040	2-20-2009	Amend	4-1-2009
741-200-0065	2-20-2009	Adopt	4-1-2009
800-010-0020	2-5-2009	Amend	3-1-2009
800-010-0025	2-5-2009	Amend	3-1-2009
800-010-0030	2-5-2009	Amend	3-1-2009
800-010-0040	2-5-2009	Amend	3-1-2009
800-010-0041	2-5-2009	Amend	3-1-2009
800-010-0042	2-5-2009	Amend	3-1-2009
800-015-0005	2-5-2009	Amend	3-1-2009
800-015-0010	2-5-2009	Amend	3-1-2009
800-015-0015	2-5-2009	Amend	3-1-2009
800-015-0020	2-5-2009	Amend	3-1-2009
800-015-0030	2-5-2009	Amend	3-1-2009
800-020-0015	2-5-2009	Amend	3-1-2009
800-020-0020	2-5-2009	Amend	3-1-2009
800-020-0025	2-5-2009	Amend	3-1-2009
800-020-0030	2-5-2009	Amend	3-1-2009
800-020-0035	2-5-2009	Amend	3-1-2009
800-025-0020	2-5-2009	Amend	3-1-2009
800-025-0023	2-5-2009	Amend	3-1-2009
800-025-0025	2-5-2009	Amend	3-1-2009
800-025-0027	2-5-2009	Amend	3-1-2009
800-025-0030	2-5-2009	Amend	3-1-2009
800-025-0040	2-5-2009	Amend	3-1-2009
800-025-0050	2-5-2009	Amend	3-1-2009
800-025-0060	2-5-2009	Amend	3-1-2009
800-025-0070	2-5-2009	Amend	3-1-2009
800-030-0025	2-5-2009	Amend	3-1-2009
800-030-0050	2-5-2009	Amend	3-1-2009
801-001-0035	1-1-2009	Amend	2-1-2009
801-010-0010	1-1-2009	Amend	2-1-2009
801-010-0050	1-1-2009	Amend	2-1-2009
801-010-0115	1-1-2009	Amend	2-1-2009
801-010-0345	1-1-2009	Amend	2-1-2009
801-030-0020	1-1-2009	Amend	2-1-2009
801-040-0010	1-1-2009	Amend	2-1-2009
801-040-0090	1-1-2009	Amend	2-1-2009
804-001-0002	7-1-2009	Amend	7-1-2009
806-001-0003	5-14-2009	Amend	6-1-2009
806-001-0003	7-1-2009	Amend	7-1-2009
806-010-0095	2-5-2009	Amend	3-1-2009
808-001-0008	7-1-2009	Amend	7-1-2009
808-002-0480	6-1-2009	Amend	7-1-2009
808-002-0780	2-1-2009	Amend	3-1-2009
808-003-0045	7-1-2009	Amend	7-1-2009
808-003-0095	6-3-2009	Amend(T)	7-1-2009
808-003-0100	7-1-2009	Amend	7-1-2009
808-003-0105	7-1-2009	Amend	7-1-2009
808-003-0130	7-1-2009	Amend	7-1-2009
808-040-0020	5-13-2009	Amend(T)	6-1-2009
808-040-0050	5-13-2009	Amend(T)	6-1-2009
808-040-0080	5-13-2009	Amend(T)	6-1-2009
809-010-0025	7-1-2009	Amend	7-1-2009
811-015-0025	12-23-2008	Amend	2-1-2009
811-015-0030	1-29-2009	Amend	3-1-2009
812-001-0200	2-23-2009	Amend(T)	4-1-2009
812-001-0200	6-1-2009	Amend	6-1-2009
812-001-0200(T)	6-1-2009	Repeal	6-1-2009
812-001-0220	6-1-2009	Adopt	6-1-2009
812-002-0060	11-20-2008	Amend	1-1-2009
812-002-0262	2-1-2009	Adopt	3-1-2009
812-002-0420	11-20-2008	Amend	1-1-2009
812-002-0420	6-1-2009	Amend	6-1-2009
812-003-0120	6-1-2009	Amend	6-1-2009
812-003-0140	2-1-2009	Amend	3-1-2009
812-003-0141	2-1-2009	Adopt	3-1-2009
812-003-0200	6-1-2009	Amend	6-1-2009
812-003-0320	6-1-2009	Amend	6-1-2009
812-003-0330	6-1-2009	Amend	6-1-2009
812-003-0450	11-20-2008	Repeal	1-1-2009
812-005-0280	11-20-2008	Amend	1-1-2009
812-005-0280	6-1-2009	Amend	6-1-2009
812-005-0800	11-20-2008	Amend	1-1-2009
812-005-0800	2-1-2009	Amend	3-1-2009
812-005-0800	6-1-2009	Amend	6-1-2009
812-006-0100	11-20-2008	Amend	1-1-2009
812-006-0200	11-20-2008	Amend	1-1-2009
812-006-0300	6-1-2009	Amend	6-1-2009
812-006-0400	6-1-2009	Amend	6-1-2009
812-012-0170	6-1-2009	Adopt	6-1-2009
812-020-0050	11-20-2008	Adopt	1-1-2009
812-020-0055	11-20-2008	Adopt	1-1-2009
812-020-0060	11-20-2008	Adopt	1-1-2009
812-020-0062	11-20-2008	Adopt	1-1-2009
812-020-0065	11-20-2008	Adopt	1-1-2009
812-020-0070	11-20-2008	Adopt	1-1-2009
812-020-0070	2-1-2009	Amend	3-1-2009
812-020-0072	11-20-2008	Adopt	1-1-2009
812-020-0080	11-20-2008	Adopt	1-1-2009

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812-020-0085	11-20-2008	Adopt	1-1-2009
812-020-0087	11-20-2008	Adopt	1-1-2009
812-020-0090	11-20-2008	Adopt	1-1-2009
813-110-0010	2-9-2009	Amend(T)	3-1-2009
817-005-0005	6-1-2009	Amend	7-1-2009
817-010-0101	6-1-2009	Amend	7-1-2009
817-020-0005	6-1-2009	Am. & Ren.	7-1-2009
817-020-0011	6-1-2009	Am. & Ren.	7-1-2009
817-020-0012	6-1-2009	Am. & Ren.	7-1-2009
817-020-0015	6-1-2009	Amend	7-1-2009
817-030-0005	12-1-2008	Amend(T)	1-1-2009
817-030-0005	6-1-2009	Amend	7-1-2009
817-030-0015	12-1-2008	Amend(T)	1-1-2009
817-030-0015	6-1-2009	Amend	7-1-2009
817-030-0020	12-1-2008	Amend(T)	1-1-2009
817-030-0020	6-1-2009	Amend	7-1-2009
817-030-0040	12-1-2008	Amend(T)	1-1-2009
817-030-0040	6-1-2009	Amend	7-1-2009
817-030-0045	12-1-2008	Amend(T)	1-1-2009
817-030-0045	6-1-2009	Amend	7-1-2009
817-030-0065	12-1-2008	Amend(T)	1-1-2009
817-030-0065	6-1-2009	Amend	7-1-2009
817-030-0100	12-1-2008	Suspend	1-1-2009
817-030-0100	6-1-2009	Repeal	7-1-2009
817-035-0010	6-1-2009	Amend	7-1-2009
817-035-0030	12-1-2008	Amend(T)	1-1-2009
817-035-0030	6-1-2009	Amend	7-1-2009
817-035-0050	6-1-2009	Amend	7-1-2009
817-035-0070	6-1-2009	Amend	7-1-2009
817-035-0090	6-1-2009	Amend	7-1-2009
817-035-0110	6-1-2009	Amend	7-1-2009
818-001-0087	7-1-2009	Amend(T)	7-1-2009
820-010-0215	12-12-2008	Amend	1-1-2009
820-010-0325	5-15-2009	Amend	6-1-2009
820-010-0635	5-15-2009	Amend	6-1-2009
820-030-0060	5-15-2009	Amend	6-1-2009
820-040-0005	5-15-2009	Amend	6-1-2009
833-020-0050	12-26-2008	Amend	2-1-2009
833-020-0164	12-26-2008	Amend	2-1-2009
833-025-0050	12-26-2008	Amend	2-1-2009
833-030-0001	12-26-2008	Amend	2-1-2009
833-030-0010	12-26-2008	Amend	2-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009
836-011-0000	1-29-2009	Amend	3-1-2009
836-042-0045	1-1-2009	Amend	2-1-2009
836-043-0005	1-1-2009	Amend	1-1-2009
836-043-0009	1-1-2009	Amend	1-1-2009
836-043-0017	1-1-2009	Amend	1-1-2009
836-043-0021	1-1-2009	Amend	1-1-2009
836-043-0024	1-1-2009	Amend	1-1-2009
836-043-0028	1-1-2009	Amend	1-1-2009
836-043-0032	1-1-2009	Amend	1-1-2009
836-043-0034	1-1-2009	Adopt	1-1-2009
836-043-0036	1-1-2009	Repeal	1-1-2009
836-043-0037	1-1-2009	Repeal	1-1-2009
836-043-0041	1-1-2009	Amend	1-1-2009
836-043-0044	1-1-2009	Amend	1-1-2009
836-043-0046	1-1-2009	Amend	1-1-2009
836-043-0048	1-1-2009	Amend	1-1-2009
836-043-0050	1-1-2009	Amend	1-1-2009
836-043-0053	1-1-2009	Amend	1-1-2009
836-043-0060	1-1-2009	Amend	1-1-2009
836-043-0062	1-1-2009	Amend	1-1-2009
836-043-0064	1-1-2009	Amend	1-1-2009
836-043-0066	1-1-2009	Amend	1-1-2009
836-043-0068	1-1-2009	Amend	1-1-2009
836-043-0070	1-1-2009	Repeal	1-1-2009
836-043-0071	1-1-2009	Adopt	1-1-2009
836-043-0076	1-1-2009	Amend	1-1-2009
836-043-0079	1-1-2009	Amend	1-1-2009
836-043-0082	1-1-2009	Amend	1-1-2009
836-043-0086	1-1-2009	Repeal	1-1-2009
836-043-0087	1-1-2009	Adopt	1-1-2009
836-043-0089	1-1-2009	Amend	1-1-2009
836-051-0106	12-9-2008	Amend	1-1-2009
836-051-0750	12-9-2008	Adopt	1-1-2009
836-051-0755	12-9-2008	Adopt	1-1-2009
836-051-0760	12-9-2008	Adopt	1-1-2009
836-051-0765	12-9-2008	Adopt	1-1-2009
836-051-0770	12-9-2008	Adopt	1-1-2009
836-051-0775	12-9-2008	Adopt	1-1-2009
836-053-0850	4-28-2009	Adopt(T)	6-1-2009
836-053-0855	4-28-2009	Adopt(T)	6-1-2009
836-053-0860	4-28-2009	Adopt(T)	6-1-2009
836-053-0865	4-28-2009	Adopt(T)	6-1-2009
836-072-0001	12-10-2008	Adopt	1-1-2009
836-072-0005	12-10-2008	Adopt	1-1-2009
836-072-0010	12-10-2008	Adopt	1-1-2009
836-072-0015	12-10-2008	Adopt	1-1-2009
836-072-0020	12-10-2008	Adopt	1-1-2009
836-072-0025	12-10-2008	Adopt	1-1-2009
836-072-0030	12-10-2008	Adopt	1-1-2009
836-072-0035	12-10-2008	Adopt	1-1-2009
836-072-0040	12-10-2008	Adopt	1-1-2009
836-072-0045	12-10-2008	Adopt	1-1-2009
837-012-0530	4-10-2009	Amend	5-1-2009
837-012-0625	4-10-2009	Amend	5-1-2009
837-012-0750	4-10-2009	Amend	5-1-2009
837-040-0001	12-31-2008	Amend	2-1-2009
837-040-0015	12-31-2008	Adopt	2-1-2009
837-040-0020	12-31-2008	Amend	2-1-2009
837-046-0000	6-2-2009	Adopt(T)	7-1-2009
837-046-0020	6-2-2009	Adopt(T)	7-1-2009
837-046-0040	6-2-2009	Adopt(T)	7-1-2009
837-046-0060	6-2-2009	Adopt(T)	7-1-2009
837-046-0080	6-2-2009	Adopt(T)	7-1-2009
837-046-0100	6-2-2009	Adopt(T)	7-1-2009
837-046-0120	6-2-2009	Adopt(T)	7-1-2009
837-046-0140	6-2-2009	Adopt(T)	7-1-2009
837-046-0160	6-2-2009	Adopt(T)	7-1-2009
837-046-0180	6-2-2009	Adopt(T)	7-1-2009

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839-003-0020	12-5-2008	Amend	1-1-2009
839-003-0025	12-5-2008	Amend	1-1-2009
839-003-0040	12-5-2008	Amend	1-1-2009
839-003-0045	12-5-2008	Amend	1-1-2009
839-003-0050	12-5-2008	Amend	1-1-2009
839-003-0055	12-5-2008	Amend	1-1-2009
839-003-0060	12-5-2008	Amend	1-1-2009
839-003-0065	12-5-2008	Amend	1-1-2009
839-003-0070	12-5-2008	Amend	1-1-2009
839-003-0080	12-5-2008	Amend	1-1-2009
839-003-0085	12-5-2008	Amend	1-1-2009
839-003-0090	12-5-2008	Amend	1-1-2009
839-003-0095	12-5-2008	Amend	1-1-2009
839-003-0100	12-5-2008	Amend	1-1-2009
839-003-0200	12-5-2008	Amend	1-1-2009
839-003-0205	12-5-2008	Amend	1-1-2009
839-003-0210	12-5-2008	Amend	1-1-2009
839-003-0215	12-5-2008	Amend	1-1-2009
839-003-0220	12-5-2008	Amend	1-1-2009
839-003-0225	12-5-2008	Amend	1-1-2009
839-003-0230	12-5-2008	Amend	1-1-2009
839-003-0235	12-5-2008	Amend	1-1-2009
839-003-0240	12-5-2008	Amend	1-1-2009
839-003-0245	12-5-2008	Amend	1-1-2009
839-005-0000	12-5-2008	Amend	1-1-2009
839-005-0003	12-5-2008	Amend	1-1-2009
839-005-0010	12-5-2008	Amend	1-1-2009
839-005-0016	12-5-2008	Amend	1-1-2009
839-005-0026	12-5-2008	Amend	1-1-2009
839-005-0195	12-5-2008	Amend	1-1-2009
839-005-0200	12-5-2008	Amend	1-1-2009
839-005-0205	12-5-2008	Amend	1-1-2009
839-005-0220	12-5-2008	Amend	1-1-2009
839-020-0050	1-12-2009	Amend	2-1-2009
839-025-0700	12-1-2008	Amend	1-1-2009
839-025-0700	12-29-2008	Amend	2-1-2009
839-025-0700	1-1-2009	Amend	2-1-2009
839-025-0700	1-6-2009	Amend	2-1-2009
839-025-0700	1-12-2009	Amend	2-1-2009
839-025-0700	2-11-2009	Amend	3-1-2009
839-025-0700	3-17-2009	Amend	5-1-2009
839-025-0700	3-24-2009	Amend	5-1-2009
839-025-0700	4-1-2009	Amend	5-1-2009
839-025-0700	6-10-2009	Amend	7-1-2009
839-025-0750	3-1-2009	Amend	4-1-2009
839-025-0750	4-16-2009	Amend	5-1-2009
845-005-0405	4-1-2009	Amend	5-1-2009
845-005-0410	4-1-2009	Amend	5-1-2009
845-005-0415	4-1-2009	Amend	5-1-2009
845-006-0335	4-1-2009	Amend	5-1-2009
845-006-0345	5-1-2009	Amend	6-1-2009
845-006-0500	5-1-2009	Amend	6-1-2009
845-010-0154	12-20-2008	Adopt	2-1-2009
845-013-0050	5-1-2009	Amend	6-1-2009
845-013-0060	5-1-2009	Amend	6-1-2009
845-020-0025	1-1-2009	Amend	2-1-2009
845-020-0035	1-1-2009	Amend	2-1-2009
847-001-0030	5-1-2009	Amend	6-1-2009
847-005-0005	1-22-2009	Amend	3-1-2009
847-008-0020	1-22-2009	Amend	3-1-2009
847-008-0040	1-22-2009	Amend	3-1-2009
847-008-0060	5-1-2009	Amend	6-1-2009
847-008-0070	1-22-2009	Adopt	3-1-2009
847-010-0054	1-22-2009	Repeal	3-1-2009
847-010-0055	1-22-2009	Repeal	3-1-2009
847-010-0073	5-1-2009	Amend	6-1-2009
847-010-0100	1-22-2009	Amend	3-1-2009
847-020-0130	1-22-2009	Amend	3-1-2009
847-020-0170	4-9-2009	Amend(T)	5-1-2009
847-035-0030	5-1-2009	Amend	6-1-2009
847-065-0000	5-1-2009	Amend	6-1-2009
847-070-0019	1-22-2009	Amend	3-1-2009
847-070-0020	1-22-2009	Amend	3-1-2009
847-070-0045	1-22-2009	Amend	3-1-2009
848-005-0010	5-14-2009	Amend	6-1-2009
848-005-0010	7-1-2009	Amend	6-1-2009
848-010-0015	1-2-2009	Amend	2-1-2009
848-010-0020	1-2-2009	Amend	2-1-2009
848-010-0022	1-2-2009	Adopt	2-1-2009
848-010-0026	1-2-2009	Amend	2-1-2009
848-010-0044	1-2-2009	Amend	2-1-2009
848-015-0030	1-2-2009	Amend	2-1-2009
848-020-0030	1-2-2009	Amend	2-1-2009
848-020-0060	1-2-2009	Amend	2-1-2009
848-035-0020	1-2-2009	Amend	2-1-2009
848-035-0030	1-2-2009	Amend	2-1-2009
848-035-0035	1-2-2009	Adopt	2-1-2009
848-035-0040	1-2-2009	Amend	2-1-2009
848-040-0100	1-2-2009	Amend	2-1-2009
848-040-0117	1-2-2009	Amend	2-1-2009
848-040-0145	1-2-2009	Amend	2-1-2009
848-040-0160	1-2-2009	Amend	2-1-2009
848-040-0175	1-2-2009	Adopt	2-1-2009
848-045-0020	1-2-2009	Amend	2-1-2009
850-035-0230	4-30-2009	Amend	6-1-2009
850-060-0225	12-8-2008	Amend	1-1-2009
850-060-0226	12-8-2008	Amend	1-1-2009
851-050-0138	11-26-2008	Amend	1-1-2009
851-056-0006	11-26-2008	Amend	1-1-2009
851-056-0022	11-26-2008	Amend	1-1-2009
851-061-0090	5-15-2009	Amend	6-1-2009
851-062-0020	11-26-2008	Amend	1-1-2009
851-063-0035	5-15-2009	Amend	6-1-2009
852-005-0005	7-1-2009	Amend	7-1-2009
852-070-0005	7-1-2009	Amend	7-1-2009
852-070-0055	7-1-2009	Amend	7-1-2009
852-070-0060	7-1-2009	Amend	7-1-2009
855-007-0010	1-5-2009	Adopt(T)	2-1-2009
855-007-0020	1-5-2009	Adopt(T)	2-1-2009
855-007-0030	1-5-2009	Adopt(T)	2-1-2009
855-007-0040	1-5-2009	Adopt(T)	2-1-2009
855-007-0050	1-5-2009	Adopt(T)	2-1-2009
855-007-0060	1-5-2009	Adopt(T)	2-1-2009
855-007-0080	1-5-2009	Adopt(T)	2-1-2009
855-007-0090	1-5-2009	Adopt(T)	2-1-2009
855-007-0100	1-5-2009	Adopt(T)	2-1-2009

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855-007-0120	1-5-2009	Adopt(T)	2-1-2009
856-010-0015	2-10-2009	Amend(T)	3-1-2009
859-040-0010	12-17-2008	Amend(T)	2-1-2009
859-040-0010	5-5-2009	Amend	6-1-2009
859-040-0010(T)	5-5-2009	Repeal	6-1-2009
859-040-0015	12-17-2008	Amend(T)	2-1-2009
859-040-0015	5-5-2009	Amend	6-1-2009
859-040-0015(T)	5-5-2009	Repeal	6-1-2009
860-022-0041	4-15-2009	Amend(T)	5-1-2009
860-022-0070	3-25-2009	Amend	5-1-2009
860-024-0010	12-29-2008	Amend	2-1-2009
860-024-0020	5-5-2009	Amend	6-1-2009
860-024-0021	5-5-2009	Amend	6-1-2009
860-027-0400	2-5-2009	Adopt	3-1-2009
860-032-0620	4-14-2009	Amend	5-1-2009
860-034-0010	5-5-2009	Amend	6-1-2009
860-034-0120	5-5-2009	Amend	6-1-2009
860-034-0310	5-5-2009	Amend	6-1-2009
863-014-0000	1-1-2009	Adopt	1-1-2009
863-014-0003	1-1-2009	Adopt	1-1-2009
863-014-0038	1-1-2009	Adopt	1-1-2009
863-014-0042	1-1-2009	Adopt	1-1-2009
863-015-0000	1-1-2009	Adopt	1-1-2009
863-015-0005	1-1-2009	Am. & Ren.	1-1-2009
863-015-0010	1-1-2009	Am. & Ren.	1-1-2009
863-015-0015	1-1-2009	Am. & Ren.	1-1-2009
863-015-0020	1-1-2009	Am. & Ren.	1-1-2009
863-015-0025	1-1-2009	Repeal	1-1-2009
863-015-0030	1-1-2009	Am. & Ren.	1-1-2009
863-015-0035	1-1-2009	Am. & Ren.	1-1-2009
863-015-0040	1-1-2009	Am. & Ren.	1-1-2009
863-015-0045	1-1-2009	Am. & Ren.	1-1-2009
863-015-0050	1-1-2009	Am. & Ren.	1-1-2009
863-015-0055	1-1-2009	Am. & Ren.	1-1-2009
863-015-0060	1-1-2009	Am. & Ren.	1-1-2009
863-015-0061	1-1-2009	Am. & Ren.	1-1-2009
863-015-0062	1-1-2009	Am. & Ren.	1-1-2009
863-015-0063	1-1-2009	Am. & Ren.	1-1-2009
863-015-0065	1-1-2009	Am. & Ren.	1-1-2009
863-015-0070	1-1-2009	Am. & Ren.	1-1-2009
863-015-0075	1-1-2009	Am. & Ren.	1-1-2009
863-015-0076	1-1-2009	Am. & Ren.	1-1-2009
863-015-0080	1-1-2009	Am. & Ren.	1-1-2009
863-015-0085	1-1-2009	Am. & Ren.	1-1-2009
863-015-0095	1-1-2009	Am. & Ren.	1-1-2009
863-015-0100	1-1-2009	Am. & Ren.	1-1-2009
863-015-0120	1-1-2009	Am. & Ren.	1-1-2009
863-015-0130	1-1-2009	Amend	1-1-2009
863-015-0135	1-1-2009	Amend	1-1-2009
863-015-0140	1-1-2009	Amend	1-1-2009
863-015-0145	1-1-2009	Amend	1-1-2009
863-015-0150	1-1-2009	Amend	1-1-2009
863-015-0155	1-1-2009	Amend	1-1-2009
863-015-0160	1-1-2009	Am. & Ren.	1-1-2009
863-015-0165	1-1-2009	Repeal	1-1-2009
863-015-0175	1-1-2009	Amend	1-1-2009
863-015-0180	1-1-2009	Repeal	1-1-2009
863-015-0185	1-1-2009	Repeal	1-1-2009
863-015-0186	1-1-2009	Amend	1-1-2009
863-015-0188	1-1-2009	Adopt	1-1-2009
863-015-0190	1-1-2009	Amend	1-1-2009
863-015-0195	1-1-2009	Repeal	1-1-2009
863-015-0200	1-1-2009	Amend	1-1-2009
863-015-0205	1-1-2009	Amend	1-1-2009
863-015-0210	1-1-2009	Amend	1-1-2009
863-015-0215	1-1-2009	Amend	1-1-2009
863-015-0220	1-1-2009	Repeal	1-1-2009
863-015-0225	1-1-2009	Am. & Ren.	1-1-2009
863-015-0230	1-1-2009	Am. & Ren.	1-1-2009
863-015-0250	1-1-2009	Amend	1-1-2009
863-015-0255	1-1-2009	Amend	1-1-2009
863-015-0260	1-1-2009	Amend	1-1-2009
863-015-0265	1-1-2009	Amend	1-1-2009
863-015-0275	1-1-2009	Amend	1-1-2009
863-024-0000	1-1-2009	Adopt	1-1-2009
863-024-0003	1-1-2009	Adopt	1-1-2009
863-024-0005	1-1-2009	Adopt	1-1-2009
863-024-0010	1-1-2009	Adopt	1-1-2009
863-024-0015	1-1-2009	Adopt	1-1-2009
863-024-0020	1-1-2009	Adopt	1-1-2009
863-024-0030	1-1-2009	Adopt	1-1-2009
863-024-0050	1-1-2009	Adopt	1-1-2009
863-024-0055	1-1-2009	Adopt	1-1-2009
863-024-0060	1-1-2009	Adopt	1-1-2009
863-024-0061	1-1-2009	Adopt	1-1-2009
863-024-0062	1-1-2009	Adopt	1-1-2009
863-024-0063	1-1-2009	Adopt	1-1-2009
863-024-0065	1-1-2009	Adopt	1-1-2009
863-024-0070	1-1-2009	Adopt	1-1-2009
863-024-0075	1-1-2009	Adopt	1-1-2009
863-024-0076	1-1-2009	Adopt	1-1-2009
863-024-0085	1-1-2009	Adopt	1-1-2009
863-024-0095	1-1-2009	Adopt	1-1-2009
863-024-0100	1-1-2009	Adopt	1-1-2009
863-025-0005	1-1-2009	Amend	1-1-2009
863-025-0010	1-1-2009	Amend	1-1-2009
863-025-0015	1-1-2009	Amend	1-1-2009
863-025-0020	1-1-2009	Amend	1-1-2009
863-025-0025	1-1-2009	Amend	1-1-2009
863-025-0030	1-1-2009	Amend	1-1-2009
863-025-0035	1-1-2009	Amend	1-1-2009
863-025-0040	1-1-2009	Amend	1-1-2009
863-025-0045	1-1-2009	Amend	1-1-2009
863-025-0050	1-1-2009	Amend	1-1-2009
863-025-0055	1-1-2009	Amend	1-1-2009
863-025-0060	1-1-2009	Amend	1-1-2009
863-025-0065	1-1-2009	Amend	1-1-2009
863-025-0070	1-1-2009	Amend	1-1-2009
863-025-0080	1-1-2009	Amend	1-1-2009
863-027-0000	1-1-2009	Adopt	1-1-2009
863-027-0005	1-1-2009	Adopt	1-1-2009
863-050-0000	1-1-2009	Amend	1-1-2009
863-050-0015	1-1-2009	Amend	1-1-2009
863-050-0020	1-1-2009	Amend	1-1-2009
863-050-0025	1-1-2009	Amend	1-1-2009
863-050-0030	1-1-2009	Amend	1-1-2009
863-050-0033	1-1-2009	Amend	1-1-2009

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863-050-0040	1-1-2009	Repeal	1-1-2009
863-050-0050	1-1-2009	Amend	1-1-2009
863-050-0052	1-1-2009	Adopt	1-1-2009
863-050-0055	1-1-2009	Amend	1-1-2009
863-050-0060	1-1-2009	Amend	1-1-2009
863-050-0065	1-1-2009	Amend	1-1-2009
863-050-0066	1-1-2009	Amend	1-1-2009
863-050-0100	1-1-2009	Amend	1-1-2009
863-050-0105	1-1-2009	Amend	1-1-2009
863-050-0115	1-1-2009	Amend	1-1-2009
863-050-0150	1-1-2009	Amend	1-1-2009
863-050-0151	1-1-2009	Repeal	1-1-2009
863-050-0205	1-1-2009	Repeal	1-1-2009
863-050-0210	1-1-2009	Repeal	1-1-2009
863-050-0215	1-1-2009	Repeal	1-1-2009
863-050-0220	1-1-2009	Repeal	1-1-2009
863-050-0225	1-1-2009	Repeal	1-1-2009
863-050-0230	1-1-2009	Repeal	1-1-2009
863-050-0235	1-1-2009	Repeal	1-1-2009
863-050-0240	1-1-2009	Amend	1-1-2009
875-010-0090	12-15-2008	Amend	1-1-2009
875-010-0090	4-20-2009	Amend	6-1-2009
875-020-0005	12-15-2008	Amend	1-1-2009
875-030-0010	12-15-2008	Amend	1-1-2009
875-030-0050	12-15-2008	Amend	1-1-2009
877-001-0000	7-1-2009	Repeal	7-1-2009
877-001-0005	7-1-2009	Amend	7-1-2009
877-001-0010	7-1-2009	Repeal	7-1-2009
877-020-0060	7-1-2009	Adopt	7-1-2009
877-030-0100	7-1-2009	Amend	7-1-2009
877-035-0000	7-1-2009	Amend	7-1-2009
877-035-0005	7-1-2009	Repeal	7-1-2009
877-035-0010	7-1-2009	Amend	7-1-2009
877-035-0012	7-1-2009	Amend	7-1-2009
877-035-0013	7-1-2009	Amend	7-1-2009
877-035-0015	7-1-2009	Amend	7-1-2009
877-040-0000	7-1-2009	Amend	7-1-2009
877-040-0003	7-1-2009	Amend	7-1-2009
877-040-0010	7-1-2009	Amend	7-1-2009
877-040-0015	7-1-2009	Amend	7-1-2009
877-040-0020	7-1-2009	Repeal	7-1-2009
877-040-0045	7-1-2009	Amend	7-1-2009
877-040-0050	7-1-2009	Amend	7-1-2009
877-040-0055	7-1-2009	Amend	7-1-2009
918-008-0075	1-1-2009	Amend	2-1-2009
918-008-0080	1-1-2009	Amend	2-1-2009
918-008-0085	1-1-2009	Amend	2-1-2009
918-008-0090	1-1-2009	Amend	2-1-2009
918-008-0095	1-1-2009	Amend	2-1-2009
918-008-0110	1-1-2009	Amend	2-1-2009
918-008-0115	1-1-2009	Amend	2-1-2009
918-020-0370	1-1-2009	Adopt	2-1-2009
918-050-0000	1-1-2009	Amend	1-1-2009
918-050-0010	1-1-2009	Amend	1-1-2009
918-050-0020	1-1-2009	Amend	1-1-2009
918-050-0030	1-1-2009	Amend	1-1-2009
918-050-0100	1-1-2009	Amend	1-1-2009
918-050-0110	1-1-2009	Amend	1-1-2009
918-050-0120	1-1-2009	Amend	1-1-2009
918-050-0130	1-1-2009	Amend	1-1-2009
918-050-0140	1-1-2009	Amend	1-1-2009
918-050-0150	1-1-2009	Amend	1-1-2009
918-050-0160	1-1-2009	Amend	1-1-2009
918-050-0170	1-1-2009	Amend	1-1-2009
918-225-0430	1-1-2009	Amend	2-1-2009
918-225-0435	1-1-2009	Amend	2-1-2009
918-225-0445	1-1-2009	Adopt	2-1-2009
918-225-0450	1-1-2009	Amend	2-1-2009
918-225-0570	1-1-2009	Amend	2-1-2009
918-261-0015	1-1-2009	Adopt	2-1-2009
918-261-0015(T)	1-1-2009	Repeal	2-1-2009
918-305-0280	4-1-2009	Amend	5-1-2009
918-311-0065	1-1-2009	Adopt	2-1-2009
918-311-0065(T)	1-1-2009	Repeal	2-1-2009
918-400-0455	1-1-2009	Amend	2-1-2009
918-400-0458	1-1-2009	Amend	2-1-2009
918-480-0010	2-1-2009	Amend	3-1-2009
918-480-0010(T)	2-1-2009	Repeal	3-1-2009
918-480-0150	1-1-2009	Adopt	2-1-2009
918-480-0150(T)	1-1-2009	Repeal	2-1-2009