

OREGON BULLETIN

Supplements the 2009 *Oregon Administrative Rules Compilation*

Volume 48, No. 3
March 1, 2009

For January 16, 2009–February 13, 2009



Published by
KATE BROWN
Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule’s “History”

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

Locating the Most Recent Version of an Administrative Rule

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

Locating Administrative Rules Unit Publications

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

2008–2009 Oregon Bulletin Publication Schedule

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

Submission Deadline — Publishing Date

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

Reminder for Agency Rules Coordinators

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

Publication Authority

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

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EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 09-05

AMENDING EXECUTIVE ORDER 09-02

On January 5, 2009, I executed Executive Order 09-02, establishing a Task Force on Disproportionality in Child Welfare. This Order amends Executive Order 09-02 to change the appointing authority of the Task Force member representing the Oregon Judicial Department.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. Executive Order 09-02 is amended to provide that the Task Force member representing the Oregon Judicial Department shall be appointed by the Chief Justice of the Oregon Supreme Court.
2. This Order expires on December 31, 2010.

Done at Salem, Oregon, this 11th day of February, 2009.

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

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

EXECUTIVE ORDER NO. 09-06

USING OREGON'S GREEN ADVANTAGE TO MAXIMIZE THE FEDERAL ECONOMIC RECOVERY PACKAGE

In the coming days, President Obama will sign the American Recovery and Reinvestment Plan (ARRP). In the short term, this federal economic stimulus package will help Oregonians by creating family-wage jobs and supporting critical public services like education and health care. This immediate injection into Oregon's economy is vital and necessary.

Equally important, the ARRP represents an opportunity for Oregon to demonstrate how smart resource investments can create new long-term capacity in our communities and spark sustainable economic activity throughout the state. Leveraging these federal stimulus dollars to create even more jobs, train workers, reduce taxpayer costs, and invest in a cleaner environment is the real key to long term recovery through reinvestment. The ARRP empowers Oregon to reinvest in its economy by being smart, sustainable and transformational — **the Oregon Way.**

Oregon's success in sustainability serves as the basis for this initiative. The State of Oregon has already demonstrated its commitment to investing in renewable energy, reducing greenhouse gas emissions and creating a sustainable future. The strength of this commitment has, in turn, fostered and empowered world-class private sector expertise in alternative energy and green development. This combination of public and private leadership makes Oregon the ideal place to initiate a new model for delivering such a transformational change.

As the federal stimulus funding decisions move to the state level, Oregon has already started defining strategic, sustainable and transformational investments in communities throughout the state. Partnering with local governments, non-profit organizations, and Oregon businesses, the State seeks to identify a set of economic stimulus projects that create more jobs, increase economic value and enhance our investment in green technology. These *Oregon Way* examples

could even serve as national demonstration projects for other states to model.

To successfully compete for the competitive grants outlined in the ARRP, Oregon has a singular opportunity to apply its homegrown expertise and strong commitment to sustainability by forming unique partnerships and taking innovation to a new level. Collaborative economic solutions through a public/private partnership are the way Oregon will be able to generate the short-term benefits and long-term advantages that will see us through the current economic crisis.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Oregon Way Advisory Group is hereby established to advise and assist those seeking competitive federal stimulus grants by developing grant proposals including innovative elements promoting sustainability, renewable energy, carbon reduction, energy efficiency and green development — proposals for projects done the *Oregon Way*.
2. The Oregon Way Advisory Group shall be appointed by the Governor and shall include representatives from the public and private sectors who can provide expertise and innovation in developing *Oregon Way* project proposals.
3. The Oregon Way Advisory Group shall assist the Governor in identifying, developing, prioritizing, and evaluating *Oregon Way* projects using criteria designed to create both short-term and long-term benefit to Oregon, including, but not limited to:

- a. Immediate job creation for Oregonians
- b. Use of Oregon companies and sourcing of local materials to keep stimulus funds in Oregon
- c. Green jobs training that accompanies projects
- d. Promotion of Oregon's sustainability, renewable energy, carbon reduction, energy efficiency and green development goals
- e. Innovative approaches in technology, partnership, process and life cycle optimization
- f. Potential to attract additional federal money through block grants and other sources.

4. Any state agency applying for a competitive federal grant under ARRP shall notify the Governor, who may advance the proposal to the *Oregon Way* Advisory Group for advice and assistance on maximizing the factors listed in paragraph 3.

5. In addition, all state agencies receiving federal stimulus funds through the ARRP are encouraged to identify opportunities to use federal stimulus funds the *Oregon Way*, by incorporating the factors listed in paragraph 3 into projects whenever possible. Agency directors shall report their identification of such opportunities to the Governor within 60 days of the President's signing of the ARRP.

Done at Salem, Oregon, this 11th day of February, 2009.

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

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

OTHER NOTICES

REQUEST FOR COMMENTS PROPOSED CLEANUP ACTIONS FOR FORMER KOPPERS WOOD-TREATING SITE IN WAUNA

COMMENTS DUE: 5 p.m., Tuesday, March 31, 2009

PROJECT LOCATION: 92326 Taylorville Road, Wauna, OR
PROPOSAL: The Department of Environmental Quality (DEQ) invites comments on proposed final cleanup actions for the former Koppers Wood-Treating facility.

HIGHLIGHTS: A cleanup investigation at the site identified soil, sediment and groundwater contamination associated with historical use of the wood treating preservatives creosote, pentachlorophenol, and metals. A 2004 interim source control measure prevents groundwater contamination from reaching the Columbia River by using a subsurface barrier wall and groundwater treatment at the site. Based on completion of remedial investigations, risk assessments, and a feasibility study, DEQ proposes final remedial actions for the site to address contamination with unacceptable risk. These actions include excavation and off-site disposal of surface soil; soil and drainage ditch sediment capping; continued operation of the interim remedial measure to treat groundwater; and institutional controls.

HOW TO COMMENT: Send written comments on the proposed remedial actions to DEQ Project Tom Gainer, Oregon DEQ, Northwest Region, 2020 SW 4th Ave., Suite 400, Portland, Oregon 97201, or e-mail to gainer.tom@deq.state.or.us. To view the project files please call (503) 229-6729 to schedule an appointment. For more information, please contact Gainer at 503-229-5326. To access site summary information and the staff report in the DEQ Environmental Cleanup Site Information (ECSI) database, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, enter ECSI #649 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #649 in the Site ID/Info column.

THE NEXT STEP: Once the public comment period has closed DEQ will consider all comments before making a decision.

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.

CHANCE TO COMMENT ON... PROPOSED FINAL UPLAND REMEDY AND SETTLEMENT FOR COLUMBIA SLOUGH SEDIMENT CONTAMINATION FOR FORMER UNION CARBIDE FACILITY (ECSI #176)

COMMENTS DUE: April 2, 2009

PROJECT LOCATION: The site is located at 11920 N Burgard Street, in North Portland.

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on its proposal for a final remedy for the former Union Carbide facility site (ECSI #176). In addition, DEQ is proposing to enter a settlement with potentially liable parties for implementation of cleanup and source control at upland properties and sediments remediation in the Columbia Slough. The settlement would be in the form of a consent judgment pursuant to ORS 465.325(4). The settlements would require the potentially liable parties to satisfactorily complete the final cleanup measures at their upland facilities, pay DEQ specified amounts to be used by DEQ for sediment cleanup. The parties would also pay DEQ a specified amount to be dedicated to habitat restoration to settle potential natural damage claims. In return, the settling parties would receive a covenant not to sue from the State and contribution protection as to third parties regarding the matters addressed by the settlement.

DEQ proposes to enter the settlements for the following parties and properties:

Union Carbide Corp: 9707 and 9645 N. Columbia Blvd.; 11920 N Burgard Street

Elkem Metals Company: 9707 and 9645 N. Columbia Blvd.; 11920 N Burgard Street

Rivergate Scrap Metals: 9707 and 9645 N. Columbia Blvd.

WMR.: 11920 N Burgard Street.

HIGHLIGHTS: The former Union Carbide site is zoned heavy industry and is surrounded by heavy industrial properties. The 84-acre site is located west of the Columbia Slough, across from the St Johns Landfill and consists of the three parcels noted above. Union Carbide Corporation operated a calcium carbide and ferroalloy processing facility at the site between 1974 and 1981. The property was sold to Elkem Metals Company (Elkem) in about 1982, and then sold to Oregon Steel Mills in 1984. Current property owners include Rivergate Scrap Metals and WMR.

Raw products used in the Union Carbide manufacturing process included manganese ore, manganese slag, petroleum coke and bituminous coke. Process emissions were treated with wet a scrubber resulting in a slurry that was managed in unlined ponds constructed on parcels at 9707 and 9645 N Columbia Boulevard. The ponds were filled in place in the 1980s using onsite and imported soil fill.

Union Carbide and Elkem Metals recently completed a remedial investigation and feasibility study to address potential risks posed from contamination remaining from their past operations. Contaminants of concern in sludge material in the buried ponds include metals, semi-volatile organic chemicals (SVOCs), and cyanide. The proposed final remedy for the site will include installation of an engineered cap on the 9707 property, use of the existing caps at the 9645 and 11920 properties, groundwater monitoring and implementation of institutional controls to restrict access to contaminated subsurface soil and groundwater. The caps would be monitored and maintained to assure the effectiveness of the implemented final remedy at the site.

HOW TO COMMENT: The proposed settlement, DEQ Staff Report and the administrative record for the proposed final remedy are available for review at DEQ's Northwest Region Eastside office located at 1550 NW Eastman Parkway, Suite 290, Portland, Oregon. For an appointment to review the files call (503)667-8414 x55026; toll free at (800)452-4011; or TTY at (503)229-5471. Please send written comments to Mavis D. Kent, Project Manager, DEQ Northwest Region East Side Office, 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon, 97030 or via email at: kent.mavis.d@deq.state.or.us. DEQ must receive written comments by 5:00 p.m. on April 2, 2009. This notice will also be published in the local newspaper The Oregonian.

DEQ is committed to accommodating people with disabilities at our hearings. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach at (503) 229-5696 or toll free in Oregon at (800) 452-4011. People with hearing impairments may call DEQ's TTY number, (503)229-5471.

THE NEXT STEP: DEQ will review and consider all comments received during the comment period. In the absence of comments, DEQ will issue a Record of Decision for the site. If DEQ then determines to enter the consent judgments the consent judgment will be executed by the parties and filed with the Multnomah County Circuit Court. The court must approve the consent judgments for them to take effect.

OPPORTUNITY TO COMMENT RECORD OF DECISION, CHEVRON BULK PLANT 100-1916 (FORMER) & CHEVRON PIPELINE TAKE OFF FACILITY (FORMER), BAKER CITY, OREGON

COMMENT DUE: March 31, 2009

PROJECT LOCATION: Baker City, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) is providing notice for a public opportunity to review and comment on

OTHER NOTICES

a draft Record of Decision (ROD) for the Chevron Bulk Plant 100-1916 (former) & Chevron Pipeline Take Off Facility (former) site. The draft ROD details the analysis and selection of preferred and protective remedial options designed to address contaminated environmental media at the site located at 3370 17th Street in Baker City, Oregon.

The site consists of two distinct operations; 1) the former bulk plant; and 2) the former unmanned pipeline "take off terminal". The bulk plant was operational from the early 1950s to August 1988. All bulk plant facilities except the shop building were removed in 1989. The pipeline was constructed in 1951 and re-routed in 2000. All facilities were removed from the pipeline terminal as part of re-routing of the pipeline.

The draft ROD as well as more 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 664.

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 project manager at the number below to arrange for an appointment.

HOW TO COMMENT: The public comment period will extend from March 1 to 31, 2009. Please address all comments and/or inquiries to 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 finalizing the ROD for the Chevron Bulk Plant & Pipeline site. DEQ will provide written responses to all received public comments.

CHANCE TO COMMENT ON...

PROPOSED NO FURTHER ACTION DETERMINATION AND DELISTING FOR IRONWOOD HOMES LOT 3, SHERWOOD, OREGON

COMMENTS DUE: March 31, 2009

PROJECT LOCATION: 23320 SW Murdock Road, Sherwood, Oregon.

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.230 and 465.320, and Oregon Administrative Rules, OAR 340-122-0077, OAR 340-122-0078 and OAR 340-122-0100, the Department of Environmental Quality (DEQ) invites public comment on its proposal to approve a no further action determination (NFA) and delisting for a residentially-zoned property identified as Ironwood Homes,

Lot 3 in southeast Sherwood, Oregon. The property owner is Ironwood Homes, Inc.

HIGHLIGHTS: DEQ has reviewed several reports that describe soil removal and storage actions taken as part of an Interim Remedial Action Measure (IRAM) Work Plan for the 0.61-acre property (tax lot - 2S133CB 02400) in Sherwood, Oregon. Soils on these properties were contaminated with elevated concentrations of chromium, lead and mercury, resulting from historic land application and apparent disposal of wastes from a former leather tanning plant. The IRAM actions are an initial component of a larger cleanup of properties owned by Ironwood Homes, Inc. in this area of Sherwood that is also known as the former Ken Foster Farm (DEQ ECSI #2516).

The removal actions undertaken by Ironwood Homes included removal of 2,130-cubic yards of contaminated soils from Lot 3 and placement of the soil in a temporary engineered storage cell on a nearby Ironwood Homes-owned property, identified as Tax Lot 300. The ESC was completed, covered with clean soil, and established a grass cover.

A post-removal Risk Evaluation was performed to evaluate the possible ecological exposure threat from residual soil concentrations on Lot 3 and on all four residential lots (Lots 1-4). Residual concentrations of total chromium in site soils were largely below IRAM cleanup goals, but some areas still had concentrations above the established risk-based goal of 130 parts-per-million (ppm). DEQ has determined that a clean soil cover of no less than one foot over these areas will establish a protective barrier to ecological species exposure.

Based on the work completed DEQ is prepared to issue a NFA for Lot 3 and remove it from DEQ's Confirmed Release List and Inventory.

HOW TO COMMENT: DEQ's project file information is available for public review (by appointment) at DEQ's Northwest Region Office, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon, 97201. To schedule a file review appointment, call: 503-229-6729; toll free at 1-800-452-4011; or TTY at 503-229-5471. DEQ has also arranged to provide the main reports and DEQ Staff Report to interested parties in Adobe PDF format on a CD. Please send written comments and request to Chuck Harman, Project Manager, at the address listed above or via email at harman.charles@deq.state.or.us by 5 p.m., March 31, 2009.

Summaries of site information can be found on the internet in DEQ's on-line Environmental Cleanup Site Information (ECSI) database (<http://www.deq.state.or.us/wmc/ecsi/ecsiquery.htm>). The Ironwood Homes site is listed as ECSI # 4750. The Ironwood Homes site is within the boundaries of the Former Ken Foster Farm site (ECSI #2516).

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

THE NEXT STEP: DEQ will consider all public comments received by the March 31, 2009 deadline and the Regional Cleanup Manager will make a final decision after consideration of these public comments.

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

.....
Board of Naturopathic Examiners
Chapter 850

Rule Caption: Defines terms used in ORS Chapter 685 and OAR chapter 850.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.135

Proposed Amendments: 850-035-0230

Last Date for Comment: 3-31-09

Summary: Clarifies that to apply for a certificate in natural child-birth a person must maintain an active license as a naturopathic physician.

Rules Coordinator: Anne Walsh

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

Telephone: (971) 673-0193

.....
Board of Nursing
Chapter 851

Rule Caption: Rules Establish Instructor to Student Ratios for Classroom, Lab and Clinical for CNA 2 Trainings.

Date:	Time:	Location:
4-23-09	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: James McDonald

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Proposed Amendments: 851-061-0090

Last Date for Comment: 4-21-09, 5 p.m.

Summary: These rules cover the standards for training programs for Nursing Assistants and Medication Aides. This rule amendment would establish instructor to student ratios for classroom, lab and clinical for CNA 2 trainings.

Rules Coordinator: KC Cotton

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

Telephone: (971) 673-0638

.....
Rule Caption: Rules Coordinate Language Between Curriculum Policy and Authorized Duties for CNA 2s in Acute Care.

Date:	Time:	Location:
4-23-09	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: James McDonald

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Proposed Amendments: 851-063-0035

Last Date for Comment: 4-21-09, 5 p.m.

Summary: These rules cover the standards and authorized duties for Certified Nursing Assistants and Certified Medication Aides. The revision in these rule amendments are to coordinate the language between the curriculum policy and the authorized duties for CNA 2s in Acute Care.

Rules Coordinator: KC Cotton

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

Telephone: (971) 673-0638

.....
Department of Administrative Services
Chapter 125

Rule Caption: Rule for adoption of Hillcrest Area Plan, 2008.

Date:	Time:	Location:
3-20-09	10 a.m.	Tillamook Rm. Dept. of Forestry 2600 State St. Salem, OR 97310

Hearing Officer: Staff

Stat. Auth.: ORS 183 & 276

Other Auth.: SB90 (2005 Legislative Session)

Stats. Implemented: ORS 183 & 276

Proposed Amendments: 125-125-0540

Last Date for Comment: 3-20-09, 5 p.m.

Summary: Amendment adopts Hillcrest Area Plan, 2008 and replaces the Fairview/Hillcrest Area Plan, 1985.

Rules Coordinator: Yvonne Hanna

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

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

.....
Department of Agriculture
Chapter 603

Rule Caption: Adopting, Amending, and Repealing Rules Governing Notices and Civil Penalties related to Pesticide Violations.

Date:	Time:	Location:
4-1-09	10 a.m.	635 Capitol St. NE Salem, OR

Hearing Officer: Vance Bybee

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372 & 634.900-634.915

Proposed Adoptions: 603-057-0502, 603-057-0532

Proposed Amendments: 603-057-0500, 603-057-0510, 603-057-0520, 603-057-0525, 603-057-0530

Proposed Repeals: 603-057-0515

Last Date for Comment: 4-3-09, 5 p.m.

Summary: The proposed rules fully implement ORS 634.900 as amended in 2007 and update procedures by amending, adopting, and repealing rules related to notices and civil penalties issued for violations of pesticide laws. Among other things, the proposed rules define "gross negligence" and "willful misconduct." The proposed rules establish criteria that the Director will use to set the amounts

NOTICES OF PROPOSED RULEMAKING

of the civil penalties for violations that result from gross negligence or willful misconduct. They also modify some of the criteria used to determine the amounts of the civil penalties for violations that do not result from gross negligence or willful misconduct. The proposed rules also update and summarize procedures.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4552

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

Rule Caption: Amends Oregon Electrical Specialty Code Article 708, Critical Operations Power Systems.

Date: 3-17-09 **Time:** 9:30 a.m. **Location:** 1535 Edgewater St. NW
Salem, OR 97304

Hearing Officer: Aeron Teverbaugh

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Proposed Amendments: 918-305-0280

Last Date for Comment: 3-20-09, 5 p.m.

Summary: This proposed rule amends the Oregon Electrical Specialty Code (OESC), Article 708, Critical Operations Power Systems, by removing provisions that are outside the scope of the OESC such as continuing maintenance and physical security. The proposed rule also clarifies who has the authority to designate an area as a critical operations area (DCOA) and classify systems in the DCOA as critical operations power systems.

Rules Coordinator: Shauna 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,
Oregon Medical Insurance Pool Board
Chapter 443**

Rule Caption: Update rules to be clear with processing and administrative procedures for the 2009 benefit year.

Stat. Auth.: ORS 735.610(6), 735.615 & 735.625

Other Auth.: OMIP Board

Stats. Implemented: ORS 735.610(6), 735.615 & 735.625

Proposed Amendments: 443-002-0070, 443-002-0180

Last Date for Comment: 3-23-09

Summary: 443-002-0070: Updates reference to benefits, benefit limitations, benefit exclusions and claims administration for the OMIP program to the plans, contract, application, member handbook, and benefit and rate instructions as of January 1, 2009. These rules do not change program requirements.

443-002-0180: Updates rule by clarifying current administrative procedures as outlined in the January 1, 2009 contracts. These rules for not change program requirements.

Rules Coordinator: Linnea Saris

Address: Department of Consumer and Business Services, Oregon Medical Insurance Pool, 250 Church St. SE, Suite 200, Salem, OR 97301

Telephone: (503) 378-5672

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

Rule Caption: Proposed changes to Division 2/F, Powered Platforms, Manlifts, and Vehicle Mounted Work Platforms.

Date: 3-26-09 **Time:** 2:30 p.m. **Location:** Labor & Industries Bldg.
Basement — Conference Rm. F
350 Winter Street NE
Salem, OR

Hearing Officer: Sue Joye

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001–654.295

Proposed Adoptions: 437-002-0072, 437-002-0074, 437-002-0076

Proposed Repeals: 437-002-0067, 437-002-0069, 437-002-0071, 437-002-0073, 437-002-0075

Last Date for Comment: 3-31-09

Summary: Oregon OSHA proposes to repeal five Oregon Administrative Rules (OARs):

OAR 437-002-0067 Extensible and Articulating Boom Platforms, because the rule does not allow for additional acceptable alternatives. The rule currently requires equipment to have clearly visible flashing warning lights on all vehicles when operating in or exposed to traffic.

The rule does not allow for other approved methods such as traffic control devices, barricades or simply roping off the area as referenced in the 2006 edition of the ANSI/SIA A92.5 consensus standard for Boom-Supported Elevating Work Platforms. Similar equipment or vehicles can simply conform to the Millennium Edition of the (FHWA) Manual of Uniform Traffic Control Devices (MUTCD), December 2000.

OAR 437-002-0069 General rules for proximity to overhead high voltage lines and equipment, **437-002-0071** Clearance or Safeguards Required, **437-002-0073** Warning Signs Required, and **437-002-0075** Notification to Power Company and Responsibility for Safeguards. These are redundant to overhead electrical rules found in Division 2/S Electrical.

Repeal of these rules in Division 2/F, will further maintain consistency with the Division 3 Construction rules.

Oregon OSHA Proposes to adopt three new OARs:

OAR 437-002-0072 Manually Propelled Elevating Aerial Platforms, equipment identified in ANSI A92.3; **437-002-0074** Self-Propelled Elevating Work Platforms-Scissor Lifts, equipment identified in ANSI A92.6; and **437-002-0076** Boom Supported Elevating Work Platforms, equipment identified in ANSI A92.5. Oregon OSHA adopted rules in 1997 into Division 3, Construction concerning this equipment. This proposal will provide consistent requirements for general industry and construction.

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 Electrical Standard in General Industry.

Date: 3-26-09 **Time:** 1:30 p.m. **Location:** Labor & Industries Bldg.
Basement — Conference Rm. F
350 Winter Street NE
Salem, OR

Hearing Officer: Sue Joye

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001–654.295

Proposed Amendments: 437-002-0320

Last Date for Comment: 3-31-09

Summary: The Occupational Safety and Health Administration (Federal OSHA) published a final rule revising its electrical installation standard for general industry on February 14, 2007. Oregon OSHA adopted the Federal OSHA changes to the electrical instal-

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lation standard found in Division 2/S as they appeared in the February, 2007 Federal Register.

This rulemaking proposes to adopt the additional Federal OSHA changes published in the October 29, 2008 Federal Register. The changes revise the scope of 1910.304(3) Ground-fault circuit interrupter protection for personnel, and addresses some questions raised by stakeholders on the application of the provision. Also two typographical errors located in Table S-3 of 1910.303 will be corrected.

Please visit our web site www.osha.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

Department of Corrections Chapter 291

Rule Caption: Visiting for Inmates Assigned to Disciplinary Segregation and Intensive Management Unit.

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

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

Proposed Amendments: 291-127-0240, 291-127-0260

Last Date for Comment: 3-25-09

Summary: The Department recently revised its visiting rules for inmates assigned to the Disciplinary Segregation Unit (DSU) and the Intensive Management Unit (IMU). Under the new provisions, inmates assigned to these units were permitted to visit with only two visitors whom they selected from their visiting list.

Several concerns were raised from inmates and inmate family. The main concern expressed was the inability, under the recent revision, of an inmate housed in DSU or IMU to receive visits from more than one of his or her children. A minor child must be accompanied by an adult to visit an inmate; and selection of two visitors from the inmate's visiting list required an inmate with two or more children to make a choice as to which child would be permitted to visit. This amendment will permit inmates housed in DSU or IMU to receive visits from more than one child. Other modifications allow inmates to increase the maximum number of visitors on the visiting list.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Department of Fish and Wildlife Chapter 635

Rule Caption: Amendments to the Fern Ridge, Lower Deschutes, Riverside, and Bridge Creek Areas management plans.

Date:	Time:	Location:
4-17-09	8 a.m.	1730 NW 9th St. McKenzie Conf. Center Corvallis, OR 97330

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138 & 496.146

Stats. Implemented: ORS 496.012, 496.138 & 496.146

Proposed Amendments: Rules in 635-008

Last Date for Comment: 4-17-09

Summary: Amendments to Oregon Administrative Rules for the Fern Ridge, Lower Deschutes, Riverside, and Bridge Creek Areas Management Plans. Amendments will guide management activities for the next 10 years.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

Rule Caption: Modify Rules for Ocean Commercial Pacific Sardine Fisheries.

Date:	Time:	Location:
4-17-09	8 a.m.	Salbaugeon Suites & Conf. Center McKenzie Conference Rm. 1730 NW 9th St. Corvallis, OR 97330

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.138 & 506.119

Stats. Implemented: ORS 496.162, 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: 4-17-09

Summary: These rule modifications amend ocean commercial Pacific sardine harvest regulations and establish the annual management measures for 2009. Rules may be adopted or amended regarding commercial Pacific sardine fishery permit renewals; waivers; and transfers. A lottery system may be established. Rules modifying regulations prohibiting the fishing practice of tendering may be considered for amendment and/or adoption. Housekeeping and technical corrections to regulations may occur to ensure rule consistency.

Rules Coordinator: Therese Kucera

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

Telephone: (503) 947-6033

Rule Caption: Amend Rules for Sport and Commercial Groundfish and Pacific Halibut, and Ocean Commercial Sturgeon Fisheries.

Date:	Time:	Location:
4-17-09	8 a.m.	Salbaugeon Suites & Conf. Center McKenzie Conference Rm. 1730 NW 9th St. Corvallis, OR 97330

Hearing Officer: Fish & Wildlife Commission

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

Stats. Implemented: ORS 496.162 & 506.129

Proposed Adoptions: Rules in 635-004, 635-011, 635-039

Proposed Amendments: Rules in 635-004, 635-011, 635-039

Proposed Repeals: Rules in 635-004, 635-011, 635-039

Last Date for Comment: 4-17-09

Summary: These amended rules will modify sport and commercial groundfish and Pacific halibut fisheries and ocean commercial sturgeon fisheries and establish annual management measure for 2009. 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

Rule Caption: Reconsider Rule to Authorize Ceremonial Wildlife Harvest Permits for use by the tribes of the Grand Ronde Indian reservation.

Date:	Time:	Location:
5-15-09	8 a.m.	3406 Cherry Ave. NE Salem, OR

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496

Stats. Implemented: ORS 496

Proposed Amendments: Rules in 635-043

Last Date for Comment: 5-9-09

Summary: Reconsider the rules that authorize ceremonial wildlife harvest permits for use by the Confederated Tribes of the Grande Ronde Indian Reservation.

Rules Coordinator: Therese Kucera

NOTICES OF PROPOSED RULEMAKING

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

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

Rule Caption: Update of Criminal History Check Rules for Providers Licensed, Certified, or Regulated by the Department.

Date:	Time:	Location:
3-18-09	9-9:45 a.m.	Human Services Bldg., Rm. 137-D 500 Summer St. NE Salem, OR 97301

Hearing Officer: Jennifer Bittel

Stat. Auth.: ORS 181.534, 181.537, 409.050, 410.020, 411.060, 411.122, 418.016, 418.640, 441.055, 443.730, 443.735 & 678.153

Stats. Implemented: ORS 181.534, 181.537, 183.341, 409.010, 411.060, 411.122 & 678.153

Proposed Amendments: 407-007-0200, 407-007-0210, 407-007-0220, 407-007-0230, 407-007-0240, 407-007-0250, 407-007-0280, 407-007-0290, 407-007-0320, 407-007-0330, 407-007-0340, 407-007-0350, 407-007-0355

Last Date for Comment: 3-23-09, 5 p.m.

Summary: The Department of Human Services' criminal history check provider rules are being updated to change the name of the DHS Criminal Records Unit to the DHS Background Check Unit; to correct grammatical and errors in the rules which became effective 1/1/2009; and to make the rules accurately represent current practice in the following areas:

1. The Department may revoke a qualified entity's ability to appoint authorized designees and contact persons during a compliance investigation (OAR 407-007-0240);

2. A current and valid government-issues photo identification is needed to verify a subject individual's identity (OAR 407-007-0240);

3. The Department recognizes that a conflict of interest in making a fitness determination may occur for reasons other than relationship and financial relations (OAR 407-007-0240); and

4. The intent of active supervision is to have the subject individual within line-of-sight and hearing when outdoors or off the qualified entity's property.

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

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

Rules Coordinator: Jennifer Bittel

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

Telephone: (503) 947-5250

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

Rule Caption: Certificate of Need Program to Impose Civil Penalties for Violations.

Date:	Time:	Location:
3-26-09	1 p.m.	800 NE Oregon St., Rm. 918 Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 431.120(6), 431.262 & 442.315

Stats. Implemented: ORS 431.120(6), 431.262 & 442.315

Proposed Adoptions: 333-565-0010

Last Date for Comment: 3-30-09, 5 p.m.

Summary: In accordance with ORS 431.262, the Department of Human Services, Public Health Division, is proposing to adopt Oregon Administrative Rule 333-565-0010, which will allow the Certificate of Need Program to impose civil penalties upon any person who violates ORS 442.315 through 442.347, any rule promulgated thereunder, or any order issued by the Division under this

authority, including the violation of any condition set forth in an order granting a certificate of need.

Rules Coordinator: Sally Peters

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

Telephone: (971) 673-0561

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Rule Caption: Public Drinking Water Systems Compliance.

Date:	Time:	Location:
3-24-09	1 p.m.	Douglas County Health 621 W Madrone Roseburg, OR
3-25-09	12 p.m.	Deschutes Service Bldg. 1300 NW Wall St. Bend, OR
3-26-09	10 a.m.	800 NE Oregon St., Rm. 1C Portland, OR

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 431.110, 431.150, 448.115-448.285 & 448.407

Proposed Amendments: 333-06-0020, 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

Last Date for Comment: 3-30-09, 5 p.m.

Summary: The Oregon Department of Human Services, Public Health Division is proposing to amend 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 proposed 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 proposed rule amendments include changes to lead and copper public education requirements, water treatments plant classification, variances from treatment techniques, wellfield determination criteria, facility disinfection requirements following construction or maintenance, and operator certification suspension.

Rules Coordinator: Sally Peters

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

Telephone: (971) 673-0561

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

Rule Caption: COD Course Remediation Process and Certification Recall Process for Failing to Maintain First Aid/CPR (Police).

Stat. Auth.: ORS 181.640, 181.652, 181.653 & 181.667

Stats. Implemented: ORS 181.640, 181.652, 181.653 & 181.667

Proposed Amendments: 259-008-0025, 259-008-0065

Last Date for Comment: 3-24-09, 5 p.m.

Summary: Establishes re-testing process for an individual who fails a Career Officer Development (COD) Course;

Establishes certification recall process for police officers who fail to maintain current First Aid or CPR certification and clarifies reporting requirements.

Rules Coordinator: Bonnie Salle-Narvaez

Address: 4190 Aumsville Hwy SE, Salem, OR 97317

Telephone: (503) 378-2431

NOTICES OF PROPOSED RULEMAKING

Rule Caption: Amend Conversion Ratio for Police and Corrections Students Receiving College Credit for Basic Course.

Stat. Auth.: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654 & 181.655

Stats. Implemented: ORS 181.640, 181.644, 181.651, 181.652, 181.653, 181.654 & 181.655

Proposed Amendments: 259-008-0060

Last Date for Comment: 3-24-09, 5 p.m.

Summary: The current rule allows for a unilateral 1:20 ratio for conversion, which means the Department can grant 20 training hours for each college credit converted to training or deduct 20 training hours for each college credit obtained from training, whichever is to the advantage of an individual applying for upper levels of certification. Oregon community colleges determined the 1:20 ratio is appropriate for "practical" or "skills based training" but academic training is more appropriate at a ratio of one credit per 10 hours of comparable training. The Department proposes to amend its rule to provide for a 1:20 ratio for skills based training and a 1:10 ratio for academic training.

Rules Coordinator: Bonnie Salle-Narvaez

Address: 4190 Aumsville Highway SE, Salem OR 97317

Telephone: (503) 378-2431

Rule Caption: Housekeeping Changes to Administrative Rulemaking Process.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Proposed Amendments: 259-001-0005

Last Date for Comment: 3-24-09, 5 p.m.

Summary: Clarifies Department's requirement to provide notice to interested parties as part of the proposed permanent rulemaking process.

Rules Coordinator: Bonnie Salle-Narvaez

Address: 4190 Aumsville Hwy SE Salem, OR 97317

Telephone: (503) 378-2431

Rule Caption: Adoption of NFPA 1001, Standard for Firefighter Professional Qualifications, 2008 Edition.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Proposed Amendments: 259-009-0062

Last Date for Comment: 3-24-09, 5 p.m.

Summary: Adopts the provisions of the NFPA Standard 1001, 2008 Edition, entitled "Fire Fighter Professional Qualifications."

Rules Coordinator: Bonnie Salle-Narvaez

Address: 4190 Aumsville Highway SE, Salem, OR 97317

Telephone: (503) 378-2431

Rule Caption: Require Physical Examination if officer returns after separating employment due to physical inability to perform job.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Proposed Amendments: 259-008-0010

Last Date for Comment: 3-24-09, 5 p.m.

Summary: Amends the current rule to require a law enforcement officer who is separated from employment due to a physical inability to perform the essential tasks of the position to complete a new F-2 (Physical Examination), if seeking re-employment or retired police officer certification, even if the officer's certification is not yet lapsed.

Rules Coordinator: Bonnie Salle-Narvaez

Address: 4190 Aumsville Hwy SE, Salem, OR 97317

Telephone: (503) 378-2431

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.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.350, 803.370, 807.050, 807.062, 821.080 & 2007 OL Ch. 99 Sec. 3

Stats. Implemented: ORS 802.500, 802.520, 803.200, 803.300, 803.325, 803.350, 803.355, 803.360, 807.370, 807.010, 807.040, 807.045, 807.050, 807.062, 807.400, 821.080 & 826.033

Proposed Amendments: 735-016-0030, 735-016-0070

Last Date for Comment: 3-23-09

Summary: 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 proposes to amend 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 is further amended by describing when an Oregon tax return is acceptable to DMV as proof of domicile. Other proposed amendments to OAR 735-016-0030 are non-substantive, but are being made for clarify and readability.

OAR 735-016-0070 establishes what documents DMV will accept as proof of residency or domicile. DMV proposes to amend OAR 735-016-0070 to clarify when an Oregon income tax return is acceptable as proof of residency or domicile. Additionally amendments are proposed for clarity.

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

Department of Transportation, Highway Division Chapter 734

Rule Caption: Adoption and amendment of rules governing motor carrier transportation of logs, poles and piling.

Stat. Auth.: ORS 184.616, 184.619 & 818.220

Stats. Implemented: ORS 818.220

Proposed Adoptions: 734-078-0017

Proposed Amendments: 734-078-0015

Last Date for Comment: 3-23-09

Summary: These rules describe allowances and limitations for vehicles and combinations of vehicles transporting long logs, poles or piling. The proposed amendment to OAR 735-078-0015 is need to authorize log haulers to utilize an auxiliary axle to distribute the weight of a load that may not otherwise be allowed, thereby facilitating more efficient use of equipment without additional damage to the infrastructure. The proposed new rule specifies allowable rear overhang limits, describes variance permit requirements for loads with excessive rear overhang and clarifies how rear overhang is measured. Previously, rear overhang for these loads was governed by OAR 734-082-0030 which includes a wheelbase formula to determine allowable overhang. The formula based approach is difficult to manage and has proved to allow overhang that can be unsafe. The new rule is needed to promote safe transport of loads with rear overhang by requiring a rear pilot vehicle for loads turning off a multi-lane highway.

NOTICES OF PROPOSED RULEMAKING

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

Rules Coordinator: Lauri Kunze

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

Telephone: (503) 986-3171

.....
Oregon Department of Education
Chapter 581

Rule Caption: Modifies requirements relating to granting of credits towards high school diploma.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Proposed Amendments: 581-022-1131

Last Date for Comment: 3-25-09, 5 p.m.

Summary: The proposed revision of the current rule updates the available options for school districts in granting credit to align with graduation requirements adopted by the State Board of Education in January, 2007. Additional options and language included in the revision allow school districts to grant graduation credit based on student demonstrated proficiency to knowledge and skill standards, in addition to traditional instructional time (130 clock hours = 1 credit).

Rules Coordinator: Paula Merritt

Address: 255 Capitol St NE, Salem, OR 97310

Telephone: (503) 947-5746

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Rule Caption: Modifies rules relating to private prekindergarten through grade 12 schools.

Stat. Auth.: ORS 345.535

Stats. Implemented: ORS 345.505–345.575

Proposed Adoptions: 581-045-0522, 581-045-0538

Proposed Amendments: 581-045-0500, 581-045-0505, 581-045-0515, 581-045-0525, 581-045-0530, 581-045-0535, 581-045-0545, 581-045-0550, 581-045-0555, 581-045-0565, 581-045-0570

Proposed Repeals: 581-045-0575

Last Date for Comment: 3-25-09, 5 p.m.

Summary: Most of the rule revisions are to clarify existing rules. The rules require compliance with fire safety rules and child care standards relating to safety and sanitation. The rules also implement a child abuse reporting and training law enacted by the 2007 legislature.

Rules Coordinator: Paula Merritt

Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310-0203

Telephone: (503) 947-5746

.....
Oregon State Treasury
Chapter 170

Rule Caption: Changes to public funds collateralization rule.

Date:	Time:	Location:
3-25-09	10 a.m.	350 Winter St. NE, #100 Salem, OR 97301-3896

Hearing Officer: Judy Whaley-Fultz

Stat. Auth.: ORS 293.525 & 295.106

Other Auth.: HB 2901, 2007 Legislative Session

Stats. Implemented: ORS 293.525 & 295.106

Proposed Amendments: 170-040-0020

Last Date for Comment: 3-25-09

Summary: Rule 170-040-0020 is amended to provide the ability to assess a penalty on bank depositories that remit program administration fees by check.

Rules Coordinator: Sally Wood

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

Telephone: (503) 378-4990

Oregon University System,
University of Oregon
Chapter 571

Rule Caption: Amend special fees, fines, penalties, and service charges.

Date:	Time:	Location:
4-1-09	2:30–3:30 p.m.	Coquille/Metolius Rm. Erb Memorial Union Univ. of Oregon Eugene, OR

Hearing Officer: Deb Eldredge

Stat. Auth.: ORS 351.070 & 352

Stats. Implemented: ORS 351.070

Proposed Amendments: 571-060-0005

Last Date for Comment: 4-2-09, 12 p.m.

Summary: The University administration has determined that the adoption of the amendments to the fee list will be necessary in order to provide the basis for funding to cover the expenses of the services rendered and to maintain a current schedule of fees, fines, and penalties.

Rules Coordinator: Deb Eldredge

Address: Oregon University System, 1226 University of Oregon, Eugene, OR 97403

Telephone: (541) 346-3082

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Rule Caption: Amend special fees, fines, penalties, and services charges — specifically for Family Housing Rental Rates.

Date:	Time:	Location:
4-7-09	4 p.m.	Rogue Rm. Erb Memorial Union Univ. of Oregon Eugene, OR

Hearing Officer: Deb Eldredge

Stat. Auth.: ORS 351.070 & 352

Stats. Implemented: ORS 351.070

Proposed Amendments: 571-060-0005

Last Date for Comment: 4-8-09, 12 p.m.

Summary: Increase in family housing rental rates to cover projected operating costs for 2009–2010.

Rules Coordinator: Deb Eldredge

Address: Oregon University System, 1226 University of Oregon, Eugene, OR 97403

Telephone: (541) 346-3082

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Oregon Youth Authority
Chapter 416

Rule Caption: OYA offender medication management.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 418.517, 420A.010, 420A.014 & 420.054

Proposed Amendments: 416-340-0010, 416-340-0020, 416-340-0030, 416-340-0040, 416-340-0060, 416-340-0070

Last Date for Comment: 3-23-09, Close of Business

Summary: The rule modifications update requirements for OYA staff and substitute care providers in storing, administering, and tracking OYA offender medication. Also clarified are offender rights relating to medication.

Rules Coordinator: Winifred Skinner

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

Telephone: (503) 373-7570

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Parks and Recreation Department
Chapter 736

Rule Caption: Amendment to OAR 736-018-0045 to Adopt the Iwetemlaykin State Heritage Site Master Plan.

NOTICES OF PROPOSED RULEMAKING

Date: 3-25-09
Time: 6 p.m.
Location: Tomas Conference Rm.
309 S. River
Enterprise, OR

Hearing Officer: Jim Hutton
Stat. Auth.: ORS 390.180(1)
Stats. Implemented: ORS 390.180(1)
Proposed Amendments: 736-018-0045
Last Date for Comment: 4-24-09

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 master plan for Iwetemlaykin State Heritage Site, a new park that was recently added to the state park system. Master plans for state parks are adopted as state rules under OAR 736-018-0045. The purpose of amending OAR 736-018-0045 is to adopt the new master plan as a 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 through OPRD's mandated master planning process involving meetings with the general public, an advisory committee, tribes that are affiliated with the area, 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

Rule Caption: Amend OAR 736-015-0035 to make waiver of camping fee to U.S. Military veterans only as was the original intent.

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.111, 390.121 & 390.124
Proposed Amendments: 736-015-0035
Last Date for Comment: 4-1-09

Summary: OAR 736-015-0035 is being amended to limit the waiver of camping fees to U.S. military veterans with a service connected disability or active duty 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 past few years that have been increasing requests for fee waiver from people outside the United State, mostly Canadian 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
Address: Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301
Telephone: (503) 986-0756

Rule Caption: Amendment to OAR 736-018-0045 for Adoption of the Kam Wah Chung State Heritage Site Master Plan.

Stat. Auth.: ORS 390.180(1)
Stats. Implemented: ORS 390.180(1)
Proposed Amendments: 736-018-0045
Last Date for Comment: 4-4-09

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 master plan for Kam Wah Chung State Heritage Site. Master plans for state parks are adopted as state rules under OAR 736-018-0045. The purpose of amending OAR 736-018-0045 is to adopt the new master plan as a state rule.

The master plan for Kam Wah Chung State Heritage Site responds to the most current information on park resources and related recreation and historic interpretation opportunities. The plan was formulated through OPRD's mandated master planning process involving meetings with the general public, and advisory committee, affected interest groups, and affected state and federal agencies and local government.

Rules Coordinator: Joyce Merritt

Address: Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301
Telephone: (503) 986-0756

Public Utility Commission Chapter 860

Rule Caption: In the Matter of Clarifying OAR 860-032-0620, Quarterly OUS Report: Filing and Payment.

Stat. Auth.: ORS 183, 192, 756 & 759
Stats. Implemented: ORS 756.040, 759.015 & 759.425
Proposed Amendments: 860-032-0620

Last Date for Comment: 3-27-09, Close of Business
Summary: The proposed amendments to OAR 860-032-0620 clarify that the quarterly contribution report must be signed by an officer of the telecommunications provider, clarify the penalty waiver provisions and make other minor clarifications to the rule regarding deferrals.

There are instances of telecommunications providers filing unsigned quarterly contribution reports or filing reports that are signed by contracted tax consultants. Filing of an incomplete or inaccurate contribution report can lead to monetary penalties for the subject company. The proposed amendments to the rule clarify the requirements regarding signatures required and deferrals.

Additionally, there are circumstances beyond a provider's control that may prevent it from timely filing its report and fee; under such circumstances, the Commission should be able to waive the appropriate penalties. The proposed amendments clarify the waiver provisions.

The Commission encourages participants to file written comments before the comment deadline, allowing time for other participants to consider and respond to the comments before the deadline. For information about how to file your comments, please contact Diane Davis at diane.davis@state.or.us or (503) 378-4372. Filed comments will be available online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=15346>

Rules Coordinator: Diane Davis
Address: 550 Capitol Street NE, Suite 215, Salem, OR 97301
Telephone: (503) 378-4372

Water Resources Department Chapter 690

Rule Caption: Proposed changes to the land ownership and lien information required of applicants requesting a water right transfer and/or ground water registration modification.

Date: 3-23-09
Time: 6-7 p.m.
Location: North Mall Bldg., Rm. 124
725 Summer St.
Salem, OR

Hearing Officer: Staff
Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented: ORS 540.505-540.570
Proposed Amendments: 690-380-0090, 690-380-0100, 690-380-4010, 690-382-0100, 690-382-0500, 690-382-0700
Last Date for Comment: 4-2-09, 5 p.m.

Summary: The Water Resources Department (Department) is proposing to amend provisions in administrative rules related to water right transfers (OAR chapter 690, division 380) and ground water registration modifications (OAR chapter 690, division 382) by eliminating the requirement that applicants submit a copy of written notification to all lien holders and the requirements that lien holder information be included in ownership reports prepared by a title company and submitted to the Department. In addition, the proposed rules clarify when ownership reports must be prepared to provide better information to establish that applicants are authorized to pursue a water right transfer or modification of a ground water registration.

Rules Coordinator: Ruben Ochoa
Address: Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301
Telephone: (503) 986-0874

ADMINISTRATIVE RULES

Appraiser Certification and Licensure Board Chapter 161

Rule Caption: Permanent adoption and amendment of rules resulting from three year rule review.

Adm. Order No.: ACLB 1-2009

Filed with Sec. of State: 1-28-2009

Certified to be Effective: 1-30-09

Notice Publication Date: 12-1-2008

Rules Amended: 161-010-0085, 161-020-0045, 161-020-0140, 161-020-0150, 161-025-0060

Subject: Permanently amends division 10 regarding licensure and certification requirements; division 20 regarding education requirements; and division 25, regarding scope of practice, Appraisal Standards and USPAP.

Rules Coordinator: Karen Turnbow—(503) 485-2555

161-010-0085

Pre-Requisite Experience and Education for Supervising Appraiser

Any licensee wishing to supervise a new appraiser assistant, must first apply for and receive a Supervising Appraiser Endorsement. In order to receive a Supervising Appraiser Endorsement, the applicant must:

(1) Be licensed or certified for a minimum of 24 months, be in good standing, and not be otherwise prohibited from supervising appraiser assistants. Effective January 1, 2010, State Licensed Appraisers may not supervise registered appraiser assistants and, therefore, are not eligible for a supervising appraiser endorsement.

(2) Attend a Board approved Supervising Appraiser/Appraiser Assistant Training Course and successfully pass the final exam prior to making application. A prior Supervising Appraiser/Appraiser Assistant Training Course and exam completed for purposes of registering as an appraiser assistant will not count towards obtaining a Supervising Appraiser Endorsement.

(3) Submit a completed Supervising Appraiser Endorsement application that includes the following:

(a) Non-refundable application fee as described on the application form; and

(b) Supervising Appraiser/Appraiser Assistant Training Course completion certificate.

(4) Upon application approval, the Board will issue the applicant a Supervising Appraiser Endorsement that authorizes the applicant to act as a Supervising Appraiser pursuant to OAR 161-025-0025. The endorsement is valid from the date of issuance.

(5) A Supervising Appraiser Endorsement may be suspended or revoked if the Board determines that the applicant has failed to directly supervise an Appraiser Assistant as required by OAR 161-025-0025.

(6) The Board may also conduct assessments of appraisal work product after the Supervising Appraiser Endorsement is issued.

(7) Any applicant may submit a written request to withdraw their application at any time prior to an official action being taken by the Board.

Stat. Auth.: OAR 183.355(1)(a), 674.305(7) & 674.310(2)

Stats. Implemented: ORS 674.305(7) & 674.310(2)

Hist.: ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 1-2007, f. & cert. ef. 2-9-07; ACLB 4-2007, f. 11-1-07, cert. ef. 1-1-08; ACLB 2-2008(Temp), f. & cert. ef. 8-6-08 thru 2-1-09; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09

161-020-0045

Criteria for Approval of Course as Qualifying Education

In order to be approved as qualifying education, the course shall be found to satisfy all the criteria described in this rule:

(1) Current Classroom Offering — The course shall be a current offering of the course owner/affiliated entity that is generally presented by traditional classroom methods. Courses presented by correspondence, videotape or remote television are eligible for approval only as provided in OAR 161-020-0140.

(2) Course Length and Content — The course shall be a real estate appraisal course that provides a minimum of 15 classroom hours of instruction (including examination time when applicable) and must comply with the “Qualifying Education Course Content Guidelines” in these rules.

(3) Course Description — The course materials or syllabus must include a course description which clearly describes the content of the course.

(4) Summary Outline — The course materials or syllabus shall include a summary outline of major topics and the number of classroom hours devoted to each major topic.

(5) Learning Objectives — The course materials or syllabus shall include specific learning objectives which:

(a) Are appropriate for a qualifying education course;

(b) Clearly state the specific knowledge and/or skills students are expected to acquire by completing the course;

(c) Are consistent with the course description;

(d) Are consistent with the textbook and/or other instructional materials; and

(e) Are reasonably achievable within the number of classroom hours allotted for the course.

(6) Work Assignments — The course materials or syllabus shall provide for in-class work assignments and/or out-of-class work/reading assignments, if necessary, to accomplish the stated learning objectives.

(7) Instructional Materials — Instructional materials to be used by students in the course shall:

(a) Cover the subject matter in sufficient depth to achieve the stated course learning objectives;

(b) Provide appropriately balanced coverage of the subject matter in view of the stated course learning objectives;

(c) Reflect current knowledge and practice;

(d) Contain no significant errors;

(e) Reflect correct grammatical usage and spelling;

(f) Effectively communicate and explain the information presented;

(g) Be suitable in layout and format; and

(h) Be suitably bound/packaged and be produced in a quality manner.

(8) Examination(s) — Course examinations shall consist of either a series of examinations or a comprehensive final examination or both. The course examination(s) shall comply with the following criteria:

(a) The examination(s) contains a sufficient number of questions to adequately test the subject matter covered in the course;

(b) The amount of time devoted to the examination(s) is appropriate for the course;

(c) The examination questions, individually and collectively, test at a difficulty level appropriate to measure student achievement of the stated course learning objectives;

(d) The subject matter tested by examination questions is adequately addressed in the course instructional materials;

(e) The examination questions are written in a clear and unambiguous manner; and

(f) The examination questions are accurate and the intended correct answer is clearly the best answer choice.

(9) Prerequisites — The course owner/affiliated entity must have established appropriate prerequisites for any course other than an introductory course on Basic Real Estate Appraisal Principles and Practices or a course on Appraisal Standards and Ethics.

(10) Instructor Qualifications — The course owner/affiliated entity shall keep records documenting that their instructors meet the Board qualifications as follows:

(a) A baccalaureate degree in any field and three years of experience directly related to the subject matter to be taught; or

(b) A masters degree in any field and two years of experience directly related to the subject matter to be taught; or

(c) A baccalaureate degree in a field that is directly related to the subject matter to be taught and one year of experience directly related to the subject matter to be taught; or

(d) An associate degree in a field that is directly related to the subject matter to be taught and three years of experience directly related to the subject matter to be taught; or

(e) A masters or higher degree in a field that is directly related to the subject matter to be taught; or

(f) five years of real estate appraisal teaching experience directly related to the subject matter to be taught; or

(g) Seven years of real estate appraisal experience directly related to the subject matter to be taught.

(h) For those instructing the Appraisal Foundation’s National USPAP Course:

(A) At least one instructor must be a certified residential or certified general appraiser and;

(B) The instructor must be an AQB certified USPAP instructor.

(i) For those instructing a course equivalent to the Appraisal Foundation’s National USPAP Course:

(A) At least one instructor must be a certified residential or certified general appraiser; and

(B) The instructor must be an AQB certified USPAP instructor.

ADMINISTRATIVE RULES

(11) Attendance Policy — The course owner/affiliated entity shall have a written attendance policy that requires student attendance to be verified. Policy must:

- (a) Stipulate the percentage of attendance required by the student;
- (b) Include, on the attendance records form, the instructor(s) name and the criteria under which they qualified;
- (c) Provide that non-members of the course provider's association or organization may apply for the course without membership in the association;
- (d) Provide for retention of attendance records for a minimum of five years.

(12) Course Scheduling Policy — The course owner/affiliated entity shall have an established policy on course scheduling that provides a maximum of eight (8) classroom hours of instruction in any given day and appropriate breaks during each class session.

(13) Course Completion Certificate Policy — The course owner/affiliated entity shall have an established policy assuring prompt issuance of signed course completion certificates to attendees which shall include information regarding the number of classroom hours, and whether there was successful passage of the course examination.

(14) Audit Policy — The course owner/affiliated entity shall permit the Administrator, or the Administrator's representative, to audit the course and course material, at no cost to the Administrator or the Administrator's representative, in order to evaluate the instruction. The course owner/affiliated entity shall permit the Administrator or the Administrator's representative to review records appropriate to selected course offerings.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 3-1991(Temp), f. & cert. ef. 8-29-91; ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 2-1993(Temp), f. & cert. ef. 4-28-93; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-020-0010 & 161-020-0040; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-2000; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03; ACLB 6-2003, f. & cert. ef. 11-24-03; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09

161-020-0140

Distance Education Courses (On-line/Compact Disc (CD)), Correspondence Courses and Video Remote TV Educational Offerings

In order to be approved, the course must satisfy all criteria described in this rule and meet current requirements as defined by OAR 161-020-0110 and 161-020-0120.

(1) Distance education courses offered on-line via the internet must be pre-approved by the International Distance Education Certification Center (IDECC), with the exception of courses offered by a community college or university. In addition:

(a) Qualifying education courses must be pre-approved by the Appraiser Qualifications Board (AQB).

(b) The course length of a qualifying education course must be equivalent to a minimum of 15 classroom hours. The course length of a continuing education courses must be equivalent to a minimum of 2 classroom hours.

(c) For qualifying education courses, the individual must successfully pass a written final examination.

(2) Distance education courses offered via CD:

(a) The course length must be equivalent to a minimum of 15 classroom hours for qualifying education and 2 hours for continuing education.

(b) For qualifying education courses, the individual must successfully pass a written final examination.

(3) Correspondence courses:

(a) The course is presented by an accredited college or university which also offers correspondence programs in other disciplines;

(b) For qualifying education courses, a written final examination is administered at a location and by an official approved by the college or university; and

(c) The course length must be equivalent to a minimum of 15 classroom hours for qualifying education and 2 hours for continuing education.

(4) Video and remote TV educational offerings are acceptable to meet the education classroom hour requirements provided each offering is approved by the Administrator and meets the following conditions:

(a) The offering is presented by an accredited college or university which offers similar programs in other disciplines. The course length must be equivalent to a minimum of 15 classroom hours for qualifying education and 2 hours for continuing education.

(b) For qualifying education courses, a written final examination is administered at a location and by an official approved by the college or university. An examination is not necessary for continuing education credit.

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef. 7-22-05; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09

161-020-0150

Time Requirements for Qualifying Education and Continuing Education

(1) Qualifying Education:

(a) If approved by the Administrator as meeting the requirements of these rules, audio educational offerings taken prior to July 1, 1990, shall be acceptable to meet the Qualifying Education requirements for certification and licensure;

(b) There is no time limit regarding when qualifying education credit must be obtained, with the following exceptions:

(A) The 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, must be obtained within two (2) years preceding the date of application; and

(B) All other qualifying education for applicants applying to be a registered appraiser assistant must be obtained within five (5) years preceding the date of application, with the exception of licensed or certified appraisers registering as an appraiser assistant to upgrade their license.

(2) Continuing Education:

(a) Continuing education hours shall be reported as part of the renewal application process. Reporting shall be on a form prescribed by the Board which includes the name of the educational provider, course subject matter, location, number of hours, course name, date of course and appraiser's name. The appraiser shall also submit a copy of the certificate of completion, URCEC form or grade report issued by the course provider;

(b) "Carry over" of hours from past to future years will not be allowed;

(c) The same or like course can not be repeated for use as continuing education within a two year period, with the exception of USPAP;

(d) Extension of time to satisfy continuing education hour requirements will not be permitted;

(e) USPAP:

(A) The Appraisal Foundation's National USPAP Update Course, or its equivalent, is required for renewal of all licensed and certified appraisers every two year license cycle.

(B) Registered Appraiser Assistants must successfully complete the Appraisal Foundation's National USPAP Update Course, or its equivalent, at a minimum of every two years.

(f) Fourteen hours of classroom instruction for each year preceding the license or certification renewal is required. Continuing education hours may be obtained any time during the term. Credit towards the classroom hour requirements shall be granted only where the length of the educational offering is at least two hours.

(g) Appraisers may receive up to eight (8) hours of continuing education credit for course instruction of a Board approved course per two year license cycle. However, the appraiser cannot receive credit for course instruction of the same course in consecutive license cycles.

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef. 7-22-05; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09

161-025-0060

Appraisal Standards and USPAP

(1) All licensees must develop and communicate each appraisal assignment in compliance with these administrative rules and USPAP.

(2) A licensee employed by a group or organization that conducts itself in a manner that does not conform to USPAP Standards must take steps that are appropriate under the circumstances to ensure compliance with the Standards.

(3) All licensees must certify to what extent they personally inspected the property that is the subject of the appraisal assignment. Each report must clearly state that the subject property was: inspected both inside and out; inspected from the exterior only; or was not personally inspected by the licensee.

(4) In addition to certifying as to the extent of the subject's inspection, all licensees must also certify to what extent each of the comparable sales relied upon in the appraisal were personally inspected.

ADMINISTRATIVE RULES

(5) All licensees must disclose in all appraisal reports whether the comparable sales analyzed in the appraisal report were or were not confirmed by a party to the transaction or an agent or representative of a party to the transaction.

(6) All licensees testifying or presenting evidence in an administrative or judicial proceeding must base their testimony or evidence only upon a written summary or self-contained appraisal report in compliance with USPAP, reflecting a report date that precedes the date of testimony, unless such testimony is being compelled by legal subpoena.

(7) The "Uniform Standards of Professional Appraisal Practice", 2008 Edition, approved and adopted by the Appraisal Standards Board of the Appraisal Foundation, dated April 27, 1987, as amended on January 1, 2008, are incorporated into the Administrative Rules of the Appraiser Certification and Licensure Board as the standards of professional conduct which shall guide the behavior of licensed and certified appraisers in the State of Oregon. Copies of the Uniform Standards of Professional Appraisal Practice may be obtained from the Appraisal Foundation located at 1029 Vermont Avenue, N.W., Suite 900, Washington D.C. 20005-3517.

(8) All licensees must list their certificate or license number and expiration date in each appraisal report.

(9) All licensees must comply with USPAP in all valuation activity, unless such valuation activity qualifies as an exclusion to real estate appraisal activity under ORS 674.100(2)(h).

(10) Notwithstanding any other provision of these rules, a licensee acting in one of the following capacities is not subject to the requirements of Standard 3 of USPAP when examining an appraisal report and workfile as part of an official investigation being conducted by the Board:

- (a) Board member;
- (b) Employee; or
- (c) Contractor or volunteer serving at the request of the Board.

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

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 4-1993(Temp), f. & cert. ef. 6-25-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 4-1994, f. & cert. ef. 7-27-1994; ACLB 2-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-89; ACLB 1-1999, f. 1-28-99, cert. ef. 3-31-99; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 3-2000(Temp), f. 11-9-00, cert. ef. 11-9-00 thru 5-8-01; ACLB 1-2001(Temp), f. & cert. ef. 1-26-01 thru 7-25-01; ACLB 2-2001, f. 4-11-01, cert. ef. 4-12-01; ACLB 3-2001(Temp), f. & cert. ef. 7-12-01 thru 1-8-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 1-2004, f. & cert. ef. 2-3-04; ACLB 1-2005, f. & cert. ef. 1-12-04; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-28-06; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 5-2007(Temp), f. 11-1-07, cert. ef. 1-1-08 thru 6-27-08; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 1-2009, f. 1-28-09, cert. ef. 1-30-09

Rule Caption: Temporary rule creating definition for accredited college/university and amending pre-requisite requirements for licensing.

Adm. Order No.: ACLB 2-2009(Temp)

Filed with Sec. of State: 1-28-2009

Certified to be Effective: 1-30-09 thru 7-28-09

Notice Publication Date:

Rules Amended: 161-002-0000, 161-010-0035, 161-010-0045

Subject: Amends Oregon Administrative Rule 161, division 002, rule 000 regarding definitions; division 10, rule 0035 regarding pre-requisite education and experience requirements for state certified general appraisers; and division 10, rule 0045 regarding prerequisite education and experience requirements for state certified residential appraisers.

Rules Coordinator: Karen Turnbow—(503) 485-2555

161-002-0000

Definitions

As used in OAR 161-01-005 to 161-50-050, the following terms (whether capitalized or not) shall have the following meanings:

(1) "Accredited College or University" means a college or university that is accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education.

(2) "Administrator" means the administrator of the Board appointed by the Board.

(3) "Affiliate" means a business organization sharing with a financial institution or insurance company some aspect of common ownership and control.

(4) "Appraisal" or "Real Estate Appraisal" means "appraisal" as defined in USPAP.

(5) "Appraisal Foundation" means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(6) "Appraisal Report" means "report" as defined in USPAP.

(7) "Appraiser Assistant" or "AA" means a person who is not licensed or certified as an appraiser, but is registered as an appraiser assistant under ORS 674.310, and who assists with real estate appraisal activity under the direct supervision of a certified or licensed appraiser.

(8) "Appraisal Subcommittee" or "ASC" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) established pursuant to the Federal Act.

(9) "Board" or "ACLB" means the Appraiser Certification and Licensure Board established under ORS Chapter 674.

(10) "Certificate" means the document issued by the Board indicating that the person named thereon has satisfied the requirements for certification as a state certified residential or state certified general appraiser.

(11) "Classroom hour" as used in reference to qualifying and continuing education means 50 minutes out of each 60 minute segment.

(12) "Completion" means interpreting, analyzing and reconciling data or compiled data, including reviewing and adopting another person's interpretations and reconciliations as one's own.

(13) "Complex one-to-four family residential property appraisal" means an appraisal in which the property to be appraised, market conditions, or form of ownership is atypical. For example, atypical factors may include, but are not limited to:

- (a) Architectural style;
- (b) Age of improvements;
- (c) Size of improvements;
- (d) Size of lot;
- (e) Neighborhood land use;
- (f) Potential environmental hazard liability;
- (g) Property interests;
- (h) Limited readily available comparable sales data; or
- (i) Other unusual factors.

(14) "Continuing Education" means education that is creditable toward the education requirements that must be satisfied to renew a license, certificate or appraiser assistant registration.

(15) "Direct Supervision" of an appraiser assistant means:

(a) Disclosing in the appraisal report that the supervising appraiser has inspected the subject property both inside and out, and has made an exterior inspection of all comparables relied upon in the appraisal or disclose that the supervising appraiser did not inspect the subject property both inside and out, and did not inspect the exterior of comparables relied upon in the appraisal; and

(b) Reviewing the appraiser assistant's appraisal report(s) to ensure research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that any analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading; and

(c) Reviewing the appraiser assistant's work product and discussing with the appraiser assistant any edits, corrections or modifications that need to be made to that work product to satisfy OAR 161-002-0000(14)(b); and

(d) Accepting sole and total responsibility for the appraisal report by signing the appraisal report and certifying that the appraisal report has been prepared in compliance with the current edition of the Uniform Standards of Professional Appraisal Practice.

(16) "Federal Act" means Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 et seq.).

(17) "Federal Financial Institution Regulatory Agency" means:

- (a) The Board of Governors of the Federal Reserve System;
- (b) The Federal Deposit Insurance Corporation;
- (c) The Office of the Comptroller of the Currency;
- (d) The Office of Thrift Supervision; or
- (e) The National Credit Union Administration.

(18) "Financial Institution" means an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act or an insured credit union as defined in section 101 of the Federal Credit Union Act.

(19) "Good Standing" means the status of a person whose license, certificate or registration is not currently suspended or been revoked.

(20) "Issuance" means the act of communicating the opinion of value either in writing or orally.

ADMINISTRATIVE RULES

(21) “**License**” means the document issued by the Board indicating that the person named thereon has satisfied all requirements for licensure as a state licensed appraiser.

(22) “**Licensee**” means any person who holds an active or inactive Oregon appraiser license, certified residential appraiser certificate, or certified general appraiser certificate.

(23) “**Mortgage banker**” has the meaning defined in ORS 59.840.

(24) “**Non-residential**” appraising means to render a value on real property other than one-to-four family residential properties.

(25) “**One-to-four family residential property**” means a property that includes one to four residential units and is residential in character, i.e., zoning, land use.

(26) “**Preparation**” means compiling data, including reviewing and adopting such compiled data as one’s own.

(27) “**Prerequisite education**” means the initial qualifying educational requirements to become licensed or certified with the Board.

(28) “**Professional real estate activity**” has the meaning defined in ORS 696.010.

(29) “**Qualifying Education**” means education that is creditable toward the education requirements for initial licensure or certification under one or more of the three real estate appraiser classifications.

(30) “**Real estate appraisal activity**” has the meaning defined in ORS 674.100.

(31) “**Real Estate**” or “**Real Property**” means an identified parcel or tract of land, together with any improvements, that includes easements, rights-of-way, undivided or future interests or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(32) “**State Certified General Appraiser**” or “**SCGA**” means an individual who has been certified as a state certified general appraiser by the Board.

(33) “**State Certified Residential Appraiser**” or “**SCRA**” means an individual who has been certified as a state certified residential appraiser by the Board.

(34) “**State Licensed Appraiser**” or “**SLA**” means an individual who has been licensed as a state licensed appraiser by the Board.

(35) “**Subdivision**” means either an act of subdividing land or a tract of land subdivided to create four or more lots within a calendar year.

(36) “**Supervising Appraiser**” means a licensee who is directly supervising appraiser assistants pursuant to OAR 161-025-0025.

(37) “**Supervising Appraiser Endorsement**” means the document issued by the Board indicating that the licensee named thereon has satisfied all requirements of OAR 161-010-0085 to be a Supervising Appraiser.

(38) “**Transaction Value**” means:

(a) For loans or other extensions of credit, the amount of the loan or extension of credit; and

(b) For sales, leases, purchases and investments in or exchange of real property, the market value of the real property interest involved; and

(c) For the pooling of loans or interest in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

(d) For determinations of the transaction value of real property or interests in real property in circumstances other than described in the proceeding (a) to (c) of this section, the market value of the real property interest involved.

(e) In condemnation or partial taking actions, the transaction value is deemed to be the value of the larger parcel before the taking.

(39) “**Uniform Standards of Professional Appraisal Practice**” or “**USPAP**” means the standards adopted and published by the Appraisal Standards Board of the Appraisal Foundation dated April 27, 1987, as amended January 1, 2008.

(40) “**Workfile**” means “workfile” as defined in USPAP.

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1993(Temp), f. & cert. ef. 3-3-93; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-010-0000; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 4-1994, f. & cert. ef. 7-27-94; ACLB 2-1996, f. & cert. ef. 2-13-96; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-1999, f. 1-28-99, cert. ef. 3-31-99; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 1-2001(Temp), f. & cert. ef. 1-26-01 thru 7-25-01; ACLB 2-2001, f. 4-11-01, cert. ef. 4-12-01; ACLB 3-2001(Temp), f. & cert. ef. 7-12-01 thru 1-8-02; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 1-2004, f. & cert. ef. 2-3-04; ACLB 2-2004, f. 5-25-04, cert. ef. 6-1-04; ACLB 1-2005, f. & cert. ef. 1-12-04; ACLB 4-2005, f. & cert. ef. 11-2-05; ACLB 1-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-28-06; ACLB 2-2006, f. & cert. ef. 7-26-06; ACLB 5-2007(Temp), f. 11-1-07, cert. ef. 1-1-08 thru 6-27-08; ACLB 1-2008, f. &

cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 2-2009(Temp), f. 1-28-09, cert. ef. 1-30-09 thru 7-28-09

161-010-0035

Prerequisite Experience and Education Requirements for State Certified General Appraisers

As a prerequisite to taking the examination for certification as a state certified general appraiser, an applicant shall present evidence satisfactory to the Administrator that the applicant has:

(1) At least 3,000 cumulative hours of acceptable appraisal experience, including at least 1,500 hours of appraisal experience in non-residential appraising. “Cumulative” is defined as meaning that experience may be acquired over any time period of at least thirty (30) months.

(2) Successfully completed not less than 300 class hours of acceptable appraisal courses as set forth in OAR 161-020-0110(2)(d). Included within that requirement, each applicant shall have successfully completed the 15-hour Appraisal Foundation’s National USPAP Course, or its equivalent, within four (4) years preceding the date of application and have successfully passed an examination thereon.

(3) A Bachelors degree or higher from an accredited college or university, unless the requirements of paragraph (4) below are satisfied.

(4) In lieu of the Bachelors degree, an applicant for state certified general appraiser shall successfully pass all of the following collegiate level subject matter courses from an accredited college, junior college, community college or university:

- (a) English Composition;
- (b) Micro Economics;
- (c) Macro Economics;
- (d) Finance;
- (e) Algebra, Geometry, or higher mathematics;
- (f) Statistics;
- (g) Computer Science;
- (h) Business or Real Estate Law; and

(i) Two elective courses in accounting, geography, agricultural economics, business management, or real estate. Total hours of equivalent college courses in lieu a Bachelors degree: 30 semester credit hours or its equivalent for the state certified general appraiser. If an accredited college or university accepts the College-Level Examination Program (CLEP) examination(s) and issues a transcript for the exam, showing its approval, it will be considered as credit for the college course.

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 7-1991, f. & cert. ef. 12-23-91; ACLB 1-1994, f. & cert. ef. 2-1-94, Renumbered from 161-010-0030 & 161-010-0040; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 2-2009(Temp), f. 1-28-09, cert. ef. 1-30-09 thru 7-28-09

161-010-0045

Prerequisite Experience and Education Requirements for State Certified Residential Appraisers

As a prerequisite to taking the examination for certification as a state certified residential appraiser, an applicant shall present evidence satisfactory to the Administrator that the applicant has:

(1) At least 2,500 cumulative hours of acceptable appraisal experience. “Cumulative” is defined as meaning that experience may be acquired over any time period of at least twenty-four (24) months.

(2) Successfully completed not less than 200 class hours of acceptable appraisal courses as set forth in OAR 161-020-0110(2)(c). Included within that requirement, each applicant shall have successfully completed the 15-hour Appraisal Foundation’s National USPAP Course, or its equivalent, within four (4) years preceding the date of application and have successfully passed an examination thereon.

(3) An Associate degree or higher from an accredited college or university, unless the requirements of paragraph (4) below are satisfied.

(4) In lieu of the Associate degree, an applicant for state certified residential appraiser shall successfully pass all of the following collegiate level subject matter courses from an accredited college, junior college, community college or university:

- (a) English Composition;
- (b) Principles of Economics (Micro or Macro);
- (c) Finance;
- (d) Algebra, Geometry, or higher mathematics;
- (e) Statistics;
- (f) Computer Science; and

ADMINISTRATIVE RULES

(g) Business or Real Estate Law. Total hours of equivalent college courses in lieu of an Associate degree: 21 semester credit hours or its equivalent for the state certified residential appraiser. If an accredited college or university accepts the College-Level Examination Program (CLEP) examination(s) and issues a transcript for the exam, showing its approval, it will be considered as credit for the college course.

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

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1997(Temp), f. 10-13-97, cert. ef. 1-1-98; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 3-2005, f. & cert. ef. 7-22-05; ACLB 1-2008, f. & cert. ef. 5-13-08; ACLB 3-2008, f. & cert. ef. 8-13-08; ACLB 2-2009(Temp), f. 1-28-09, cert. ef. 1-30-09 thru 7-28-09

Board of Architect Examiners Chapter 806

Rule Caption: Filing and Maintaining Contact Information.

Adm. Order No.: BAE 1-2009

Filed with Sec. of State: 2-5-2009

Certified to be Effective: 2-5-09

Notice Publication Date: 12-1-2008

Rules Amended: 806-010-0095

Subject: To be more specific in the contact information required to be provided and maintained at the Board office, and to elaborate and expand to whom this requirements applies.

Rules Coordinator: Carol Moeller—(503) 763-0662, ext. 23

806-010-0095

Filing and Maintenance of Current Contact Information

(1) Each person holding a certificate of registration to practice architecture in Oregon and each person filing any application form with the Board must file proper and current contact information with the Board to include all of the following:

- (a) Both work and home addresses,
- (b) Telephone numbers for both work and home;
- (c) Fax numbers for both work and home, as applicable;
- (d) At least one email address; and
- (e) A designation of which is the preferred address, fax, phone, and email to which the Board may contact the certificate holder or applicant.

(2) Each architectural firm registered with this Board must provide proper and current contact information with the Board to include all of the following:

- (a) The firm's mailing and street address;
- (b) Telephone number;
- (c) Fax number;
- (d) The name of the firm's representative through which the Board may contact the firm; and
- (e) Email address of the firm representative.

(3) Each applicant, registered architect, candidate, architectural firm, and holders of Architect Emeritus status must maintain contact information by notifying the Board in writing of changes to any and all contact information required under subsections (1) and (2) of this rule within 60 days of such a change.

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.041, 671.050, 671.080 & 671.125

Hist.: AE 1-1981, f. & ef. 3-5-81; AE 1-1987, f. & ef. 3-30-87; BAE 9-2002, f. & cert. ef. 12-12-02; BAE 1-2009, f. & cert. ef. 2-5-09

Board of Chiropractic Examiners Chapter 811

Rule Caption: Amends continuing education rule for minor surgery certified chiropractic physicians adding a new option.

Adm. Order No.: BCE 1-2009

Filed with Sec. of State: 1-29-2009

Certified to be Effective: 1-29-09

Notice Publication Date: 1-1-2009

Rules Amended: 811-015-0030

Subject: The proposed amendment adds a new option for continuing education for minor surgery certified chiropractic physicians adding a new option. Currently, certified doctors must obtain 12 hours CE in minor surgery/proctology every three years. The amended rule adds an option of documenting 12 observed or performed pro-

cedures and four hours CE (or instruction) in the same three year period.

Rules Coordinator: Dave McTeague—(503) 378-1620

811-015-0030

Chiropractic Obstetrics, Minor Surgery, and Proctology

(1) A Minor Surgery/ Proctology Review Committee will be appointed by the Board of Examiners. Members will serve at the pleasure of the Board. The committee may review the applications and rotation plans. The committee will review the results of the rotation and make a recommendation to the Board regarding the certification. The committee may advise the Board on all issues related to minor surgery and proctology.

(2) A chiropractic physician licensed in Oregon who wishes to practice minor surgery and/or proctology must apply to, and receive from, the Board a certification of special competency in minor surgery and/or proctology. To receive and maintain certification, the applicant must fulfill the following requirements:

(a) Give written application to the Board of Chiropractic Examiners to practice minor surgery and/or proctology, provide evidence of completion of 36 hours of undergraduate or postgraduate coursework in minor surgery/proctology, and propose a plan to complete a rotation for practical experience in not less than 25 minor surgery/proctology cases. The purpose of the rotation is to learn and demonstrate competencies, as determined by the Minor Surgery/Proctology Review Committee, under the guidance of one or more supervising licensed physicians. The numbers of procedures required in each of these areas will be determined by this committee.

(A) The rotation must include no less than five cases where all aspects of the cases are performed solely by the chiropractic physician, and observed by the supervising licensed physician.

(B) The remainder of the rotation not covered in paragraph (A) shall consist of cases where the chiropractic physician observes and/or assists.

(C) Adequate documentation of the Chiropractic physician's participation in all cases is required on forms provided by the Board, and signed by the supervising licensed physician. It is recommended the rotation be completed within one year.

(b) 12 hours of continuing education (seminar, course or instruction) related to minor surgery/proctology every three years. Optionally, in lieu of eight hours of the continuing education requirement, a chiropractic physician may document performance or observation of twelve minor surgery/proctology procedures every three years. Reasonable documentation of the procedure or observation is a copy of the patient schedule and/or patient billing/ or other patient record with the patient name redacted which indicates the type of procedure and date performed.

(3) A chiropractic physician who is also licensed in Oregon as a doctor of naturopathy may make written application to practice minor surgery and proctology. The application may be approved by the Board if the chiropractic physician can demonstrate his naturopathic training and experience is equivalent to that required under section (2).

(4) A chiropractic physician licensed in Oregon who wishes to practice natural childbirth must apply to and receive from the Board a certification of special competency in natural childbirth. To receive and maintain certification, the applicant must fulfill the following requirements:

(a) Successfully complete at least 200 hours of direct instruction hours at an approved chiropractic, naturopathic, medical, osteopathic college or hospital in obstetrics and furnish a signed log showing evidence that subsections (b) and (c) of this section have been completed under the direct supervision of a licensed practitioner with specialty training in obstetrics and/or natural childbirth;

(b) Take part in the care of 50 women in both the prenatal (including obstetrics intakes) and postnatal periods;

(c) Observe and assist in the intrapartum care and delivery of 50 natural childbirths in a hospital or alternative birth setting. These births must be under the supervision of a licensed practitioner with specialty training in obstetrics and/or natural childbirth. A labor and delivery that starts under the care of someone licensed to assist in childbirth and includes hospitalization shall count as a birth.

(d) Pass a certification exam in obstetrics given by or approved by the Board.

(e) Submit annually, at the time certificate holders submit their general continuing education hours, 15 hours of Board approved continuing education in obstetrics. Seven of the 15 hours in obstetrics may be used to satisfy OAR 811-015-0025(4). Every other year an approved class in neonatal resuscitation shall be part of this continuing education requirement.

ADMINISTRATIVE RULES

(5) Licensing action by the Board under ORS 684 shall be deemed to have an equal effect upon a certificate of special competency issued the practitioner, unless specifically provided otherwise in the Board action.

(a) When the subject of a disciplinary proceeding relates specifically to the practice of minor surgery, proctology, or natural childbirth by a licensee who possesses a certificate of special competency, the license action may in lieu of affecting the entire scope of the licensee's practice, suspend, revoke, or curtail only the practitioner's authority under the certificate of special competency.

(b) To address emergency or other circumstances which indicate the use of substances or procedures not authorized for use by chiropractic physicians, a plan to access these must be developed in a timely fashion and entered in the patient's chart.

(6) Notwithstanding section (4), a Chiropractic physician may obtain a license as a direct entry midwife from the Board of Direct Entry Midwifery. Any chiropractic physician licensed as a naturopathic physician and certified in natural childbirth by the Oregon Board of Naturopathic Examiners, may also practice natural childbirth/obstetrics as a chiropractic physician to the extent allowed by ORS 684.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.155

Hist.: 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 6-1985, f. 11-13-85, ef. 12-1-85; CE 2-1995, f. & cert. ef. 10-30-95; CE 3-1995, f. & cert. ef. 11-3-95; BCE 2-1998, f. & cert. ef. 5-29-98; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2009, f. & cert. ef. 1-29-09

Board of Massage Therapists Chapter 334

Rule Caption: OBMT comprehensive changes to increase readability, update practices, update terminology and streamline processes.

Adm. Order No.: BMT 1-2009

Filed with Sec. of State: 2-13-2009

Certified to be Effective: 3-1-09

Notice Publication Date: 1-1-2009

Rules Adopted: 334-040-0001

Rules Amended: 334-001-0000, 334-001-0035, 334-001-0045, 334-001-0060, 334-010-0005, 334-010-0010, 334-010-0012, 334-010-0015, 334-010-0017, 334-010-0025, 334-010-0033, 334-010-0046, 334-010-0047, 334-010-0050, 334-020-0005, 334-020-0015, 334-020-0050, 334-020-0055, 334-030-0001, 334-030-0005

Rules Repealed: 334-010-0016, 334-010-0031, 334-020-0020, 334-020-0025, 334-020-0030, 334-020-0035, 334-020-0040, 334-020-0045, 334-020-0060, 334-020-0065, 334-020-0070, 334-020-0075, 334-020-0080, 334-020-0085, 334-020-0090, 334-030-0002, 334-030-0010

Rules Ren. & Amend: 334-010-0041 to 334-010-0008, 334-030-0025 to 334-040-0010

Subject: Over the past several years OBMT rules committee has conducted a comprehensive review of rule. This review was done to increase readability, update practices, update terminology and streamline processes. Almost every rule has been affected by this process in some manner. In addition, division 30 has been split into two divisions. Division 30 will not cover Standards of Conduct. A new division 40 will address Complaints and Discipline.

Rules Coordinator: Patty Glenn—(503) 365-8657

334-001-0000

Notice to Interested Persons

Prior to adoption, amendment or repeal of any rule relating to the practice of massage or bodywork, the Board shall give notice pursuant to ORS 183.335 of the proposed adoption, amendment or repeal:

(1) By mailing or delivering a copy of the notice to persons on the Board's mailing list, established pursuant to ORS 183.335 (8);

(2) By mailing or furnishing a copy of the notice to representatives of the:

- Associated Press and United Press International;
- Oregon Massage Therapists Association;
- American Massage Therapy Association — Oregon chapter; and
- Certified Massage Schools in Oregon.

(3) By mailing or furnishing a copy of the notice to other persons, organizations, and publications that may have an interest in the subject matter of the proposal.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 687.011, 687.086 & 687.121

Hist.: MTB 1-1978, f. & ef. 7-28-78; MTB 2-1982, f. & ef. 7-21-82; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-001-0035

Purchasing

(1) The Oregon Board of Massage Therapists adopts by reference the State of Oregon's purchasing rules. These rules are contained in the Oregon Administrative Rules, chapter 125, division 30. An exception to these rules will be with air travel. When travel by airplane is necessary for the business of the Board, the traveler will purchase tickets from the least expensive source that meets the traveler's basic scheduling needs.

(2) The Board intends to develop its own purchasing rules, but until those are developed and adopted the above referenced rules are controlling.

Stat. Auth.: ORS 182.456 - 182.472

Stats. Implemented: ORS 182.456 - 182.472

Hist.: BMT 3-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-001-0045

Personnel Policies

The Oregon Board of Massage Therapists hereby adopts its own personnel policies which are controlling.

Stat. Auth.: ORS 182.456 - 182.472

Stats. Implemented: ORS 182.456 - 182.472

Hist.: BMT 3-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 3-2005, f. 6-24-05, cert. ef. 7-1-05; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-001-0060

Definitions

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

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

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

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

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

(b) Appliances, tools or devices;

(c) Topical preparations; or

(d) Hot and cold applications.

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

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

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

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

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

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

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

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

(10) "Client vulnerability" means factors which diminish a client's ability to be self-determining.

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

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

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

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

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

(b) Assessment and understanding of a situation.

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

ADMINISTRATIVE RULES

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

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

(17) "Indorsement" means:

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 687.011 & 687.121

Stats. Implemented: ORS 687.011

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

334-010-0005

Applications

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

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

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

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

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

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

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

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

(d) A current photograph of the applicant;

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

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

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

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

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

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

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

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

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

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

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

334-010-0008

Indorsement

(1) State Indorsement: The Board may grant a license by state indorsement, upon successful completion of the jurisprudence exam, without any additional examination to any applicant who holds a valid license or permit to practice massage from another jurisdiction if the requirements of that licensing authority meet or exceed the requirements established in Oregon.

(2) Health Indorsement: The Board may grant a license by health indorsement, after successful completion of practical and jurisprudence examination, to any applicant currently holding an active Oregon license in good standing in a Board approved health related field who can document curriculum that includes a minimum of 300 hours comprised of Massage Theory & Practical Application, Clinical Practice, Business Development, Communication, Ethics, Sanitation and Hydrotherapy. Kinesiology may be included as part of the 300 hours.

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

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 3-2002, f. 5-8-02, cert. ef. 1-1-03; Renumbered from 334-010-0041 by BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-010-0010

Examination

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

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

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

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

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

(6) Failure to Pass: An applicant must pass the practical examination within 24 months of the initial date of application.

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

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

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- (b) Failure to follow written or oral instructions relative to conducting the examination, including termination times and procedures;
 - (c) Endangering the life or health of others present
 - (d) Introducing unauthorized materials during any portion of the examination;
 - (e) Attempting to remove examination materials or notations from the testing site; or
 - (f) Violating the credentialing process such as falsifying or misrepresenting educational credentials or other information required for admission to the examination, impersonating an examinee, or having an impersonator take the licensing examination on one's behalf.
- (8) Test questions, scoring keys, and other examination data used to administer the qualifying examination are exempt from disclosure under ORS 192.410 to 192.505 as amended.

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

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

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

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

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

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0004; MTB 1-1979, f. & ef. 5-22-79; MTB 2-1982, f. & ef. 7-21-82; MTB 2-1985, f. & ef. 1-23-85; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98, Renumbered from 334-010-0021 [Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92, Sections (6) - (20)(h) Renumbered from 334-030-0020]; BMT 1-1999(Temp), f. 6-14-99, cert. ef. 7-4-99 thru 12-31-99; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2002(Temp), f. & cert. ef. 1-9-02 thru 7-5-02; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 4-2005(Temp), f. & cert. ef. 9-19-05 thru 3-12-06; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 2-2007, f. & cert. ef. 6-29-07; BMT 1-2007, f. & cert. ef. 6-29-07; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-010-0012

Examination Appeal

(1) The following appeal process shall be utilized to request a Board review of examination results:

(a) A request for appeal must be made by the applicant in writing and must be received in the Board office within thirty days of the date on the letter of notification of examination results sent to the applicant; and

(b) In the written appeal the applicant must specifically state the reason for the appeal and why the applicant believes the results should be modified. The applicant must identify the specific errors of content, procedure, bias, prejudice or discrimination.

(2) The following appeal process shall be utilized to conduct a review of examination results:

(a) During the review, the applicant will be identified only by the applicant's test number.

(b) The Board's representative will review the examination results including any written materials, audio or video related to the examinations, examiner comments, and information provided by the applicant related to examination results.

(c) The Board representative(s) will present its findings to the Board in executive session at a regularly scheduled meeting of the Board.

(d) The Board will not consider oral arguments from the applicant regarding an examination appeal unless the Board determines that further information is required directly from the applicant.

(e) The Board will make a determination as to whether to grant the appeal and that the determination will become part of the public record.

(3) An appeal may result in:

(a) No action;

(b) Reversal of a failing score; or

(c) Suspension of a failing score and opportunity for the applicant to retake the practical examination.

Stat. Auth.: ORS 183, 687.121 & ORS 182.456 - 182.472
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-010-0015

Licensure

(1) An applicant for an initial license or renewal of a license shall complete, in its entirety, an original application furnished by the Board.

(2) An applicant must provide written explanation and copies of all related documentation as requested by the board if:

(a) Applicant has ever been investigated, disciplined or denied licensure by this agency or any other governmental agency in any state or jurisdiction of the United States or foreign country;

(b) Applicant has surrendered a massage license or other professional license in any state or jurisdiction of the United States or foreign country;

(c) Applicant has been arrested, charged or convicted of any type of violation of the law, including both misdemeanors or felonies, other than minor traffic infractions in any state or jurisdiction of the United States or foreign country;

(d) Applicant has abused or been treated for the abuse of alcohol, controlled or mind altering substances; or

(e) Applicant has suffered from and/or received treatment for a mental, physical or emotional condition, which could impede applicant's ability to safely practice massage.

(3) Applicants for initial licensure must apply within one year of the successful completion of the practical examination.

(a) If an applicant does not apply within one year, the applicant must retake the practical examination.

(b) At the time of re-examination, the applicant must meet all current licensing requirements and submit original documents as required by the Board.

(4) Licenses issued expire on the last day of the licensee's birth month of even numbered years for licensees with even numbered birth years and odd numbered years for licensees with odd numbered birth years. Thereafter, licenses may be renewed every other year upon completion of the application requirements. The application must be returned to the Board postmarked no later than the 1st day of the month of expiration. A delinquent fee shall be paid if the completed application and all requirements are not received by the due date.

(5) Applicants for the renewal of an active license shall sign a statement verifying completion of a minimum of 25 hours of continuing education. The Board may require proof of the continuing education hours.

(6) Applications for renewal of an active license shall be accompanied by:

(a) current licensing fee;

(b) any applicable late fees;

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

(d) proof of 25 hours of continuing education; and

(e) any additional documentation required by the Board.

(7) All applicants for initial, renewal, or reinstated license must sign a statement verifying that they have read, understand, and will comply with all current Oregon Revised Statutes (ORS 687), Oregon Administrative Rules (OAR 334), and policy statements of the Board.

(8) Licenses issued by the Board shall not be transferable.

(9) A person licensed by the Board may move to an inactive status by completing the form provided by the Board. Upon payment of the appropriate fee, the applicant will be issued an inactive license. During the period of inactive status, the licensee may not practice massage for compensation in the State of Oregon.

(10) An application to reactivate an inactive license:

(a) Shall be accompanied by:

(A) Current licensing fee;

(B) Proof of current cardiopulmonary resuscitation (CPR); and

(C) Proof of 25 hours of continuing education for each biennium or fraction of the biennium the license was inactive, up to 50 hours.

(b) An individual who has been inactive or a combination of lapsed/inactive for 6 consecutive years or greater must, in addition, successfully pass the practical examination.

Stat. Auth.: ORS 687.121 & 687.051

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0006; MTB 1-1979, f. & ef. 5-22-79; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 2-2006(Temp), f. & cert. ef. 2-16-06 thru 8-7-06; Administrative correction 8-22-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

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334-010-0017

Lapsed License

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

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

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

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

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

(c) Late fee payment;

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

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

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

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

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

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

334-010-0025

Practice of Massage

(1) Massage treatment may include, but is not limited to:

(a) Client intake and assessment;

(b) Practice of massage or bodywork;

(c) Post massage assessment and recommendation; and

(d) Documentation.

(2) Massage treatment does not include:

(a) The application of high velocity/low amplitude force further defined as thrust techniques directed toward joint surfaces;

(b) The use of equipment or devices that require a prescription; or

(c) Making a medical diagnosis.

(3) A massage therapist shall use safe and functional coverage/draping practices during the practice of massage when the client is disrobed.

(a) Safe and functional coverage/draping means:

(A) LMT explains, maintains and respects coverage/draping boundaries;

(B) Client gives informed consent;

(C)(i) Genitals and gluteal cleft of male and female clients and the breast area of female clients are not exposed;

(ii) With voluntary and informed consent of the client, the gluteal and breast drapes may be temporarily moved in order to perform therapeutic treatment of the area.

(D) Massage or movement of the body does not expose genitals, gluteal cleft or breast area.

(b) Exceptions to the rule may be made for LMTs who can document training in specific modalities that require variations in coverage/draping.

(4) A Licensed massage therapist shall not perform or offer to perform any services for clients other than those connected with giving massage therapy treatments as defined in ORS 687, unless the LMT has additional training and/or licensure.

(5) A person represents himself or herself as a massage therapist when the person adopts or uses any word(s) that implies a skill or application as defined by statute 687.011.

(6) Any person who holds a license as a massage therapist in this state may use the abbreviation "L.M.T." No other person(s) may assume such title or such abbreviation or any other word[s], letters, signs, or figures to indicate that the person using the title is a licensed massage therapist.

(7) All licensed massage therapists must notify the Board office in writing of any change of residence, business, email or mailing address within 30 days of change of address.

(8) Active licensed massage therapists must display their license in a location clearly visible to their clients.

(9) Active licensed massage therapists are required to include their license number in all advertisements, including but not limited to: written, electronic, televised and audio.

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

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0010; MTB 1-1979, f. & ef. 5-22-79; MTB 2-1985, f. & ef. 1-23-85; MTB 3-1985(Temp), f. & ef. 9-20-85; MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 3-2002, f. 5-8-02, cert. ef. 1-1-03; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-010-0033

Fees

Licensure fees will not be refunded.

(1) The fee for an initial and renewal license is \$100 per biennium.

(2) The fee for inactive license is \$50 per biennium.

(3) The fee for the practical examination and retake is \$150.

(4) Application fee \$50.

(5) Examination fee will be refunded only when the applicant is unqualified by Oregon statutes and no inquiry or investigation is initiated.

(6) A \$25 fee will be charged per week, to a maximum of \$250, for any late license renewal.

(7) The temporary license fee is \$25.

(8) The fee for mailing list is \$100.

(9) The fee for a license reprint is \$5.

(10) The fee for license verification is \$5.00.

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

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

334-010-0046

Class Certification

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

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

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

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

(d) Approved by the Board.

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

(a) A completed Board application;

(b) Verification of content meeting the Model Curriculum;

(c) Course descriptions and syllabi;

(d) The institution's Code of Ethics and fraternization policy;

(e) The method of evaluation to determine the student's successful completion of a class;

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

(g) Minimum qualifications for selecting instructors.

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

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

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

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

Stat. Auth.: ORS 687.121

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

334-010-0047

Competencies

A Licensed Massage Therapist must establish by successful completion of Board approved written and/or practical exams, and maintain

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through Continuing Education, the knowledge and skills relevant to the practice of massage and bodywork as follows:

- (1) Knowledge of:
 - (a) Massage and bodywork assessment and application;
 - (b) Anatomy;
 - (c) Physiology;
 - (d) Kinesiology;
 - (e) Pathology;
 - (f) Legal and business requirements;
 - (g) Ethical principles; and
 - (h) Basic CPR.
- (2) Practical skills application of:
 - (a) Fundamental techniques of soft tissue manipulation and treatment, and safe utilization of:
 - (A) Thermal modalities;
 - (B) Topical preparations;
 - (C) Mechanical assistance devices and appliances;
 - (D) Other applications available to the public; and
 - (E) Movements and exercises that lengthen and shorten soft tissues within the normal range of the client; and
 - (b) Fundamental principles of body mechanics in the application of massage and bodywork; and
 - (c) Locating muscle attachments and bellies; and
 - (d) Draping/coverage practices that address both function and safety.
 - (3) Demonstrating Treatment and Business skills in the following areas by:
 - (a) Developing and utilizing treatment plans addressing client conditions and concerns by:
 - (A) Identification of indications and contraindications,
 - (B) Informing the client and obtaining informed consent regarding the risks and benefits of the treatment plan, and
 - (C) Application and modification of the treatment plan as needed;
 - (b) Using effective verbal and non-verbal interpersonal communication;
 - (c) Tracking the client's non-verbal communication and adjusting treatment plan as indicated;
 - (d) Utilizing an ethical decision making process;
 - (e) Establishing and maintaining a practice environment that provides for the client's safety and comfort; and
 - (f) Establishing and maintaining professional business records.

Stat. Auth.: ORS 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

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

334-010-0050

Continuing Education

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 687.081, 687.121 & 687.122

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: BMT 1-1998(Temp), f. & cert. ef. 2-3-98 thru 7-31-98; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 2-2004(Temp), f. & cert. ef. 3-16-04 thru 9-7-04; Administrative correction, 9-28-04; BMT 3-2004(Temp), f. & cert. ef. 10-22-04 thru 4-19-05; BMT 1-2005, f. & cert. ef. 2-23-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-020-0005

Facilities and sanitation

(1) Permanent and Mobile structures:

- (A) All permanent structures and mobile facilities where a LMT routinely conducts massage and bodywork must:

(A) Be established and maintained in accordance with all local, state and federal laws, rules & regulations;

(B) Provide a finished lavatory that

- (i) Is well maintained,
 - (ii) Provides a system for sanitary disposal of waste products,
 - (iii) Is capable of being fully closed and locked from the inside,
 - (iv) Supplies hot and cold running water,
 - (v) Is supplied with liquid soap and single use towels,
 - (vi) Is supplied with toilet paper at each toilet, and
 - (vii) Has a poster prominently displayed encouraging handwashing;
- (C) Dispose of refuse sewage in a manner described by local and state law; and

(D) Follow applicable laws pertaining to public spas, pools, baths and showers.

(b) All treatment spaces must:

- (A) Provide for client privacy, both in-house and on-site;
- (B) Be designated as used only for massage at the time of services;
- (C) Provide for sufficient hearing, cooling and ventilation for client comfort; and

(D) Provide illumination during cleaning.

(c) The facility and treatment space must be:

- (A) Cleaned regularly and kept free of clutter, garbage or rubbish;
- (B) Maintained in a sanitary manner; and
- (C) Maintained free from flies, insects, rodents and all other types of pests.

(2) Outcall/On-site

(a) Any temporary location where the LMT conducts massage and bodywork, the LMT must provide and utilize:

(b)(A) Safe, sanitized and well-maintained equipment, tools and preparations;

(B) Sanitary linen practices; and

(C) Client privacy practices.

Stat. Auth.: ORS 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0012; MTB 2-1985, f. & ef. 1-23-85;

MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0030; MTB 1-1992, f. & cert. ef. 7-28-92; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-020-0015

Equipment

(1) All equipment and tools used in conjunction with a treatment on a client must:

(a) Be approved by a nationally recognized testing laboratory when applicable;

(b) Be maintained on a regular basis; and

(c) Be cleaned between each use.

(2) Cushions on tables and chairs, as well as bolster and pillows, must be covered with impervious material that is cleaned after every use.

(3) Topical preparations will be:

(a) Stored in a manner that maintains the integrity of the product and prevents spoilage and contamination;

(b) Dispensed in a manner that prevents contamination of the unused portion; and

(c) Dispensed in a manner that prevents cross-contamination between clients.

(4) Topical preparations such as ice cubes, plasters, herbal wraps and any other similar product that comes in contact with the client must be used only once and then disposed of in a sanitary manner.

Stat. Auth.: ORS 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: HB 88, f. 3-16-56; Renumbered from 333-035-0016; MTB 1-1979, f. & ef. 5-22-79;

MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0040; MTB 1-1992, f. & cert. ef. 7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-020-0050

Linens

(1) The use of soiled linens is prohibited.

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(2) All single-service materials and clean linens shall be stored at least four inches off the floor in shelves, compartment, or cabinets used for that purpose only.

(3) All single-service materials and linens (such as sheets, towels, gowns, pillow cases) used in the practice of massage, shall be furnished clean and fresh for the use of each individual patron.

(4) All soiled linens shall be immediately placed in a covered receptacle.

(5) All soiled linens shall be washed with bleach in a clothes washing machine which provides a hot water temperature of at least 140 degrees Fahrenheit.

Stat. Auth.: ORS 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: HB 88, f. 3-16-56; Transferred from 333-035-0030; MTB 1-1979, f. & ef. 5-22-79;

MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0075; MTB 1-1990, f. & cert. ef.

4-20-90; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-020-0055

Communicable Disease Control

(1) All therapists must always practice communicable disease prevention and control.

(2) LMT's are required to follow the communicable disease guidelines as adopted by the Board.

Stat. Auth.: ORS 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: HB 88, f. 3-16-56; Transferred from 333-035-0032; MTB 1-1979, f. & ef. 5-22-79;

MTB 1-1986, f. & ef. 1-29-86; Renumbered from 334-010-0080; MTB 1-1992, f. & cert. ef.

7-28-92 (and corrected 8-6-92); BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

334-030-0001

Preamble and Fundamental Canon

(1) In order to safeguard the health, safety and welfare of the citizens of Oregon and to establish and maintain a high standard of integrity and practice, the following Standards of Professional Conduct shall be binding on every person holding a license to practice massage in this state.

(2) The Standards of Professional Conduct as promulgated herein are an exercise of the authority vested in the Board by acts of the legislature.

(3) All persons licensed under ORS 687 are charged with having knowledge of the existence of these Standards of Professional Conduct and shall be deemed to be familiar with their provisions and to understand them. Such knowledge shall encompass the understanding that the practice of massage is a privilege as opposed to a right.

(4) The Board may establish guidelines for ethical decision-making that are congruent with the standards of professional conduct promulgated by the Board. Such guidelines may be modified or revised at the Board's discretion. The Board will use current standards of practice and codes of ethics in the field of massage and bodywork as well as relevant statutes and regulations in establishing guidelines for ethical decision-making. A copy of any such guidelines or change shall be published in the Board's newsletter and relevant professional publications in the field of massage and bodywork.

(5) All LMT's, in the fulfillment of their professional duties, shall comply with the Standards and Objectives of Professional Conduct.

Stat. Auth.: ORS 687.011 & 687.081

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

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

334-030-0005

Standards and Objectives of Professional Conduct

(1) Standard I: Responsibility — the relationship between the LMT and the profession. The LMT shall:

(a) Acquire, maintain and improve professional knowledge and competence using scientific, clinical, technical, psychosocial and governmental sources of information;

(b) Act within the context of professional practice standards, codes of ethics, and relevant statutes and regulations;

(c) Consider factors related to safety, effectiveness, and cost in planning and providing care and services;

(d) Represent all aspects of his or her professional capabilities and services honestly and accurately;

(e) Be accountable to his or her profession for establishing the quality and effectiveness of care and services, using their experience, professional education, and available resources;

(f) Establish relationships with other massage, bodywork or health-care professionals to collaborate with, and to offer or receive consultation in the provision of services; and

(g) Be accountable for his or her actions and commitments and assume personal and professional responsibility to do his or her best.

(2) Standard II: Therapeutic Relationship — the relationship between the LMT and the client. The LMT shall:

(a) Be accountable to his or her clients for the quality and effectiveness of care and services and for creating the basic conditions and boundaries necessary to foster safety and trust in the client-professional relationship;

(b) Plan and provide care and services to the best of his or her abilities, in partnership with the client, based on client needs;

(c) Ensure that their actions with a client are based on understanding and implementing the core values of caring, respect, compassion, appropriate boundaries, and appropriate use of personal power;

(d) Develop alliances with the client, colleagues, other health care providers and the community to provide care and services that are safe, effective and appropriate to the client's needs;

(e) Develop and incorporate respect for diverse client backgrounds in regard to a client's clinical diagnosis, lifestyle, sexual orientation, race, gender, ethnicity, religion, age, and socioeconomic background when planning and providing services;

(f) Act as an advocate for client and client's needs;

(g) Support and respect the client's right and responsibility for self-determination in making health care choices; and

(h) Base decisions and actions on behalf of a client on sound ethical reasoning and current principles of practice.

(3) Standard III: Critical Reflection — the relationship of LMT to self. The LMT shall:

(a) Use critical reflection in the assessment of professional and clinical situations for the development and provision of care and services;

(b) Evaluate the quality and effectiveness of his or her professional practice activities;

(c) Modify and adapt professional practice activities, consistent with current professional standards and practices, in response to client needs, advancing knowledge and research, and social expectations; and

(d) Be an autonomous agent in planning and providing care and services to individuals, groups and the community.

Stat. Auth.: ORS 687.081 & 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

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

334-040-0001

Complaints

(1) Every licensee having information regarding a possible violation of the rules or statutes governing massage shall cooperate with the Board in furnishing such information and shall assist the Board, in order that appropriate investigative, corrective or disciplinary action may be taken.

(2) Anyone may submit a complaint against a licensed or unlicensed person. A complaint may be submitted anonymously. Complainants are kept confidential.

(3) A preliminary review of the complaint shall be made by the Board or its representative, to assure there is sufficient evidence to justify proceeding to investigate and to determine if the allegations against the Respondent are such that, if proven, could result in disciplinary action being imposed by the Board.

(4) If the complaint is considered to be valid, the Board will then proceed as follows:

(a) The Board or its representative may notify the Respondent of the allegations by mail and request written response. Written responses must be received by the Board within two weeks after the notification was first mailed, unless an extension is authorized by the Board. In the event no written response is received the Board may evaluate the complaint using available evidence; or

(b) The Board or its representative may refer the complaint to the Board's designated authority for additional investigation.

(5) The Board shall evaluate all evidence obtained; including any documents or comments received from the Respondent and the Board shall proceed as follows:

(a) If the evidence is insufficient to justify further proceedings, the Complainant and Respondent will be so notified in writing.

(b) If the evidence is sufficient to justify further proceedings, the Board will consider and take appropriate action at a regular or special meeting.

Stat. Auth.: ORS 687.081 & 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121

Hist.: BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

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334-040-0010

Discipline

The Board may deny, conditionally grant, restrict, suspend or revoke a license, impose probation, reprimand, censure, impose remedial education or corrective actions, and/or impose a civil penalty for any of the following reasons:

- (1) Practicing massage or representing one's self as a massage therapist without a current active license issued by the Board;
- (2) Knowingly or recklessly making any false statement to the Board;
- (3) Suspension or revocation of a license to practice massage in another jurisdiction based upon acts by the licensee similar to acts described in this section;
- (4) Conviction of a crime in this state, or jurisdiction;
- (5) The use of false, deceptive, or misleading advertising, which includes but is not limited to, advertising massage using the term "massage" or any other term that implies a massage technique or method in any private or public communication or publication by a person licensed or not licensed by the Board as a massage therapist;
- (6) Allowing the use of a license by an unlicensed person;
- (7) Presenting as one's own license, the license of another;
- (8) Practicing massage under a false or assumed name without notification to the Board;
- (9) Impersonating another massage therapist;
- (10) Assisting, employing, or permitting an unlicensed person to practice massage;
- (11) Practicing or purporting to practice massage when the license has been revoked or suspended, lapsed or inactive;
- (12) Practicing or offering to practice massage beyond the scope permitted by law;
- (13) The use of intoxicants, drugs, controlled substances, or mind altering substances to such an extent as to impair or potentially impair the licensee's abilities to perform professional duties in a safe manner;
- (14) Practicing massage with a physical or mental impairment that renders the therapist unable or potentially unable to safely conduct the practice of massage;
- (15) Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition as required by rules of the Board;
- (16) Refusing to permit the Board or its representatives to inspect the business premises of the licensee during regular business hours;
- (17) Failing to cooperate with the Board in any licensing action or disciplinary proceeding, including but not limited to:
 - (a) Failure to furnish any requested papers or documents,
 - (b) Failure to provide in writing a full and complete explanation covering the matter contained in the complaint filed with the Board,
 - (c) Failure to respond to subpoenas issued by the Board whether or not the recipient is accused in the proceeding;
- (18) Failing to comply with an order issued by the Board;
- (19) Unprofessional or dishonorable conduct which includes but is not limited to:
 - (a) Any conduct involving inappropriate physical contact or sexual misconduct which includes:
 - (A) Sexual abuse which is conduct which constitutes a violation of any provision of ORS 163.305 through 163.465;
 - (B) Sexual violation which is sex between the LMT and the client, whether initiated by the client or not, engaging in any conduct with a client that is sexual, or may be reasonably interpreted as sexual, including, but not limited to:
 - (i) Sexual intercourse;
 - (ii) Genital to genital contact;
 - (iii) Oral to genital contact; oral to anal contact;
 - (iv) Oral to oral contact except cardiopulmonary resuscitation; touching breasts or genitals or any sexualized body part for any purpose other than appropriate examination or treatment or where the client has refused or withdrawn consent; or
 - (v) Encouraging the client to masturbate in the presence of the LMT or masturbation by the LMT while the client is present.
 - (C) Sexual impropriety which is any behavior, gestures, or expressions that are seductive or sexually demeaning to a client; inappropriate procedures, including, but not limited to,
 - (i) Disrobing or draping practices that reflect a lack of respect for the client's privacy, deliberately watching a client dress or undress for self gratification instead of providing privacy for disrobing;
 - (ii) Subjecting a client to an examination in the presence of students, assistants, or other parties without the explicit consent of the client or when consent has been withdrawn;

- (iii) An examination or touching of genitals;
- (iv) Inappropriate comments about or to the client, including but not limited to, making sexual comments about a client's body or clothing, making sexualized or sexually-demeaning comments to a client, comments on the client's or LMT's sexual orientation and making a request to date;
- (v) Initiation by the LMT of conversation regarding the sexual problems, preferences or fantasies of the LMT; or
- (vi) Kissing of a sexual nature.
- (b) Violating the client's rights of privacy, and confidentiality.
- (c) Failure to disclose or release information about a client if required by law or on written consent of client.
- (d) Intentionally harassing, abusing, or intimidating a client either physically or verbally.
- (e) Any conduct or practice which could endanger the health or safety of a client or the public.
- (f) Any conduct or practice which impairs the massage therapist's ability to safely and skillfully practice massage.
- (g) Exercising undue influence on a client, including promotion or sale of services, goods, or appliances in such a manner as to exploit the client for the financial gain or self-gratification of the massage therapist.
- (h) Routinely practicing in an incompetent manner.
- (i) Conduct which would also constitute a violation of the Oregon Unlawful Trade Practices Act.
Stat. Auth.: ORS 687.081 & 687.121
Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92; Sections (6) - (20)(h) Renumbered from 334-030-0020; BMT 2-1998, f. & cert. ef. 7-22-98; Renumbered from 334-030-0025 by BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09

Board of Tax Practitioners
Chapter 800

Rule Caption: 2008 Overhaul of OAR's based on recommendations made by the Rules Advisory Committee and noted on by the Board.

Adm. Order No.: BTP 1-2009

Filed with Sec. of State: 2-5-2009

Certified to be Effective: 2-5-09

Notice Publication Date: 1-1-2009

Rules Amended: 800-010-0020, 800-010-0025, 800-010-0030, 800-010-0040, 800-010-0041, 800-010-0042, 800-015-0005, 800-015-0010, 800-015-0015, 800-015-0020, 800-015-0030, 800-020-0015, 800-020-0020, 800-020-0025, 800-020-0030, 800-020-0035, 800-025-0020, 800-025-0023, 800-025-0025, 800-025-0027, 800-025-0030, 800-025-0040, 800-025-0050, 800-025-0060, 800-025-0070, 800-030-0025, 800-030-0050

Subject: The amendments to the OAR's were recommended by the Board's Rules Advisory Committee and are for general "house-keeping" & "maintenance" as well as to change language to better reflect the "norm" in industry standards and the practices of other state agencies.

The amendment(s) to OAR 800-010-0040 eliminates the need for both Consultant and Preparer license number on the state personal income tax return.

The amendment(s) to OAR 800-020-0020 requires that a tax preparer applicant must retake the 80 hour Basic Course if after 3 years from Basic Course completion date the applicant has not yet passed the preparer exam.

The amendment(s) to OAR 800-025-0060 replaces the wording April 15 to read the federal filing deadline without extension.

Changes also include:

Clarification of "business" or "calendar" added to sections where number of days are specified.

Update to the "Civil Penalty Matrix" to include a minimum \$ amount where it currently had no minimum amount listed.

Rules Coordinator: Jane Bilings—(503) 373-1691

800-010-0020

Confidential Information

(1) A licensee shall not disclose any confidential information obtained in the course of professional engagement except:

- (a) With the written consent of the client;

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(b) After being subpoenaed by a court or governmental agency of competent jurisdiction;

(c) In response to an inquiry by the Board or its investigator.

(d) As required by federal or state regulations for electronic filing.

(2) Members of the Board and its employees shall not disclose any confidential client information which comes to their attention except as required to carry out their official responsibilities.

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 6, f. & ef. 1-5-76; TSE 1-1985, f. & ef. 1-15-85; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2009, f. & cert. ef. 2-5-09

800-010-0025

Integrity and Objectivity

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 673.730(6)

Stats. Implemented:

Hist.: TSE 6, f. & ef. 1-5-76; TSE 3-1980, f. & ef. 8-22-80; TSE 1-1985, f. & ef. 1-15-85; TSE 4-1986, f. & ef. 8-15-86; TSE 3-1989, f. & cert. ef. 12-20-89; TSE 1-1992, f. 3-24-92, cert. ef. 6-1-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-010-0030

Accountability

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

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

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

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

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

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

(5) A licensee shall not maintain a financial interest in or hold an employment position with any business entity that offers personal income tax preparation services, if any other person maintains a financial interest in

the entity, or holds a management position involving authority over the business operations of the entity, and:

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

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

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

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

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

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 6, f. & ef. 1-5-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 1-1985, f. & ef. 1-15-85; TSE 8-1987, f. & ef. 12-21-87; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-010-0040

Identification

(1) A licensee shall include the business name, permanent address, and signature on the original and all copies of federal and state personal income tax returns or electronic filing documents prepared by the licensee, together with all other data required by the Internal Revenue Service, Department of Revenue, and State Board of Tax Practitioners. Office copies are exempt from this requirement.

(2) Where the licensee's signature appears on the state personal income tax return, there shall be included the State license number of the licensee preparing the return.

(3) In addition to the original copies of returns provided to or filed on behalf of a client, at least one (1) duplicate copy of the complete set of the returns, including all accompanying forms and schedules, shall be supplied to the client. A licensee is not required to provide duplicate records to a client more than once. However, in the case of a joint return, each spouse is entitled, upon request, to a copy of the return.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented:

Hist.: TSE 6, f. & ef. 1-5-76; TSE 12, f. & ef. 9-20-77; TSE 1-1978, f. & ef. 2-3-78; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1995, f. & cert. ef. 5-5-95; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2009, f. & cert. ef. 2-5-09

800-010-0041

Address and Telephone

Licensees shall file with the Board their current mailing address, residence address, e-mail address, and telephone number(s). Licensees shall also file with the Board their current business address, telephone number and a year-round address and telephone number where clients and the Board may contact the licensee. Whenever any of the information required in this section changes, the licensee shall notify the Board within 15 business days.

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 1-1985, f. & ef. 1-15-85; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-010-0042

Communications

A licensee shall, when requested, respond in writing to communications from the Board within 15 business days of the mailing of such communications to the address furnished to the Board by licensee.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented:

Hist.: TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1995, f. & cert. ef. 5-5-95; BTP 1-2009, f. & cert. ef. 2-5-09

800-015-0005

Basic Education

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

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

(3) A basic course shall include:

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

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

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

(d) A midterm and final examination.

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 673.625(1)

Stats. Implemented:

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; Renumbered from OAR 800-020-0040 by TSE 2-1980, f. & ef. 5-30-80; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1990, f. & cert. ef. 1-25-90; TSE 7-1992, f. & cert. ef. 12-22-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-015-0010

Continuing Education

(1) Except for renewal of an initial license, a Licensed Tax Consultant or Licensed Tax Preparer renewing a license shall submit evidence of attending OR by self-attestation on the renewal must complete at least 30 hours of acceptable continuing education since the last renewal date.

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

(3) If by self-attestation, proof of participation in required continuing education is the responsibility of the licensee. To ensure that proof of attainment of required continuing education is available for audit or investigation by the Board, licensees shall maintain a record of attendance for at least two (2) years following each continuing education cycle and renewal of the tax practitioner license.

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

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

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

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

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

(1) hour of continuing education credit will be allowed for each hour of classroom attendance.

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

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

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

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

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

(11) "In-Company" instruction may be accepted if the course or seminar is presented to ten (10) or more people and all other requirements for continuing education sponsors are met. Portions of such educational sessions devoted to administrative and firm matters shall not be accepted.

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

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

Stat. Auth.: ORS 673.645 - 673.667

Stats. Implemented: ORS 673.645 - 673.667

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 3-1980, f. & ef. 8-22-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 9-1987, f. & ef. 12-21-87; TSE 1-1997, f. & cert. ef. 7-2-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-015-0015

Continuing Education: Audit, Required Documentation and Sanctions

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

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

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

(a) Name of student;

(b) Name, address and telephone number of sponsoring institution/association or organization;

(c) Location of program;

(d) Title of program and description of content;

(e) Name of instructor or presenter;

(f) Date(s) of attendance;

(g) Number of classroom hours of instruction;

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

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

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

Stat. Auth.: ORS 673.605 - 673.740

Stats. Implemented: ORS 673.605 - 673.740

Hist.: BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-015-0020

Continuing Education Program Requirements

(1) Acceptable continuing education is that which contributes directly to the expertise of the individual in the preparation of income tax returns, and is presented by a sponsor who meets the requirements of all Rules. It is

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the obligation of each licensee to select a course of study which will contribute to his or her competence in the preparation of income tax returns.

(2) The following general subject matters are acceptable to the extent they contribute directly to the expertise of income tax preparation:

- (a) Taxation.
- (b) Practitioner Ethics.
- (c) Accounting and payroll theory.
- (d) Estate, tax or investment planning.
- (e) Computer technology.
- (f) Others, if the licensee can demonstrate a direct relationship to the preparation of a client's income tax returns.

(3) Programs primarily directed towards the licensee's personal benefit, rather than that of his or her clients, and programs relating primarily to general business management, are unacceptable. Some examples of unacceptable subjects are:

- (a) Memory improvement.
- (b) Buying or selling a tax practice.
- (c) Setting fee schedules.
- (d) Character development.
- (e) Behavior modification.
- (f) Business management.
- (g) Labor law.
- (h) Economic forecasts.
- (i) Learning to operate office equipment.

(4) Programs must be at least one (1) hour in length, including reasonable breaks, with credit given in whole hours only.

(5) Programs must be conducted by a qualified instructor whose background, training, education or experience make it appropriate for the person to lead a discussion on the subject matter of the particular program.

(6) Licensees may not receive credit for repeat of courses taken within the same continuing education reporting period.

Stat. Auth.: ORS 673.645 - 673.667
Stats. Implemented: ORS 673.645 - 673.667
Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 2-1989, f. & cert. ef. 10-27-89; TSE 8-1992, f. & cert. ef. 12-22-92; TSE 2-1997, f. & cert. ef. 7-2-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2007, f. 1-12-07.

800-015-0030

Continuing Education and Basic Sponsor Requirements

(1) Sponsors shall:

(a) Maintain for at least two (2) years an outline of each program presented;

(b) Maintain for at least two (2) years a record of attendance for each program presented;

(c) Maintain for at least two (2) years a record of instructor names, addresses and qualification; and

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

- (A) Name of student;
- (B) Name, address and telephone number of sponsoring institution/association or organization;
- (C) Location of program;
- (D) Title of program and description of content;
- (E) Name of instructor or presenter;
- (F) Date(s) of attendance;
- (G) Number of classroom hours of instruction;

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

Stat. Auth.: ORS 673.655
Stats. Implemented:
Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 4-1995, f. & cert. ef. 5-5-95; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; cert. ef. 2-1-07; BTP 1-2009, f. & cert. ef. 2-5-09

800-020-0015

Application for Examination

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

(2) The application and examination fee shall be filed with the Board no later than one (1) month prior to the examination date, except when the Board sets tighter deadlines due to extenuating circumstances.

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

(4) A tax consultant applicant who is a Licensed Tax Preparer shall submit verification by the applicant's employer or employers, on forms prescribed and furnished by the Board, that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 780 hours during at least two (2) of the last five (5) years.

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

(a) Verification by the applicant's employer or employers that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 780 hours during at least two (2) of the last five (5) years.

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

(B) For the purpose of meeting the work experience requirement for tax consultants, one hour of experience gained through volunteer tax preparation programs such as VITA and AARP-TCE will be accepted for each five hours spent preparing, advising or assisting in the preparation of tax returns through the volunteer program, up to a maximum of 150 hours credited. To qualify for the one (1) to five (5) hour experience credit, total hours worked in the volunteer program must be verified in writing by a supervisor.

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

(6) Applicants for the tax consultant examination must have completed, within a year prior to submitting application, a minimum of 15 hours of acceptable continuing education in personal income taxation to meet the requirements of OAR 800-015-0010 to 800-015-0030. This requirement is in addition to the required 780 hours of work experience earned during at least two (2) of the last five (5) years.

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

(a) Submit, on a form prescribed and furnished by the Board, a petition signed under penalty of perjury, claiming self-employment as a tax practitioner for no less than two (2) of the last five (5) years; and

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

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

(a) The applicant was actively engaged in a tax preparation business within two (2) years prior to the date of application;

(b) The applicant has at least three (3) years experience in a tax preparation business;

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

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

(9) The Board may accept education credit for courses completed by a tax consultant applicant to substitute for up to 260 hours of work experience at the rate of one (1) classroom hour of education for five (5) hours of experience if:

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

(b) The applicant completed the course within one (1) year of applying to become a Licensed Tax Consultant; and

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

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

Stat. Auth.: ORS 673.625

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 2-1980, f. & ef. 5-30-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 4-1988, f. & cert. ef. 11-2-88; TSE 5-1990, f. & cert. ef. 5-3-90; TSE 9-1992, f. & cert. ef. 12-22-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2005, f. & cert. ef. 1-5-05; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-020-0020

Examinations

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

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

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

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

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

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

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

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

(9) A tax preparer applicant must re-take the Basic Course, if after three (3) years from Basic Course completion date, the applicant has not yet passed the preparer examination.

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

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

Stat. Auth.: ORS 673

Stats. Implemented: ORS 673.605 - 673.740 & 673.900

Hist.: TSE 8, f. & ef. 5-19-76; TSE 10(Temp), f. & ef. 11-29-76 thru 3-28-77; TSE 11, f. & ef. 4-6-77; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1980, f. & ef. 5-30-80; TSE 1-1981 (Temp), f. 1-2-81, ef. 1-5-81; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1983, f. & ef. 3-10-83; TSE 1-1984(Temp), f. & ef. 12-20-84; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1985(Temp), f. & ef. 6-11-85; TSE 2-1986, f. & ef. 7-14-86; TSE 4-1987, f. & ef. 10-2-87; TSE 1-1989, f. & cert. ef. 6-8-89; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 2-2004, f. 8-12-04 cert. ef. 8-31-04; BTP 2-2005, f. 7-28-05, cert. ef. 8-1-05; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-020-0025

Fees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 673.730

Stats. Implemented: ORS 673.685

Hist.: TSE 4(Temp), f. & ef. 11-20-75 through 3-19-76; TSE 8, f. & ef. 5-19-76; TSE 14, f. 10-25-77, ef. 11-1-77; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1986, f. & ef. 7-14-86; TSE 1-1987(Temp), f. 6-30-87, ef. 7-1-87; TSE 5-1987, f. & ef. 10-2-87; TSE 7-1987(Temp), f. & ef. 11-17-87; TSE 1-1988, f. & cert. ef. 2-19-88; TSE 4-1990, f. & cert. ef. 5-3-90; TSE 3-1991(Temp), f. 8-14-91, cert. ef. 9-29-91; TSE 5-1991, f. & cert. ef. 10-28-91; TSE 12-1991(Temp), f. & cert. ef. 11-25-91; TSE 3-1992, f. 5-15-92, cert. ef. 6-1-92; TSE 3-1997, f. & cert. ef. 9-4-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTSE 1-2002(Temp), f. & cert. ef. 8-6-02 thru 1-1-03; Administration correction 4-16-03; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 3-2007, f. 7-30-07, cert. ef. 8-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-020-0030

Licenses — Renewals and Reactivation

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 673.730

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1986, f. & ef. 7-14-86; TSE 2-1993, f. & cert. ef. 2-23-93; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-020-0035

Inactive and Lapsed Status

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

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

(3) A license that has been placed in inactive or lapsed status, or a combination thereof, for three (3) consecutive years, shall not be reactivated to active status.

(4) The Board may refuse to reactivate a license that has been placed in inactive or lapsed status for the same reasons it may refuse to issue, renew, suspend, or revoke a license.

Stat. Auth.: ORS 673.645, 673.667 & 673.730

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 3-1985, f. & ef. 12-5-85; TSE 2-1991, f. & cert. ef. 1-30-91; TSE 6-1992, f. 8-13-92, cert. ef. 8-1-93; TSE 2-1993, f. & cert. ef. 2-23-93; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-025-0020

Tax Preparation Business Registration

(1) A tax preparation business shall not offer services to the public until the business has:

(a) Complied with applicable laws and rules of the Oregon Corporation Division;

(b) Registered with the Board, on a Board-approved application form, the business name, address, telephone number, and e-mail address; the name(s) of the owner(s) of the business; and the name of the individual(s) responsible under OAR 800-025-0040 for the tax activities of the business; and

(c) Paid the tax business registration fee required under OAR 800-025-0025.

(2) Within 15 business days of a change of name or ownership, a tax preparation business must file a new business registration with the Board and pay a new business registration fee.

(3) A person who offers tax preparation services under more than one name must register each such name as a separate business.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented:

Hist.: TSE 1-1985, f. & ef. 1-15-85; TSE 13-1991(Temp), f. & cert. ef. 11-25-91; TSE 14-1991, f. 11-25-91, cert. ef. 1-1-92; TSE 4-1992, f. & cert. ef. 5-15-92; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-025-0023

Reporting Closing of Business; Address and Phone Changes

A tax preparation business shall notify the Board within 15 business days of:

(1) Termination of the tax preparation business;

(2) A change in the mailing address, physical address, e-mail address or telephone number(s) of the business.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented:

Hist.: TSE 7-1991, f. & cert. ef. 10-28-91; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-025-0025

Renewal of Tax Preparation Business Registration

(1) Tax preparation business registrations shall expire annually on June 15, except that combination business registration/tax preparer licenses shall expire annually on October 15.

(2) At least 30 calendar days prior to the registration expiration date each year, the Board shall attempt to notify each business, using the contact information they provided to the Board, that their tax preparation business registration is up for renewal.

(3) Renewal registrations shall be issued to qualifying businesses upon receipt of a completed registration renewal application and the fee for registering a tax preparation business specified in OAR 800-020-0025(14) or the fee for a combined tax consultants or tax preparers license and business registration specified in OAR 800-020-0025(15).

(4) A business whose registration has expired shall not perform tax preparation services for the public, for a fee, or offer such services until the business submits a new business registration application and the application process has been completed.

Stat. Auth.:

Stats. Implemented:

Hist.: TSE 8-1991, f. & cert. ef. 10-28-91; BTP 1-2004, f. 1-28-04, cert. ef. 2-1-04; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-025-0027

Eligibility for Combined Business Registration and Tax Consultant/Preparer License

(1) A tax preparation business is not eligible for a combined license and registration under OAR 800-020-0025(15) unless at least one (1) of the owners of the business is a Licensed Tax Consultant or Licensed Tax Preparer. As used in this section, "owner" means an individual who owns at least ten (10) percent of the business.

(2) A tax preparation business, including a business that must file a new registration due to a change of name or ownership, is not eligible for a combined license and registration under OAR 800-020-0025(15) unless the registration is submitted:

(a) If a new registration, at the time of application for the owner's tax consultant's or tax preparer's license;

(b) If a renewal registration, before the expiration date of the current registration.

(3) A licensee who owns more than one (1) tax preparation business is eligible for a combined license and business registration under OAR 800-020-0025(15) for only one (1) of the businesses and must pay the business registration fee specified in OAR 800-020-0025(14) for the second and additional businesses.

Stat. Auth.:

Stats. Implemented:

Hist.: TSE 9-1991, f. & cert. ef. 10-28-91; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2009, f. & cert. ef. 2-5-09

800-025-0030

Branch Offices

(1) A tax preparation business shall not operate any branch office until:

(a) The business has complied with all laws and rules of the Board concerning tax business registration;

(b) The mailing address, physical address, e-mail and phone number(s) of the branch office and the name and license number of the resident consultant for the branch office have been submitted to the Board; and

(c) The business has paid an annual fee for the branch office registration for that location as required under OAR 800-020-0025(16).

(2) Branch office registrations shall expire annually on the expiration date of the associated tax business registration.

(3) At least 30 calendar days before the expiration of a branch office registration, the Board shall attempt to notify each business, using the contact information they provided to the Board, that their tax preparation branch office registration is up for renewal.

(4) Renewal branch office registrations shall be issued to qualifying businesses upon receipt of the required annual registration fee.

(5) A tax preparation business operating branch offices shall notify the Board within 15 business days of:

(a) Change of mailing address, physical address, e-mail address or phone number(s) of the branch office.

(b) Change in resident consultant of the branch office.

(c) Closing the branch office.

(6) Branch offices must be conducted under the same name as the principal office. This name shall be posted conspicuously in each branch office.

(7) The name of the Designated Consultant and the name of the Resident Consultant must be posted conspicuously in each branch office.

(8) The current registration issued by the Board for a branch office must be posted conspicuously in the branch office.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented: ORS 673.730(5)

Hist.: TSE 1-1985, f. & ef. 1-15-85; TSE 10-1991, f. & cert. ef. 10-28-91; TSE 5-1992, f. 5-15-92, cert. ef. 7-1-92; TSE 2-1996, f. & cert. ef. 12-30-96; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-025-0040

Designated Consultants

(1) A tax preparation business shall not engage in the preparation of personal income tax returns for the public, or offer such services, until the business has designated a Licensed Tax Consultant or other authorized person ("Designated Consultant") as the responsible individual. A form prescribed by the Board shall be signed by the Designated Consultant and signed by the owner or authorized representative of the tax preparation business.

(2) The Designated Consultant shall be responsible for all tax preparation activities of the business, and the Designated Consultant and the designating business shall each be responsible for the business's compliance with laws and rules of the Board.

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(3) A Designated Consultant will cease to be responsible for a business's tax preparation services upon receipt by the Board of written notice from the consultant or business.

(4) A Licensed Tax Consultant may act as the Designated Consultant for only one tax preparation business, except by written application for waiver.

(5) An application for waiver to serve as a Designated Consultant for more than one tax preparation business shall set forth the following:

(a) The name and address of the tax preparation business for which the Licensed Tax Consultant is presently serving as the Designated Consultant;

(b) The name and address of the additional tax preparation business for which the Licensed Tax Consultant is requesting approval to serve as the Designated Consultant;

(c) A detailed plan how each tax preparation business will be supervised in carrying out the duties as a Designated Consultant;

(d) The financial relationship of the proposed Designated Consultant and the tax preparation businesses; and

(e) Unusual or extenuating circumstances why approval should be granted.

(6) In determining whether a Licensed Tax Consultant will be approved to act as a Designated Consultant for more than one (1) tax preparation business, the Board:

(a) May approve an application for waiver only wherein the Licensed Tax Consultant has an ownership interest in the tax preparation businesses, or unusual or extenuating circumstances exist, such as the death of a Designated Consultant, resulting in undue hardship. The Board may limit the Licensed Tax Consultant designation period; and

(b) Shall consider the Licensed Tax Consultant's past record of compliance with ORS 673.605 to 673.735, rules of the Board, statutes of the State of Oregon together with information set forth in the application for waiver, particularly the feasibility of the plan in supervising the corporation, firm or partnership.

(7) A tax preparation business shall notify the Board within 15 business days of any change in status of its Designated Consultant.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 3-1980, f. & ef. 8-22-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; Renumbered from 800-020-0050; TSE 4-1989, f. & cert. ef. 12-20-89; TSE 11-1991, f. & cert. ef. 10-28-91; TSE 10-1992, f. & cert. ef. 12-22-92; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2006, f. & cert. ef. 9-5-06; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2009, f. & cert. ef. 2-5-09

800-025-0050

Management and Supervision of Tax Preparation Business

(1) Each principal and branch office must be under the management and supervision of a Licensed Tax Consultant. Supervision means:

(a) The direct and immediate control of the Licensed Tax Preparer by the Licensed Tax Consultant in such manner that the Licensed Tax Consultant is aware of the line of questioning and the reasoning applied by the Licensed Tax Preparer in the preparation of each return, and that the Licensed Tax Consultant has adequate opportunity to correct or add to the reasoning applied by the Licensed Tax Preparer; and

(b) A system of selecting, training and controlling the Licensed Tax Preparer, including a set of procedures by which the Licensed Tax Consultant is assured that the Licensed Tax Preparer is providing competent workmanship and abiding by the statutes and Board rules. Such procedures shall include:

(A) An examination and review of all personal income tax returns for errors under the direct supervision of the Licensed Tax Consultant or a Licensed Tax Preparer chosen based on experience and reviewing ability; and

(B) Giving notice to the Licensed Tax Preparer of any adjustments after examination and review; and

(C) Maintaining in principal and branch offices current federal and state personal income tax reference material; and

(D) Providing access to the Licensed Tax Consultant (including telephone or electronic media access from branch offices) so that the Licensed Tax Preparer is encouraged to seek tax law consultation and advice; and

(E) Exercising control by the Licensed Tax Consultant over the tax preparation practices and all other matters governed by the statutes and Board rules in each principal and branch office.

(2) Licensed Tax Preparers who have not had at least one (1) year's tax return preparation experience during the previous five (5) year period must be under the immediate, onsite supervision of more experienced personnel when preparing, advising, or assisting in the preparation of tax returns.

(3) Licensed Tax Consultants who employ any person described in subsection (4) of ORS 673.610 to act in the capacity of Licensed Tax Preparer or Licensed Tax Consultant under their supervision shall report to the Board the names of these persons and the basis for their exemption.

(4) If a Licensed Tax Preparer is found by the Board to be in violation of the statutes or Board rules, the Licensed Tax Consultant responsible for supervision of that Licensed Tax Preparer shall be deemed to be in violation in the same manner and to the same extent, and may be disciplined by the Board regardless of any discipline imposed on the Licensed Tax Preparer, unless the Licensed Tax Consultant demonstrates to the satisfaction of the Board that the circumstances that led to the violation occurred without the permission or knowledge of the Licensed Tax Consultant and that the violation occurred regardless of an adequate system of supervision that would generally prevent such violation. In the case of a corporation, firm, or partnership, both the designated consultant and the corporation, firm, or partnership may be disciplined.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented: ORS 673.615(2)

Hist.: TSE 1-1985, f. & ef. 1-15-85; TSE 2-1996, f. & cert. ef. 12-30-96; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2009, f. & cert. ef. 2-5-09

800-025-0060

Consultant in Residence

(1) A Licensed Tax Consultant shall be in residence at each principal and branch office. "Tax consultant in residence" means that a Licensed Tax Consultant is physically present to conduct and carry out his/her duties in the principal or branch office for at least 50 percent of the time an office is open to the public for tax preparation, assistance & advice during each week from January 1 to the federal filing deadline without extension and during each month for the remainder of the year for year round offices.

(2)(a) The Board may waive the Licensed Tax Consultant in residence requirement of subsection (1) upon written application which details how the management and supervision of principal and branch offices will effectively be accomplished. The Board shall grant a waiver only where at least one of the following circumstances exist: Sickness or death of a Licensed Tax Consultant.

(b) Unforeseen or unusual circumstances.

(3) In granting or denying a written application for waiver, the Board shall evaluate each case on an individual basis, considering the following factors:

(a) Distance between offices supervised by a Licensed Tax Consultant.

(b) Past compliance of waiver applicants with ORS 673.605 to 673.735 and rules of the Board.

(c) Whether the policies and procedures described in the application will result in effective management and supervision of Licensed Tax Preparers in the absence of a Resident Consultant.

(4) Applicants shall apply annually for waiver of the resident consultant rule. The application shall provide all of the information described in guidelines established by the Board for applying for waivers. Except in emergency circumstances, such as incapacitation, death or resignation of a resident tax consultant, waiver applications will not be accepted after January 31 for branch offices intended to operate at any time during the period January 1 to the federal filing deadline without extension of the same calendar year. Approved waivers shall expire on the expiration date of the associated tax business registration or a date established by the Board.

(5) All applications must be acted upon by the Board. Disapproval of an application by the Board may be appealed.

(6) The supervising Licensed Tax Consultant of an office for which a waiver has been approved shall meet in person with Licensed Tax Preparers in the office at least twice weekly to review the work of each Licensed Tax Preparer and respond to questions.

Stat. Auth.: ORS 673.730(5)

Stats. Implemented: ORS 673.615(2)4

Hist.: TSE 1-1985, f. & ef. 1-15-85; TSE 5-1986, f. & ef. 10-6-86; TSE 6-1987, f. & ef. 10-2-87; TSE 3-1988, f. & cert. ef. 8-26-88; TSE 5-1995, f. & cert. ef. 5-5-95; TSE 2-1996, f. & cert. ef. 12-30-96; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-025-0070

Keeping of Records

(1) If a Licensed Tax Consultant is employed by another Licensed Tax Consultant, the records shall be kept by the employing Licensed Tax Consultant.

(2) If the Licensed Tax Consultant who has been designated as responsible for the tax return preparation activities and decisions of the corporation, firm or partnership, ceases to be connected with the corporation,

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firm or partnership the records shall be retained by the corporation, firm or partnership.

(3) The records of the returns shall be kept for a period of not less than four (4) years after the date of the preparation, advice or assistance.

Stat. Auth.: ORS 673

Stats. Implemented:

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1985, f. & ef. 1-15-85; Renumbered from 800-020-0070; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-030-0025

Civil Penalties

(1) Civil Penalty Ranges. Pursuant to ORS 673.735, a civil penalty in the following range shall be assessed for each violation of the following statutes and rules: [Table not included. See ED. NOTE.]

(2) Civil Penalty Factors. Pursuant to ORS 673.735, the following factors shall be considered in determining the amount of civil penalty to assess for each violation above the minimum established under paragraph (1) of this rule or for violations not specified in paragraph (1):

(a) The previous record of the person in complying, or failing to comply, with ORS 673.605 to 673.740, or any rule or order adopted there under.

(b) The harm to the consumer as a result of the violation.

(c) The person's knowledge of the statute, rule, or order violated. An intentional, reckless, or willful violation warrants a high civil penalty per violation.

(d) The person's lack of cooperation with the Board.

(e) The seriousness of the violations committed.

(3) Daily Civil Penalty. Pursuant to ORS 673.735, the Board may impose civil penalties of not more than \$5,000 for each violation of 673.605 to 673.740, or any rule adopted there under. In the case of violations of 673.615, 673.643, or 673.705(5), or OAR 800-010-0025(7) or 800-010-0042, the Board may consider each business day a person continues in violation following Board notification to be a separate violation.

(4) Civil Penalty Adjustment. The civil penalty amount to be imposed under this rule shall be lowered to an appropriate amount when the Board determines that the total civil penalties to be assessed against a person are grossly disproportionate to the seriousness of the violations committed.

(5) Payment of Civil Penalties. Unless otherwise ordered by the Board, payment of any civil penalty imposed by the Board must be made within 60 calendar days of the date a final order assessing the penalty is issued. If the civil penalty is not paid within that time, in addition to any other action allowed by law or Board rules, proceedings may be instituted to suspend, revoke or refuse to renew the tax consultants or tax preparers license of the person against whom the penalty is assessed.

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

Stat. Auth.: ORS 673.730

Stats. Implemented: ORS 673.735

Hist.: TSE 1-1985, f. & ef. 1-15-85; BTSE 1-1998, f. & cert. ef. 9-3-98; BTSE 1-2002(Temp), f. & cert. ef. 8-6-02 thru 1-1-03; Administrative correction 4-16-03; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2004, f. 1-28-04, cert. ef. 2-1-04; BTP 3-2004, f. 10-11-04 cert. ef. 11-1-04; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

800-030-0050

Obtaining Information and Purchasing Board-Provided Materials and Services

Materials and services available to the public and licensees through the Tax Board may be obtained or purchased as follows:

(1) In response to telephone requests, the board office may provide the tax practitioner name, license number, whether the license is active or expired, business location, business telephone number and whether a discipline record exists.

(2) A copy of the Oregon Revised Statutes Chapter 673 and Oregon Administrative Rules Chapter 800 may be provided upon request at no charge for the first request. A charge will be assessed for additional/multiple copies.

(3) All requests for any information other than that listed in sub-section (1) and (2) of this rule must be submitted in writing to the board office.

(4) The Board may charge for copies of its records. The types of records that the Board can charge for copies includes, but is not limited to, such material as copies of certificate(s), license(s), registration(s), board meeting materials that are available to the public, general information, duplicating requests requiring multiple records search or the compiling and creation of official documents.

(5) Fees shall not exceed the Board's actual costs for copying the record(s) requested including, but not limited to, the Board's cost for locating, compiling, making available for inspection, obtaining legal or other professional advice related to the request, reviewing the records in order to delete exempt material, supervising a person's inspection of original

records, preparing the copy in paper, audio, or electronic format, certifying documents as true copies, and delivery of such record(s).

(6) All fees assessed must be paid before public records are made available. Estimates/fees for processing requests for public records may be given when requested. Person(s) making the public records request is responsible for the actual costs regardless of the estimate.

(7) Persons who want to obtain copies of the following records may learn the charge for them by contacting the board office:

(a) A list of name's, addresses and places of business for all licensed tax practitioners currently on file with the Agency;

(b) A list of records, regardless of whether status is active, inactive, expired or archived;

(c) One (1) or more photocopies of any Board document or portion thereof;

(d) Copies of board meeting minutes or committee meeting minutes/reports.

(8) Advertising services provided by the Board for a fee which can be obtained by contacting the board office:

(a) Advertising for help-wanted, sale of business and tax related services or products in the Board newsletter;

(b) Advertising of Tax Consultant or Tax Business on the Board Web site. Licensees and businesses must be in good standing with the Board to obtain and maintain this service.

(c) All advertising is subject to the review and approval of the Board.

(9) Charges for records may be waived or substantially reduced if the request is in the public's interest, pursuant to ORS 192.440(4) & (5).

(10) The following fees apply to requests for the following types of public records, information, and services provided by the Board:

(a) Fee for a list of current licensees, which includes; license number, name, mailing address is \$25.

(b) Fee for a monthly subscription to a list of current licensees is \$120 per year. Lists provided between the 1st - 10th of each month.

(c) Fee for duplicates of tape recordings of board meetings, disciplinary hearings, etc. that are available to the public are \$5 each, plus labor at an hourly rate of \$25, mailing costs and any Department of Justice costs that may need to be incurred.

(d) Fee for board/committee meeting materials, available to the public, is:

(A) \$10 per board/committee meetings' minutes.

(B) \$5 per board/committee notice and agendas.

(e) Fees for advertising for help-wanted and tax related services or products in board newsletter:

(A) \$10 per 3 3/8 inch line or part line.

(B) \$350 for a full page ad.

(C) \$180 for a half page ad.

(D) \$100 for a quarter page ad.

(E) \$50 for a business card size ad.

(f) Fee for advertising of a tax consultant or tax business or as an employee of a tax business on the Boards website:

(A) Name, business address (physical & e-mail), and phone is \$10 per year per county.

(B) An additional \$10 per county annual fee may be charged for a link to a tax business related website.

(g) Fee for multiple records search including duplicating of documents is labor at an hourly rate of \$30, per page duplicating .05 cents, mailing costs and any Department of Justice costs that may need to be incurred.

(h) Fee for making general photocopies is labor at an hourly rate of \$25, per page duplicating .05 cents, mailing costs and any Department of Justice costs that may need to be incurred.

Stat. Auth.: ORS 192, 670 & 673

Stats. Implemented: ORS 673.605 - 673.740 & 673.990

Hist.: TSE 5-1986, f. & ef. 10-6-86; TSE 6-1990, f. & cert. ef. 5-3-90; BTSE 1-1999, f. & cert. ef. 11-23-99; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2004, f. 10-11-04 cert. ef. 11-1-04; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09

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 4-2009

Filed with Sec. of State: 2-11-2009

Certified to be Effective: 2-11-09

Notice Publication Date:

Rules Amended: 839-025-0700

ADMINISTRATIVE RULES

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).

(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

Construction Contractors Board Chapter 812

Rule Caption: Adds a definition, amends fee and commercial continuing education language, and adjusts civil penalties relating to written contracts.

Adm. Order No.: CCB 1-2009

Filed with Sec. of State: 1-30-2009

Certified to be Effective: 2-1-09

Notice Publication Date: 1-1-2009

Rules Adopted: 812-002-0262, 812-003-0141

Rules Amended: 812-003-0140, 812-005-0800, 812-020-0070

Subject: 812-002-0262 is adopted to provide an exemption for tree removal contractors who are "engaged in the commercial harvest of forest products." This definition derives from the common and ordinary term used in the phrase.

812-003-0140 is amended because in the 2007 legislative session CCB's law changed the fees from licensing and renewal fees to application fees. Part of the reason for the change was due to the fact that the agency spends its time and resources to process a new license or renewal application whether the license is ever issued or not.

812-0141 is adopted to allow the agency to refund a portion of the unused two-year fee of a four-year license, if licensee within the first two-years following renewal voluntarily terminates their license. This was formerly part of 812-003-0140.

812-005-0800 is amended — currently CCB may impose a civil penalty upon a contractor who fails to use a written contract in an amount of not less than \$200 or more than \$2000. Yet, if a contractor uses a written contract, but the contract does not contain all of the required terms, the penalties are more severe. The amendment to subsection (11) makes the failing to use a written contract the more severe offense. As of 2009, if a contractor uses a written contract, but fails to include all of the required provisions, the civil penalty is not less than \$500 or more than \$5,000. This is more than the sanction for not using a written contract at all — arguably the more serious violation. The amendment to subsection (34) reduces the sanction to reflect that this is the less serious violation.

812-020-0007 is amended to clarify that, at the time of certification, the number of key employees is determined as of the previous date when the license was issued, reissued or renewed.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-002-0262

Engaged in the Commercial Harvest of Forest Products

"Engaged in the commercial harvest of forest products" as used in ORS 701.005(5)(e) means engaged in buying or selling fallen trees, logs, poles or pilings. "Engaged in the commercial harvest of forest products" does not mean masticating, chipping or mulching trees or brush on site.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005

Hist.: CCB 1-2009, f. 1-30-09, cert. ef. 2-1-09

812-003-0140

License Application Fees

(1) The application fee for all new, renewal, or reissued licenses is \$260.

(2) Application fees will not be refunded or transferred.

Stat. Auth.: ORS 670.310, 701.238 & 701.235

Stats. Implemented: ORS 701.056, 701.063, 701.238

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 4-2005, f. 8-24-05, cert. ef. 10-1-05; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 3-2008(Temp), f. & cert. ef. 1-10-08 thru 7-7-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 1-2009, f. 1-30-09, cert. ef. 2-1-09

812-003-0141

Four-Year Renewal Fees

If, on or before July 1, 2008, a licensee paid an application fee for a four-year renewal and voluntarily terminated their license within the first two years following the renewal, the agency may refund the unused two-year application fee of \$260, less processing fee, only if the following conditions are met:

ADMINISTRATIVE RULES

- (1) The licensee will submit a written request for a voluntary termination of the license and a refund of the unused two-year fee;
- (2) The licensee will return the original license card(s) to the agency; and
- (3) The agency will retain a \$130 processing fee.
Stat. Auth.: ORS 670.310, 701.238 & 701.235
Stats. Implemented: ORS 701.056, 701.063, & 701.238
Hist.: CCB 1-2009, f. 1-30-09, cert. ef. 2-1-09

812-005-0800

Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

- (1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and
- (2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and
- (3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.026 when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and
- (4)(a) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner.
 - (b) A "complaint for damages" as used in section (4) of this rule includes, but is not limited to:
 - (A) A Construction Contractors Board Dispute Resolution Services (DRS) complaint; or
 - (B) A letter to Construction Contractors Board indicating that a citizen has been damaged by the contractor; and
 - (5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and
 - (6) \$500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.345; and
 - (7) \$1,000 per offense for hiring a unlicensed subcontractor; and
 - (8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.
 - (9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400.
 - (10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260: First offense \$50, second offense \$100, subsequent offenses \$200.
 - (11) Failing to use a written contract as required by ORS 701.305: \$500 for the first offense; \$1,000 for the second offense; and \$5,000 for subsequent offenses.
 - (12) Violation of OAR 812-012-0130(1), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.
 - (13) Failure to conform to information provided on the application in violation of ORS 701.046(4), issuance of a \$5,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application and the terms of the application.
 - (a) If the violator is a limited contractor or residential limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130 or 812-003-0131, the licensee shall be permanently barred

from licensure in the limited contractor category or residential limited contractor endorsement.

(b) If the violator is a licensed developer, residential developer or commercial developer working in violation of the conditions established pursuant to ORS 701.005(3), (6) or (13) or 701.042, the licensee shall be permanently barred from licensure in the licensed developer category or residential developer or commercial developer endorsement.

(14) Knowingly assisting an unlicensed contractor to act in violation of ORS Chapter 701, \$1,000.

(15) Failure to comply with any part of ORS Chapters 316, 656, or 657, 701.035, 701.046 or 701.091, as authorized by 701.106, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(16) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

(17) Working without a construction permit in violation of ORS 701.098, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(18) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(19) Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(20) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

(c) Failing to pay minimum wages or overtime wages as required under state and federal law; or

(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or

(e) Failing to comply with the posting requirements of ORS 279C.840: \$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(21) Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(22) When, as set forth in ORS 701.098(1)(g), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(23) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(24) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(25) Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.

(26) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(8): \$750 per offense.

(27) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(28) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0201(4): \$400 per offense.

(29) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070; \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(30) Violation of ORS 279C.590:

ADMINISTRATIVE RULES

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(31) Violation of ORS 701.315, inclusion of provisions in a contract that preclude a homeowner from filing a breach of contract complaint with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(32) Violation of ORS 701.345, failure to maintain the list of subcontractors: \$1,000 for the first offense; \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(33) Violation of 701.098(1)(e), knowingly providing false information to the Board: \$1,000 and suspension of the license for up to three months for the first offense; \$2,000 and suspension of the license for up to one year for the second offense; and \$5,000 and permanent revocation of license for the third offense.

(34) Failing to provide a written contract with the contractual terms provided by ORS 701.305 or OAR 812-012-0110: \$200 for the first offense; \$500 for the second offense; and \$1,000 for subsequent offenses.

(35) Working while the license is suspended if the licensee was required to provide an increased bond under ORS 701.068(5), 701.068(6), or OAR 812-003-0175: revocation.

(36) Working while the license is suspended for any violation of ORS 701.098(4)(a)(A) or 701.098(4)(a)(B): \$5,000 for first offense, and revocation for second or subsequent offense.

(37) Working while the license is suspended for any reason except as otherwise provided for by this rule: revocation.

(38) Failure to comply with ORS 701.106(1)(a); \$1,000 for the first offense, \$5,000 for the second offense; \$5,000 and permanent revocation of CCB license for the third offense.

Stat. Auth.: ORS 183.310 - 183.500, 670.310, 701.235 & 701.992
Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.026, 701.042, 701.046, 701.091, 701.098, 701.106, 701.227, 701.305, 701.315, 701.330, 701.345 & 701.992
Hist.: 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1985, f. & ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87; BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef. 11-13-00 thru 5-11-01; CCB 2-2001 f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2005, f. 8-24-05, cert. ef. 1-1-06; Renumbered from 812-005-0005, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 2-2006, f. & cert. ef. 1-26-06; CCB 7-2006, f. & cert. ef. 6-23-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 4-2007, f. 6-28-07, cert. ef. 7-1-07; CCB 2-2008(Temp), f. & cert. ef. 1-2-08 thru 6-29-08; CCB 5-2008, f. 2-29-08, cert. ef. 7-1-08; CCB 13-2008, f. 6-30-08, cert. ef. 7-1-08; CCB 17-2008, f. 9-26-08, cert. ef. 10-1-08; CCB 19-2008, f. & cert. ef. 11-20-08; CCB 1-2009, f. 1-30-09, cert. ef. 2-1-09

812-020-0070

Certification of Hours — Continuing Education for Commercial Contractors

(1) Upon renewal, a commercial contractor must certify that one or more key employees obtained the continuing education required by OAR 812-020-0050 to 812-020-0073.

(2) For a commercial general or specialty contractor — level 1 with five or more key employees, the commercial contractor must certify that one or more key employees completed at least 80 hours during the preceding license period.

(3) For a commercial general or specialty contractor — level 1 with four or fewer key employees, the commercial contractor must certify as follows:

(a) With four key employees, that one or more key employees completed at least 64 hours during the preceding license period.

(b) With three key employees, that one or more key employees completed at least 48 hours during the preceding license period.

(c) With two key employees, that one or more key employees completed at least 32 hours during the preceding license period.

(d) With one key employee, that the key employee completed at least 16 hours during the preceding license period.

(4) For a commercial general or specialty contractor — level 2, the commercial contractor must certify that one or more key employees completed at least 32 hours during the preceding license period.

(5) For purposes of sections (2) to (4) of this rule, the number of key employees is the number of such persons employed by the commercial contractor as of the previous date of license issuance, reissuance or renewal.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

Hist.: CCB 21-2008, f. & cert. ef. 11-20-08; CCB 1-2009, f. 1-30-09, cert. ef. 2-1-09

Department of Administrative Services Chapter 125

Rule Caption: Termination Dispositions of State Real Property Interests (Offers to Other Individuals or Entities).

Adm. Order No.: DAS 2-2009(Temp)

Filed with Sec. of State: 1-23-2009

Certified to be Effective: 1-23-09 thru 7-17-09

Notice Publication Date:

Rules Amended: 125-045-0235

Subject: This amendment changes OAR 125-045-0235(3)(b) to delete the word “minimum” so that it reads “The asking price” rather than “The minimum asking price.” The Statute reads “asking price” not “minimum asking price.” In actual real estate practice, seller’s rarely list “minimum” asking prices. Making this proposed change does not prevent any Agency from setting a “minimum” acceptable price. Implementing this change makes the OAR consistent with both the statute and common practice.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

125-045-0235

Terminal Dispositions of State Real Property Interests (Offers to Other Individuals or Entities)

(1) This rule applies to sales and leases of State Real Property Interests only.

(2) If a Disposing Agency does not sell or transfer a State Real Property Interest to either an Agency or a Political Subdivision or to a party that has been granted a Right of First Refusal, then the Disposing Agency may dispose of the State Real Property Interest to any other party subject to the rules and procedures described in this rule.

(3) The Disposing Agency shall publish notice of the proposed Terminal Disposition of the State Real Property Interest. The notice must be published not less than once a week for three successive weeks in one or more newspapers of general circulation in the county or counties in which the State Real Property Interest is located. In addition, the Disposing Agency may provide notice on its web site. The published notice must include the following:

(a) A general description of the State Real Property Interest, including a legal description, if any;

(b) The asking price;

(c) The name and address of the person to contact to obtain any additional information concerning the State Real Property Interest;

(d) A Request for Proposals, including the address to which the Proposal must be delivered and the date and time the Proposal is due, which may not be less than 30 days from the date of the first notice;

(e) A requirement that a security deposit in the amount and form described in this rule must be submitted with the Proposal;

(f) If applicable, a notice that the Terminal Disposition of the State Real Property Interest may be subject to a Right of First Refusal;

(g) If not previously published, an invitation for public comment on the State Real Property Interest values defined in OAR 125 045-0215(7) if the Appraised Fair Market Value is more than \$100,000;

(h) A reservation of the right of the Disposing Agency or the Division to accept or reject any Proposal; and

(i) Any other information the Disposing Agency elect to include.

(4) The Disposing Agency may use a multi-stage process, which may include, but need not be limited to, a Solicitation of Interest (SOI), a Request for Qualifications (RFQ), a Request for Proposals (RFP), a straight offer to purchase, or a combination of these. These documents must describe the process by which the Disposing Agency shall market the prop-

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erty, and may direct interested parties to the Disposing Agency's website for information.

(5) The Division may post the current status of Surplus State Real Property Interests available for Terminal Disposition on its website.

(6) All Proposals submitted in response to the published notice described in this rule must be accompanied by a deposit, in the form of a certified check or sufficient bond furnished by a surety company authorized to do business in this State, in favor of the State of Oregon in a sum not less than ten percent of the total amount of the proposed purchase price. Deposits will be refunded to all unsuccessful Proposers after the closing of the sale to a successful Proposer or rejection of all Proposals.

(7) Each Proposal must clearly identify the amount offered for the purchase of the State Real Property Interest, and must include the following additional information:

(a) Any conditions upon the Proposer's offer to acquire the State Real Property Interest;

(b) A detailed statement explaining the Proposer's proposed use for the State Real Property Interest; and

(c) Any other information the Proposer believes is relevant to its Proposal.

(8) After the date and time for submitting Proposals has passed, the Disposing Agency shall open all Proposals that have been timely delivered and that have the required deposit. The Disposing Agency shall evaluate all responsive Proposals to determine the Proposal most advantageous to the State. The determination of the most advantageous Proposal will be final and conclusive and is not subject to review by any court.

(9) The Disposing Agency shall notify the apparent successful Proposer and shall negotiate to determine if the transfer can be consummated and a final agreement reached. If negotiations are unsuccessful, the Disposing Agency may:

(a) Notify the next highest ranking acceptable Proposal and shall similarly attempt to negotiate the Terminal Disposition of the State Real Property Interest; and

(b) Continue the negotiation process until the Disposing Agency has exhausted the field of all Proposers; or

(c) Reject remaining Proposals.

(10) If the Disposing Agency and a Proposer reach a final agreement on the Terminal Disposition of the State Real Property Interest and this agreement, where required, is approved by the Attorney General pursuant to ORS 291.047, the Disposing Agency shall transfer the State Real Property Interest to the successful Proposer in accordance with the terms of the agreement.

(11) The Disposing Agency, in its sole discretion, may reject any or all Proposals.

(12) If all Proposals are rejected, the Disposing Agency may market and sell the Real Property Interest in any manner the Disposing Agency deems appropriate including but not limited to auction, direct negotiation with potential buyers, announcing a new RFQ or RFP process, and acting through a real estate licensee, provided that:

(a) If required by ORS 291.047, any resulting agreement of sale must be approved by the Attorney General;

(b) If no agreement of sale is executed within 18 months of the publication of the first public notice of sale described in this rule, no agreement of sale may be accepted without again first publishing a public notice of sale and complying with the provisions of this rule; and

(c) The Disposing Agency shall publish the process selected in this subsection on its website.

Stat. Auth.: ORS 270.015(2), 270.100(1)(d)

Stats. Implemented: ORS 270.010, 270.110, 270.130, 270.135, 270.140

Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 2-2009(Temp), f. & cert. ef. 1-23-09 thru 7-17-09

Rule Caption: Clarifies that disability benefit calculations for injured PIECP inmates are based on prevailing wage rates.

Adm. Order No.: DAS 3-2009

Filed with Sec. of State: 1-23-2009

Certified to be Effective: 1-23-09

Notice Publication Date: 12-1-2008

Rules Adopted: 125-160-0020

Rules Amended: 125-160-0010

Rules Repealed: 125-160-0020(T), 125-160-0010(T)

Subject: Deletes the method for calculating temporary and permanent disability award benefits from the definitions contained in OAR 125-160-0010 and places that method in a new rule, OAR 125-160-0020, and clarifies that the method for calculating temporary and per-

manent disability award benefits is based on the "Inmate Hourly Wage Rate." Amends OAR 125-160-0010 to define "Inmate Hourly Wage Rate" as either the prevailing wage for PIECP inmates working in PIECP work programs or the state Minimum wage rate for non-PIECP inmates. Amends OAR 125-160-0010 to further define "PIECP" as a Department of Corrections inmate work program certified under the federal Prison Industries Enhancement Certification Program (PIECP) as exempted under 18 USC 1761(c). Amends OAR 125-160-0010 to further define "PIECP work program" as specific inmate work projects that are part of the Prison Industry Enhancement Program. In addition, there is one housekeeping change correcting the Department name.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

125-160-0010

Definitions

As used in chapter 125, division 160, unless the context requires otherwise:

(1) "Awards" or "benefits" include one or more of the following types:

(a) "Death benefit" means the monthly amount of disability award the person deceased from a covered death would have received at a disability rating of 100 percent. Death benefit also includes any payment to the claimant's estate of burial expenses.

(b) "Final benefit or award" means the Department's final notice of all benefits due to claimant. It is normally issued upon claimant's request for reaffirmation or modification of the initial estimate. Benefits do not increase after final award appeal rights are exhausted.

(c) "Initial estimate" means the Department's notice to a claimant that the injury qualifies for permanent disability benefits. It includes the estimate of disability rating and benefits.

(d) "Medical services" means those medications, medical procedures, rehabilitation services, physical aids, and prosthetics that are duly prescribed by the attending physician. Medical Services must be of proven therapeutic value. They must be medically necessary to the process of recovery from the covered injury. They permanently cease when a claimant is medically stationary.

(e) "Permanent disability benefit or award" means the Department's estimated and final calculations of the benefit for a permanent disability from a covered injury.

(f) "Prosthetics benefit" means an amount paid, reserved, or added to permanent disability benefits for the repair or replacement of prosthetics. The cause of repair or replacement must be normal wear and tear or medical need caused by the covered injury and no other cause. The award shall be the Department's estimate of current replacement cost, multiplied by the probability of replacement before age 65, multiplied by the disability rating. Covered prosthetics are only those prescribed by the attending physician and not available over the counter. They must be medically necessary due to the covered injury and no other cause. No prosthetics awards shall be made for pre-existing prosthetics or for glasses, hairpieces, or dentures. Prosthetics benefits shall cease if and when permanent disability award payments cease to be paid or payable for any reason.

(g) "Rehabilitation Services" means physical restorative services prescribed by the attending physician. They must be necessary to recovery from a covered injury. They are part of medical services.

(h) "Temporary disability benefit or award" means the permanent disability award at a disability rating of 100 percent. It is paid only during temporary disability for up to six months after release.

(i) "Training benefit" means any training provided by Corrections during confinement that may improve the chances of employment.

(2) "Authorized work or training assignment" is the duties of, and travel to and from, work or occupational training assigned to the claimant by Corrections. It applies only to assignments during confinement in a facility or institution located within Oregon and operated by Corrections. An assignment begins with the first line movement going to, and ends with the last line movement leaving, the assignment.

(3) "Beneficiary" is a dependent of the claimant who may claim death benefits upon claimant's covered death. Beneficiaries shall meet the following tests:

(a) A beneficiary must, on the date of injury and on the date of covered death, be one of the following, in relationship to the deceased inmate-claimant:

(A) Legal husband or wife of the claimant.

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(B) Child of the claimant. Child includes claimant's natural child, born or unborn, claimant's legally adopted child, stepchild, or other child toward whom the claimant stands in loco parentis.

(C) Father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half sister, half brother, niece or nephew of the claimant.

(b) A beneficiary must also meet the following with regard to the deceased inmate-claimant:

(A) A beneficiary shall have relied upon the claimant for the major part of beneficiary's financial support. He or she shall have done so for the twelve months preceding the date of Corrections confinement, date of injury, or date of covered death. The Department shall select from these three dates the one it deems the most reasonable indicator of dependency under the circumstances.

(B) A beneficiary who is the deceased's child shall not have attained 18 years of age or have married. He or she shall not be legally emancipated and not, since claimant's confinement, have filed for emancipation from the claimant's parenting. He or she shall not have had a court terminate the inmate's parental rights. He or she shall not, since the inmate's confinement, have filed for, or had a parent or legal guardian file for, the termination of the claimant's parental rights.

(C) A beneficiary shall not have terminated nor, since claimant's confinement, applied in any way to terminate the familial, legal relationship of the beneficiary to the claimant.

(D) A beneficiary shall not be divorced from, nor have applied for legal separation or divorce from, the claimant during the period between the claimant's Corrections confinement and covered death. Divorce or separation shall not bar a beneficiary if the beneficiary also applied for, received, or attempted by process of law, to collect funds from the claimant for support or maintenance throughout that period.

(4) "Claim," "request," or "application" means written requests delivered to the Department claiming benefits due the claimant. Claims shall be on the forms or in the formats set from time to time by the Department. They shall be filed within the times set by these rules.

(5) "Claimant" is an inmate who has filed a claim for benefits claimed to be due to him or her under these rules. As applicable, claimant also includes beneficiaries, legal representatives of inmates' estates, and medical providers. Someone other than the inmate may be a claimant only of benefits due directly to him or her, not to benefits which the inmate may claim.

(6) "Confinement" means the claimant, inmate or beneficiary, is held in the legal and physical custody of any government penal, or other agency or institution, under court order. Confinement stops permanent disability and death benefits.

(7) "Corrections" means the State of Oregon Department of Corrections.

(8) "Corrections Medical Staff" means the physicians, nurses, and medical contractors of Corrections. It includes the medical staff of any penal institution where a claimant is confined when designated by Corrections or the Department to provide medical services under these rules.

(9) "Covered Death" means the claimant's death due, in large part, to a covered injury. A death may be a covered death only if it occurs within one year after the date of injury or if a claim for the covered injury was filed within 90 days of the date of injury and was not denied.

(10) "Covered Disease" means a disease or infection that meets all the following tests:

(a) It is caused in major part by the accidental exposure to substances in the course of authorized work or training assignment. Exposure means ingestion, absorption or inhalation of, or accidental contact with, the substance. Substances include dust, fumes, vapors, gases, radiation and the like. Substances shall only be those to which a worker who is not an inmate is not ordinarily exposed.

(b) It causes damage to physical body tissues or organs.

(c) It requires medical services.

(d) It results in temporary disability lasting at least seven consecutive days, permanent disability, or covered death.

(e) It is not an injury, illness, disease, or condition already awarded compensation by public or private funds.

(f) The Department has found it eligible for benefits under these rules.

(11) "Covered Injury" means that injury which meets all the following tests:

(a) It is accidental.

(b) It causes sudden damage to physical body tissues or organs, or accidental injury to prosthetic devices.

(c) It occurs in the course of, and is caused in major part by, an authorized work or training assignment.

(d) It requires medical services.

(e) It results in temporary disability lasting at least seven days, permanent disability, or covered death.

(f) It is not an injury, illness, disease, or condition already awarded compensation by public or private funds.

(g) The Department has found it eligible for benefits under these rules.

(h) Unless the context clearly requires otherwise, covered injury also includes covered disease.

(12) "Date of injury" means:

(a) For a covered injury, the day on which the accident occurred.

(b) For a covered disease, the earlier of the date of first medical treatment or date of diagnosis of the covered disease. Date of injury shall not be later than two years after the last exposure to the alleged disease-causing substance in the authorized work or training assignment.

(13) "Department" means Risk Management of the State Services Division of the Department of Administrative Services. It also means any contractor or agency designated by the Department to perform the Department's duties under these rules.

(14) "Disability" means the attending physician's determination of one of the following from objective medical findings:

(a) "Temporary Disability," the claimant is medically unable, for seven or more consecutive days, to perform substantially all of the customary duties of any employment. This shall be the direct result of a covered injury. Claimant shall not be medically stationary.

(b) "Permanent Disability," the claimant is medically stationary and has a disability rating from the covered injury that will be permanent.

(15) "Disability rating" means the attending physician's determination from objective medical findings of claimant's percent of permanent disability due solely to the covered injury. The rating shall conform to the following:

(a) If the claimant has no pre-existing disabilities or disability awards, the disability rating shall be the claimant's permanent impairment. It shall be found according to the **3rd Revised**, or later, edition of the **AMA Guides to the Evaluation of Permanent Impairment**. The physician shall identify the edition used. The disability rating shall be expressed as a percentage of a whole person. If more than one organ system is rated, the percentage of impairment of the whole person shall be combined using the combined values chart in the AMA Guides.

(b) If the claimant has pre-existing disabilities or disability awards, the maximum disability from all sources and causes shall not exceed 100 percent. The Department or the physician shall combine the current disability rating for the covered injury with all prior disabilities and disability awards from any source. The combined values chart in the AMA Guides shall be used. If the combined disability rating exceeds 100 percent, the disability rating for the covered injury shall be reduced to lower the total to 100 percent. The Department shall convert a disability award from any other system to an impairment rating of a whole person when necessary.

(16) "Employment" means claimant's ability, after release from confinement, to seek and perform employment. It shall include any lawful employment which pays at least the then statutory minimum wage of the State of Oregon. It shall be immaterial whether employment is obtained or exists.

(17) "Inmate" is a person committed to the physical and legal custody of Corrections.

(18) "Inmate Hourly Wage Rate," for purposes of calculating benefits under these administrative rules only, means:

(a) For inmates working in PIECP work projects, the Inmate Hourly Wage Rate is the rate established by Oregon Corrections Enterprises in accordance with the annual prevailing hourly wage rate determination completed by the Oregon Department of Employment.

(b) For other inmates, the Inmate Hourly Wage Rate is the state hourly minimum wage established under ORS 653.025.

(19) "Major part" means clearly and substantially more than half of the whole of all causes or contributing factors. Major part does not mean merely disproving factors deemed to be other possible causes.

(20) "Medically Stationary" or "Stationary" means that the attending physician finds that no further material medical improvement would reasonably be expected from medical treatment or the passage of time.

(21) "Physician" means a person licensed, in the state where he or she provides medical services, as a medical doctor, doctor of osteopathy, doctor of optometry, doctor of dentistry or nurse practitioner. All physicians

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may only provide medical services within the scope of their license. Physician includes one or both of the following:

(a) "Attending physician," Corrections medical staff or other physician authorized in advance by the Department. Attending physicians may diagnose and evaluate injuries and diseases. They may provide or direct medical services to claimants. They may send claimants to medically appropriate specialists for specific treatment, evaluation, advice, or consultation. They determine temporary disabilities, permanent disability ratings, and medically stationary dates.

(b) "Consulting or advisory physician," a physician selected and paid by the Department, Corrections, or the claimant to advise the attending physician. The consulting physician shall review the findings of the attending physician or evaluate the claimant to advise whether the claimant is medically stationary, temporarily or permanently disabled, and the degree of disability rating.

(22) "PIECP" means a Department of Corrections inmate work program certified under the federal Prison Industries Enhancement Certification Program (PIECP) as exempted under 18 USC 1761(c) from the federal prohibition against the transport of inmate-produced goods in interstate commerce.

(23) "PIECP Work Project" means a specific inmate work project that is part of the Prison Industry Enhancement Program.

(24) "Release" means the claimant's release from Corrections' confinement. When the context requires, release also means the date of release from any subsequent confinement.

(25) "Substantial evidence" means that all the discovered evidence, taken together, would lead a reasonable fact finder to believe the facts asserted are more probably true than false. When the weight of the evidence is equal to both sides or only slightly greater to the claimant's side, the fact finder shall find against the claimant.

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

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DASII 2-1995(Temp) f. & cert. ef. 9-28-95; DASII 2-1996, f. & cert. ef. 3-26-96; DAS 7-2008(Temp), f. & cert. ef. 10-15-08 thru 4-11-09; DAS 3-2009, f. & cert. ef. 1-23-09

125-160-0020

Calculation of Permanent Disability Awards.

A permanent disability award is calculated as two-thirds of the Inmate Hourly Wage Rate multiplied by the disability rating. The weekly amount is calculated in this manner. The Inmate Hourly Wage Rate, in effect on the date of release, is multiplied by 40, multiplied by .667, and multiplied by the disability rating. To convert to a daily benefit, the weekly amount is divided by seven. To convert to a monthly benefit, the weekly amount is multiplied by 4.35. A prosthetics allowance may be added to the permanent disability award. During confinement, permanent disability and training benefits are entirely limited to any training provided by the Oregon Department of Corrections.

Stat. Auth.: ORS 184.340, 278.405, 655.520 & 655.555

Stats. Implemented: ORS 655.505 - 655.555

Hist.: DAS 7-2008(Temp), f. & cert. ef. 10-15-08 thru 4-11-09; DAS 3-2009, f. & cert. ef. 1-23-09

Rule Caption: Rules for Statewide Facilities Planning Process.

Adm. Order No.: DAS 4-2009

Filed with Sec. of State: 1-26-2009

Certified to be Effective: 1-26-09

Notice Publication Date: 12-1-2008

Rules Adopted: 125-125-0700

Subject: OAR 125-125-0700 adopts the DAS-Salem Coordination Plan Development and Management Policies to provide a process for developing, planning and evaluating projects engaged in capitol construction on state owned property within the City of Salem as required in SB 90 (2005 Legislative Session).

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

125-125-0700

Adoption of the DAS-Salem Coordination Plan

The DAS-Salem Coordination Plan Development and Management Policies September 19, 2008 is hereby adopted by reference.

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

Stat. Auth: ORS 183 & 276

Stat. Implemented:

Hist.: DAS 4-2009, f. & cert. ef. 1-26-09

Rule Caption: Emergency Procurements and Contracts.

Adm. Order No.: DAS 5-2009(Temp)

Filed with Sec. of State: 2-13-2009

Certified to be Effective: 2-13-09 thru 8-12-09

Notice Publication Date:

Rules Amended: 125-247-0280, 125-249-0150

Subject: The Department of Administrative services (the Department) needs Temporary Rules to quickly revise OAR 125-247-0280 for Emergency Procurements and OAR 125-249-0150 for Emergency Contracts (Rules) under 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. The existing Rules present obstacles to the Program's quick implementation. The Temporary Rules remove the obstacles and help agencies employ various procurement methods.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

125-247-0280

Emergency Procurements

(1) An Authorized Agency may award a Contract as an Emergency Procurement under ORS 279B.080. An Authorized Agency has delegated authority to enter into an Emergency Contract according to OAR 125-246-0170.

(2) An Authorized Agency may, in its discretion, enter into a Contract without competitive Solicitation if an Emergency exists. Emergency means circumstances that could not have been reasonably foreseen that create a substantial risk of loss, damage, interruption of services or threat to public health or safety that requires prompt execution of a Contract to remedy the condition.

(3) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must encourage competition that is reasonable and appropriate under the Emergency circumstances. However, for the emergency procurement of construction services that are not Public Improvements, see ORS 279B.080(2).

(4) Regardless of the dollar value of the Contract, the Authorized Agency entering into an Emergency Contract must, either before or promptly after entering into an Emergency Contract, make and retain in its Procurement File documentation of the nature of the Emergency that includes:

(a) A brief description of the Supplies and Services to be provided under the Contract, together with its cost or anticipated cost;

(b) A brief explanation of how the Contract, in terms of duration or Supplies and Services provided under it, was restricted to the Scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the Emergency circumstances;

(c) A description of the emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis; and

(d) Documentation of the measures taken under Section (3) to encourage competition; the amounts of the Bids, Quotes or Proposals obtained, if any; and the reason for selecting the Contractor.

(5) The head of the Authorized Agency, or a person designated under ORS 279A.075, must authorize the conduct of the emergency procurement, and must review and approve the documentation required by Section (4) of this Rule.

(6) Any Contract awarded under this Rule must be awarded no later than sixty (60) days following the approval of the documentation of the emergency unless the head of the Authorized Agency or Person designated has granted an extension.

(7) Agencies must also comply with OAR 137-045-0070, Emergency Public Contract Exemption, if applicable. The Authorized Agency must maintain a copy of any required report in the Authorized Agency's Emergency Procurement File.

(8) For an Emergency Procurement of construction services that are not Public Improvements, the Authorized Agency must insure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the Procurement, the Authorized Agency must set a solicitation time period that the Authorized Agency determines to be reasonable under the emergency circumstances and may issue Written or oral requests for Offers or make direct appointments without competition in cases of extreme necessity.

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(9) 2009 "Go Oregon!" Economic Stimulus Package.

(a) **Program.** The 2009 "Go Oregon!" Economic Stimulus Package, Enrolled Senate Bill 338, House Bill 5562 and related legislative measures (Program), provides funding and direction to identified Authorized Agencies for deferred maintenance, capital construction, capital renewal, code compliance, safety, renovation, and other construction projects (Projects). The Program's objective is to stimulate Oregon's economy through job growth by providing opportunities to local businesses and certified minority, women and emerging small businesses. The Director of the Department has made a determination of emergency circumstances and documented the nature of the Emergency under the Program (Emergency Determination). Most of the Projects are not Public Improvements as defined in OAR 125-246-0110(127). ORS 279C.320 provides that 279B.080 regulates these Projects.

(b) **Application.** Sections (2) through (6) of this rule do not apply to Procurements and Contracts under the Program.

(c) **Emergency Documentation.** The Emergency Determination documents the nature of the Emergency on behalf of the Authorized Agencies to satisfy the requirement of ORS 279B.080. No further documentation that an Emergency exists is required of the Authorized Agencies.

(d) **Authorization.** The Designated Procurement Officer, or designee, of the Authorized Agency must authorize Procurements under the Program and may determine whether to excuse the requirement of furnishing a good and sufficient performance bond or payment bond.

(e) **Procurement Processes.** The Authorized Agencies may conduct expedited Emergency Procurement processes, including but not limited to: informal or formal requests for quotes, invitations to bid, and requests for proposals; special procurements; and direct awards. Any of these processes may be utilized regardless of project value.

(f) **Project Documentation.** The Authorized Agency must retain in its Procurement File(s) the following documentation of its Emergency Procurements and Contracts under the Program:

(A) Copies of all data requested by the Department;

(B) A brief description of the Project;

(C) A description of how the particular contractor was selected and the measures taken to encourage competition, if reasonable and appropriate under the emergency circumstances.

(D) A statement by the Designated Procurement Officer, or designee, excusing performance and payment bonds for the Project in accordance with ORS 279C.380(4), if applicable.

(g) **Timing.** The documentation described in section (9)(f) may occur a reasonable time after the award of the Contract. No documentation is required before the award of the Contract.

(10) Other State Economic Stimulus Programs

(a) **State Program.** If any other state economic stimulus program is administered by the Department or an Authorized Agency (State Program), sections (9)(d) through (g) replace sections (2) through (6) of this rule and apply to the State Program, on the following condition: the Department determines that the State Program is in response to adverse economic circumstances.

(b) **Emergency Documentation.** If the Director of the Department makes an Emergency Determination, documenting the nature of the Emergency on behalf of Authorized Agencies, then that Emergency Determination satisfies the requirement of ORS 279B.080. No further documentation that an Emergency exists is required of the Authorized Agencies.

(11) Federal Economic Stimulus Programs.

(a) **Federal Program.** If any federal economic stimulus program is administered by the Department or an Authorized Agency (Federal Program), sections (9)(d) through (g) replace sections (2) through (6) of this rule and apply to the Federal Program, upon the following conditions: the Department determines that the Federal Program is in response to adverse economic circumstances.

(b) **Emergency Documentation.** If the Director of the Department makes an Emergency Determination, documenting the nature of the Emergency on behalf of the Authorized Agencies, then that Emergency Determination satisfies the requirement of ORS 279B.080. No further documentation that an Emergency exists is required of the Authorized Agencies.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.080 & 279C.320

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 5-2009(Temp), f. & cert. ef. 2-13-09 thru 8-12-09

125-249-0150

Emergency Contracts; Bidding and Bonding Exemptions

(1) **Emergency Declaration.** An Authorized Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration must be made at an administrative level consistent with the Authorized Agency's internal policies, by a Written declaration that describes the circumstances creating the Emergency as that term is defined at ORS 279A.010(1)(f), and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration must be kept on file as a public record.

(2) **Competition for Emergency Contracts.** According to ORS 279C.320(1), Emergency Contracts are regulated under 279B.080, which provides that, for an emergency procurement of construction services, the Authorized Agency must ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include Written requests for Offers, oral requests for Offers, or direct appointments without competition in cases of extreme necessity, in whatever Solicitation time periods the Authorized Agency considers reasonable in responding to the Emergency.

(3) **Emergency Contract Scope.** Although no dollar limitation applies to Emergency Contracts, the Scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) **Emergency Contract Modification.** Emergency Contracts may be modified by change order or Amendment to address the conditions described in the original declaration or an amended declaration that further describes additional Work necessary and appropriate for related Emergency circumstances.

(5) **Excusing Bonds.** According to ORS 279C.380(4) and this Rule, the Emergency declaration may also state that the Authorized Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration those bonding requirements are excused for the Procurement.

(6) **State and Federal Economic Stimulus Programs.** Sections (1) through (5) of this Rule do not apply to Procurements and Contracts under any state economic stimulus program or any federal economic stimulus program administered by the Department or an Authorized Agency. See OAR 125-247-0280.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279B.080, 279C.320 & 279C.380(4)

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 5-2009(Temp), f. & cert. ef. 2-13-09 thru 8-12-09

Department of Administrative Services, Oregon Educators Benefit Board Chapter 111

Rule Caption: Provides definitions of terms used for the Oregon Educators Benefit Board benefits program.

Adm. Order No.: OEBC 1-2009

Filed with Sec. of State: 1-30-2009

Certified to be Effective: 1-30-09

Notice Publication Date: 12-1-2008

Rules Amended: 111-010-0015

Rules Repealed: 111-010-0015(T)

Subject: Provides definitions of terms used for the Oregon Educators benefit Board benefits program.

Rules Coordinator: April Kelly—(503) 378-6588

111-010-0015

Definitions

Unless the context indicates otherwise, as used in OEBC administrative rules, the following definitions will apply:

(1) "Actuarial value" means the expected financial value for the average member of a particular benefit plan.

(2) "Affidavit of Dependency" means a document that attests that a dependent child meets the criteria in section (11)(b).

(3) "Affidavit of Domestic Partnership" means a document that attests the eligible employee and one other eligible individual meet the criteria in section (13)(b).

(4) "Benefit plan" includes, but is not limited to, insurance or other benefits including:

(a) Medical;

(b) Dental;

(c) Vision;

ADMINISTRATIVE RULES

- (d) Life, disability and accidental death;
- (e) Long term care;
- (f) Flexible spending accounts;
- (g) Supplemental medical, dental and vision;
- (h) Any other remedial care recognized by state law, and related services and supplies; and

(i) Comparable benefits for employees who rely on spiritual means of healing.

(5) "Board" means the ten-member board established in the Department of Administrative Services as the Oregon Educators Benefit Board under chapter 00007, Oregon Laws 2007.

(6) "Comparable cost (Medical, Dental and Vision)" means that the aggregate cost to a district for enrollment in OEBB plans comparable in design to the district's plan(s) do not exceed the rate in effect or proposed for the benefit plan year.

(7) "Comparable cost (Basic and Supplemental Life Insurance, Accidental Death & Dismemberment Insurance, and Short and Long Term Disability Plans)" means that the premium rates of an OEBB plan design option do not exceed the average, aggregate premium rates of a district's pre-OEBB plan design in effect the year prior to implementation.

(8) "Comparable plan design (Medical, Dental and Vision)" means that the actuarial values of two plan designs are within 2.5 percent higher or lower of each other.

(9) "Comparable plan design (Basic and Supplemental Life Insurance and Accidental Death & Dismemberment Insurance)" means that 90 percent of district employees can obtain a maximum benefit through an OEBB plan design that is within \$2,500 of the maximum benefit obtained through a pre-OEBB plan design in effect the year prior to implementation.

(10) "Comparable plan design (Short and Long Term Disability)" means 90 percent of the district employees can obtain the same elimination period, percentage of covered compensation, definition of covered compensation, coverage period duration, and maximum payment per benefit period through an OEBB plan design as through a pre-OEBB plan design in effect the year prior to implementation.

(11) "Dependent child," unless otherwise defined by a collective bargaining agreement or documented district policy in effect on January 31, 2008, means and includes the following:

(a) A biological child of, an adopted child of, or a child placed for adoption with the eligible employee, spouse, or domestic partner; or

(b) A legal ward by court decree, a dependent by Affidavit of Dependency, or is under legal guardianship of the eligible employee, spouse or domestic partner, and is living in the home of the eligible employee.

(c) A dependent child must meet the following conditions:

(A) Does not qualify as another person's dependent child, except for a child of divorced or separated parents meeting conditions under Internal Revenue Code Section 152(e)(A) as amended by the Working Families Tax Relief Act of 2004.

(B) Single and does not have a domestic partner; and

(C) 18 years old or younger; or

(D) Is 19 through 25 years old;

(i) Attending five months of class or on-site training per calendar year at an educational institution defined by IRC Section 170(b)(1)(A)(ii) or state or political subdivision with the following requirements:

(I) The child must be citizen or resident of the United States, Canada or Mexico; and

(II) The child must be recognized as a full time student by the educational institution or state or political subdivision; or

(ii) Living in the home of the eligible employee over six months of the calendar year, and the eligible employee provides over half the yearly support; or

(iii) Incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability.

(E) Is age 26 or older, and incapable of self-sustaining employment, because of a developmental disability, mental illness, or physical disability; and

(i) The disability existed prior to attaining age 26; and

(ii) Pre-OEBB medical insurance coverage was continuous with coverage under OEBB medical insurance.

(12) "Documented district policies" means district policies and practices that apply to an employee group and are submitted to the Oregon Educators Benefit Board during the plan selection process. District policies and practices must be identified and submitted with the applicable employee group plan selections.

(13) "Domestic partner," unless otherwise defined by a collective bargaining agreement or documented district policy in effect on January 31, 2008, means and includes the following:

(a) An unmarried individual of the same sex who has entered into a "Declaration of Domestic Partnership" with the eligible employee that is recognized under Oregon law; or

(b) An unmarried individual of the same or opposite sex who has entered into a partnership that meets the following criteria:

(A) Both are at least 18 years of age;

(B) Are responsible for each other's welfare and are each other's sole domestic partners;

(C) Are not married to anyone and have not had a spouse or another domestic partner within the prior six months. If previously married, the six-month period starts on the final date of divorce;

(D) Share a close personal relationship and are not related by blood closer than would bar marriage in the State of Oregon;

(E) Have jointly shared the same regular and permanent residence for at least six months; and

(F) Are jointly financially responsible for basic living expenses defined as the cost of food, shelter and any other expenses of maintaining a household. Financial information must be provided if requested.

(c) Participating Districts must calculate and apply applicable imputed value tax for domestic partners covered under OEBB benefit plans.

(14) "Eligible employee" means and includes:

(a) "Active eligible employee" means an employee of an OEBB participating organization who is employed on a half-time or greater basis or is in a job-sharing position or meets the definition of an eligible employee under a separate OEBB rule or under a collective bargaining agreement or documented district policy in effect on January 31, 2008.

(b) "Retired eligible employee" means a previously active eligible employee, who is:

(A) Receiving a service or disability retirement allowance or pension under the Public Employees Retirement System (PERS) or under any other retirement or disability benefit plan or system offered by an OEBB participating organization for its employees;

(B) Eligible to receive a service retirement allowance under PERS and has reached earliest retirement age under ORS Chapter 238;

(C) Eligible to receive a pension under ORS 238A.100 to 238A.245 and has reached earliest retirement age as described in ORS 238A.165; or

(D) Eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by an OEBB participating organization and has reached earliest retirement age under the plan or system.

(15) "Employee Group" means one or more similarly situated employees (i.e., nonrepresented or represented by a specific collective bargaining contract) in a common school district, union high school district, education service district, community college district or charter school.

(16) "Non-subject District" means a community college district or a charter school if the employees are not considered employees of a school district.

(17) "Oregon Educators Benefit Board or OEBB" means the program created under Chapter 00007, Oregon Laws 2007.

(18) "OEBB participating organization" means a Subject District, Non-subject District, or Provisional Non-subject District that participates in benefit plans provided by the Oregon Educators Benefit Board (OEBB).

(19) "Provisional Non-subject District" means a common school district, a union high school district, or an education service district that was self-insured or that had an independent health insurance trust established and functioning on or before December 31, 2006.

(20) "Spouse" means a person of the opposite sex who is a husband or wife. A relationship recognized as a marriage in another state will be recognized in Oregon even though such a relationship would not be a marriage if the same facts had been relied upon to create a marriage in Oregon. The definition of spouse does not include a former spouse and a former spouse does not qualify as a dependent.

(21) "Subject District" means a common school district, a union high school district, or an education service district that did not self-insure or have a health trust in effect on or after January 1, 2007.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.860

Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 2-2008, f. & cert. ef. 1-4-08; OEBB 10-2008(Temp), f. & cert. ef. 8-13-08 thru 2-6-09; OEBB 1-2009, f. & cert. ef. 1-30-09

ADMINISTRATIVE RULES

Rule Caption: Establishes Oregon Educators Benefit Board's policy for effective dates for initial employee group phase-in to the OEBB benefit program.

Adm. Order No.: OEBB 2-2009

Filed with Sec. of State: 1-30-2009

Certified to be Effective: 1-30-09

Notice Publication Date: 12-1-2008

Rules Amended: 111-020-0001

Rules Repealed: 111-020-0001(T)

Subject: Establishes Oregon Educators Benefit Board's policy for effective dates for initial employee group phase-in to the OEBB program.

Rules Coordinator: April Kelly—(503) 378-6588

111-020-0001

Initial Employee Group Phase-in

(1) Any employee group in Subject Districts or Provisional Non-subject Districts may elect to participate in benefit plans provided by the Board beginning on October 1, 2008, October 1, 2009, or October 1, 2010, without having to meet the phase-in requirements outlined under Sections 2, 3 and 4; however:

(a) Eligible employees of a Subject District who are represented under a collective bargaining agreement with an end date of July 1, 2007, through June 30, 2008, must participate in benefit plans provided by the Board beginning October 1, 2008.

(b) Eligible employees of a Subject District who are represented under a collective bargaining agreement with an end date of July 1, 2008, through June 30, 2009, must participate in benefit plans provided by the Board beginning October 1, 2009.

(c) Eligible employees of a Subject District who are represented under a collective bargaining agreement with an end date on or after July 1, 2009, must participate in benefit plans provided by the Board beginning October 1, 2010.

(d) Eligible employees of a Subject District who are not represented under a collective bargaining agreement must participate in benefit plans provided by the Board consistent with the requirements governing eligible employees of the Subject District who are represented under a collective bargaining contract as outlined under section 1(a), (b) and (c) above. If more than one collective bargaining contract exists in the Subject District, the earliest collective bargaining contract end date must be applied. If no employee group in the Subject District is represented through a collective bargaining agreement, all eligible employees of the district must participate in benefit plans provided by the Board beginning October 1, 2008.

(2) An employee group electing to participate in benefit plans provided by the Board under section 1 must provide notice of such election not later than June 30, 2008, for the benefit year beginning October 1, 2008 or May 31 of any following year in which they plan to move to the OEBB benefit plans on October 1.

(3) A Provisional Non-subject District wanting to continue providing benefit plans other than those benefit plans provided by the Board must submit an application requesting to be excluded from the requirements of this Section. The application must show that the premiums for the benefit plans provided or contracted for by the district are equal or less than the premiums for comparable benefit plans provided by the Board. Applications must be submitted not later than May 31, 2010, and each year that follows.

(4) Employee groups in Provisional Non-subject Districts who elect to participate in benefit plans provided by the Board cannot return to benefit plans provided or administered by an entity other than the Board.

(5) Employee groups electing to participate in OEBB benefit plans prior to the date mandated by Senate Bills 426 and 1066 (Chapter 7, Oregon Laws 2007, as amended by Chapter 39, Oregon Laws 2008) must participate in all types of benefit coverage offered by OEBB at the time of plan selection.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.886

Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 3-2007(Temp), f. & cert. ef. 11-15-07 thru 3-18-08; OEBB 5-2008, f. & cert. ef. 4-1-08; OEBB 12-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEBB 2-2009, f. & cert. ef. 1-30-09

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

Adm. Order No.: OEBB 3-2009

Filed with Sec. of State: 1-30-2009

Certified to be Effective: 1-30-09

Notice Publication Date: 12-1-2008

Rules Adopted: 111-050-0020, 111-050-0025, 111-050-0030, 111-050-0035, 111-050-0045, 111-050-0050, 111-050-0060, 111-050-0065, 111-050-0070, 111-050-0075, 111-050-0080

Rules Amended: 111-050-0001, 111-050-0010, 111-050-0015

Rules Repealed: 111-050-0020(T), 111-050-0025(T), 111-050-0030(T), 111-050-0035(T), 111-050-0045(T), 111-050-0050(T), 111-050-0060(T), 111-050-0065(T), 111-050-0070(T), 111-050-0075(T), 111-050-0080(T), 111-050-0001(T), 111-050-0010(T), 111-050-0015(T)

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

Rules Coordinator: April Kelly—(503) 378-6588

111-050-0001

Continuation of Group Medical and Dental Insurance Coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA)

COBRA allows an eligible individual losing group health plan coverage due to a qualifying event to continue their coverage for a limited time on a self-pay basis.

(1) OEBB will issue or cause the issuance of an initial COBRA notice explaining the right to continue medical and dental insurance plans to all newly eligible employees and individuals.

(a) The notice must be mailed to the eligible employee's known address immediately following enrollment in OEBB medical or dental insurance plans. The notice must include all known eligible individuals residing at the address. Known eligible individuals residing separately from the eligible employee must be mailed a separate notice at their known address.

(b) The initial COBRA notice must be mailed to individuals becoming newly eligible due to marriage or the formation of a domestic partnership.

(2) A COBRA triggering event must cause the loss of benefit coverage. COBRA triggering events include:

(a) An involuntary reduction in hours or layoff;

(b) A strike or lockout;

(c) The beginning of an unpaid leave of absence;

(d) The termination of employment;

(e) Retirement;

(f) A dependent child no longer satisfying eligibility requirements;

(g) The loss of employer-sponsored group coverage for dependents due to Medicare eligibility;

(h) A divorce or termination of a domestic partnership; and

(i) The death of the employee.

(3) All individuals losing eligibility due to a triggering event must receive a COBRA continuation notice.

(4) An eligible employee or dependent has 60 days from the receipt of the COBRA notice to activate their COBRA rights of continuation and 45 days from the election date to pay the initial premium. Generally, OEBB-sponsored insurance coverage must be continuous.

(5) Generally, medical plans may be continued under COBRA provisions for the following basic maximum coverage periods:

(a) 18 months after the date of the triggering events specified in section 2(a)–(e) above; or

(b) An 11 month extension is provided to COBRA participants when there is a disability determination by the Social Security Administration and the plan is notified within the required timeline, resulting in a 29 month coverage period; or

(c) 36 months after the date of the triggering events specified in section 2(f)–(i) above.

(6) An eligible employee's spouse or domestic partner who is 55 years of age or older and who loses benefit coverage due to events specified in section 2(h) and (i) above, may continue OEBB medical insurance coverage for themselves and their dependent children beyond the general 36-month COBRA continuation period. An eligible individual may continue their OEBB medical insurance coverage until they are entitled to Medicare, are covered under another group medical insurance plan or otherwise lose eligibility.

(7) An eligible individual continuing OEBB medical insurance coverage only or medical and dental insurance coverage under COBRA provisions has the same rights as active eligible employees for making changes midyear and during the open enrollment period.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602
Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 7-2008, f. & cert. ef. 4-15-08; OEBB 13-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEBB 3-2009, f. & cert. ef. 1-30-09

111-050-0010

Eligibility for Retiree Medical, Dental and Vision Insurance Coverage

An eligible retired employee and their eligible dependents enrolled in an OEBB benefit plan or district benefit plan for active employees may continue participation in any OEBB retiree medical, dental and vision insurance plan or plans available to his or her Employee Group until becoming eligible for Medicare. Insurance coverage under the OEBB or district active benefit plans, as an employee or as a dependent of an employee, and retiree benefit plans must be continuous.

(1) A retired employee must be:

(a) Receiving a service or disability retirement allowance or pension under the Public Employees Retirement System (PERS) or under any other retirement or disability benefit plan or system offered by an OEBB participating organization for its employees;

(b) Eligible to receive a service retirement allowance under PERS and has reached earliest retirement age under ORS Chapter 238;

(c) Eligible to receive a pension under ORS 238A.100 to 238A.245 and has reached earliest retirement age as described in ORS 238A.165; or

(d) Eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by an OEBB participating organization and has reached earliest retirement age under the plan or system.

(2) A retired eligible employee may elect insurance coverage for themselves only or may elect to cover any eligible dependents covered by the employee's active plan immediately prior to the retirement.

(3) A former eligible employee who elects COBRA and is also eligible for retiree benefits or later becomes eligible as a retired employee will have the right to transfer the COBRA medical, dental, and vision insurance coverage to the OEBB retiree benefit plans at any time during COBRA or within 30 days of the COBRA end date. Insurance coverage under the OEBB active, COBRA and retiree benefit plans must be continuous.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602
Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 7-2008, f. & cert. ef. 4-15-08; OEBB 13-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEBB 3-2009, f. & cert. ef. 1-30-09

111-050-0015

Retirees Eligible for Medicare Coverage

(1) A retiree enrolled in OEBB retiree insurance plans who becomes eligible for Medicare coverage may not continue on an OEBB medical or vision plan. The exception is for Medicare eligibility as a result of end-stage renal disease. Insurance coverage ends the last day of the month that eligibility is lost.

(2) If a retiree becomes eligible for Medicare coverage, but his or her currently-enrolled eligible dependents are not, these eligible individuals may continue OEBB medical, dental and vision insurance coverage until such time as they no longer meet OEBB eligibility requirements or become eligible for Medicare coverage for reasons other than end-stage renal disease, whichever occurs first. The eligible individuals must confirm intent to continue coverage with the retiree plan administrator within 60 days of the retiree's eligibility for Medicare.

(3) Eligible dependents who were covered on a plan at the time of retirement who are eligible for Medicare, or who become eligible for Medicare, may continue on OEBB medical plans until the retiree becomes eligible for Medicare with the following exceptions:

(a) OEBB Coverage will end for dependents of a retiree enrolled on a Kaiser Permanente medical plan; or

(b) if stated in a collective bargaining agreement or documented district policy.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602
Hist.: OEBB 2-2007(Temp), f. & cert. ef. 9-21-07 thru 3-18-08; OEBB 7-2008, f. & cert. ef. 4-15-08; OEBB 3-2009, f. & cert. ef. 1-30-09

111-050-0020

Initial Enrollment

(1) A retired eligible employee has 60 calendar days from the end date of active eligible employee insurance coverage to enroll in OEBB-sponsored medical, dental and vision plans and can elect coverage for

themselves only or can continue coverage on eligible dependents covered on his or her benefit plans as an active employee.

(a) Coverage must be continuous.

(b) Retired eligible employees may choose to enroll in an OEBB-sponsored medical plan only or dental plan only, unless determined otherwise by a collective bargaining agreement or documented district policy. In order to continue the OEBB-sponsored vision plan, the retiree must also enroll in an OEBB-sponsored medical plan.

(c) Coverage not elected at the time of initial eligibility for early retiree benefits cannot be added at a later date.

Plan Change Periods

(2) OEBB will offer an annual plan change period for retired eligible employees.

(3) A retired eligible employee can change benefit plans consistent with members of their former active Employee Group.

(4) A retired eligible employee may not add dependents or enroll in coverage(s) he or she did not select during the initial enrollment period.

Midyear Benefit Plan Changes

(5) A retired eligible employee may make midyear changes consistent with 111-040-0040.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602
Hist.: OEBB 13-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEBB 3-2009, f. & cert. ef. 1-30-09

111-050-0025

Effective Dates

(1) Benefit plan changes or initial elections, unless otherwise specified in a collective bargaining agreement or documented district policy in effect on June 30, 2008, are effective on the later of:

(a) The first of the month following a completed online enrollment in the OEBB benefit management system or submission of a paper enrollment or change form; or

(b) The first of the month following the date of eligibility.

(2) Covered dependent changes are effective the first of the month following the date of the event causing the dependent to be eligible under OEBB administrative rules with the following exceptions:

(a) Coverage for a newborn child is effective on the date of birth through the first 31 calendar days. To continue coverage the active or retired eligible employee must add the newborn child to their benefit plans within 60 calendar days from the date of birth.

(b) Coverage for a newly adopted child is effective the date of the adoption decree or date of placement for adoption through the first 31 calendar days pending the completion of adoption proceedings. To continue coverage the retired eligible employee must add the adopted child to their benefit plans within 60 calendar days from the date of the decree or placement;

(i) The retired eligible employee must submit the adoption agreement with the enrollment forms to the Participating District.

(ii) Claims payments will not be made for expenses incurred prior to the date of decree or placement.

(c) Coverage for a dependent child by affidavit as defined in OEBB administrative rules starts the first of the month following receipt of the affidavit by the district benefits administrator.

Stat. Auth.: ORS 243.860 - 243.886
Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602
Hist.: OEBB 13-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEBB 3-2009, f. & cert. ef. 1-30-09

111-050-0030

Correcting Enrollment and Processing Errors

(1) Employee Enrollment Errors. Enrollment errors occur when a retired eligible employee provides incorrect information or fails to make correct selections when making benefit plan changes. The retired eligible employee is responsible for identifying enrollment errors or omissions.

(a) OEBB authorizes Participating Districts to correct enrollment errors reported by the retired eligible employee within 60 calendar days of the original eligibility date, annual plan change period end date, or midyear benefit plan change date. Corrections are retroactive to the original effective date as identified in OAR 111-040-0001.

(b) Enrollment errors identified after 60 calendar days of the eligibility date, annual plan change period end date or midyear benefit plan change date must be submitted to OEBB for review and approval based on OAR 111-080-0030. If approved, corrections are retroactive to the original effective date as identified in 111-040-0001.

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(2) Benefit Administrator Processing Errors. Processing errors or omissions occur when benefit plan changes are processed incorrectly in the benefit system.

(a) OEBB authorizes Participating Districts to correct processing errors identified within 60 calendar days of the eligibility date, annual plan change period end date, or midyear benefit plan change date. Corrections are retroactive to the original effective date as identified in OAR 111-040-0001. The Participating District must reconcile all premium discrepancies.

(b) Processing errors identified after 60 calendar days of the eligibility date, annual plan change period end date, or midyear benefit plan change date must be submitted to OEBB for review and approval based on OAR 111-080-0030. If approved, corrections are retroactive to the original effective date as identified in 111-040-0001. The Participating District must reconcile all premium discrepancies within 30 calendar days of any adjustments made in the system.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602

Hist.: OEBB 13-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEBB 3-2009, f. & cert. ef. 1-30-09

111-050-0035

Late Enrollment

(1) Late enrollment occurs when a retired eligible employee fails to enroll for benefits within 60 days of retirement or fails to add an eligible dependent within 31 calendar days of:

(a) The date a spouse, domestic partner, or dependent child gains eligibility;

(b) The date of marriage to a spouse who was most recently enrolled as a domestic partner; or

(c) The date of birth of the retired eligible employee's biological newborn dependent child.

(2) OEBB authorizes Participating Districts to approve late enrollment requests for retired eligible employees and dependents when the request is reported within 60 calendar days of the eligibility dates referenced in sections (1)(a), (1)(b), and (1)(c).

(3) OEBB must review and approve all late enrollment requests based on OAR 111-080-0030 when the request is made more than 60 calendar days after the eligibility dates referenced in sections (1)(a), (1)(b), and (1)(c).

(4) Approved late enrollment requests, unless determined otherwise in a collective bargaining agreement or documented district policy in effect on June 30, 2008, are effective the first of the month following the date the request is received by a district benefits administrator or OEBB, except for approved requests to add newborn children which are retroactive to the month the child was born along with any premium adjustments.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602

Hist.: OEBB 13-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEBB 3-2009, f. & cert. ef. 1-30-09

111-050-0045

Termination Dates

(1) Benefit coverage for a retired eligible employee, a spouse, a domestic partner or a dependent child ends on the last day of the month that eligibility is lost according to OEBB administrative rules, unless determined otherwise through a collective bargaining agreement or documented district policy in effect on June 30, 2008.

(2) Benefit coverage for a spouse, domestic partner, or dependent child ends on the last day of the month that a retired eligible employee dies, unless otherwise determined by a collective bargaining agreement or documented district policy in effect on June 30, 2008.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602

Hist.: OEBB 13-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEBB 3-2009, f. & cert. ef. 1-30-09

111-050-0050

Removing an Ineligible Individual from Benefit Plans

(1) A retired eligible employee is responsible for removing ineligible spouses, domestic partners and dependent children from their OEBB-sponsored benefit plans by submitting completed, applicable forms to their district benefits administrator. An ineligible individual must be removed from OEBB-sponsored benefit plans within 31 calendar days of the date the individual becomes ineligible. Coverage ends on the date identified under OAR 111-050-0045.

(2) A retired eligible employee ending a domestic partnership by affidavit must complete and submit a Termination of Domestic Partnership form and enrollment update forms to the district benefits administrator within 31 calendar days of the event for removal of the domestic partner and domestic partner's dependent children from their benefit plan. Benefit coverage for the domestic partner and domestic partner's dependent children ends on the last day of the month that eligibility is lost.

(3) A Participating District is responsible for removing ineligible individuals from the OEBB benefits management system. Ineligible individuals must be removed from coverage under OEBB-sponsored benefit plans retroactive to the end of the month when eligibility was lost.

(4) The retired eligible employee may be responsible for claims previously paid by the benefit plans to the providers during the period of ineligibility. Premium adjustments will be made retroactively based on when the ineligible individual was reported to the district benefits administrator.

(a) Ineligible individuals reported within 90 calendar days after the month eligibility was lost will result in premium adjustments retroactive to the first of the month following the loss of eligibility.

(b) Ineligible individuals reported more than 90 calendar days after the month eligibility was lost will result in premium adjustments for the month the ineligible individual was reported and the two previous months.

(5) OEBB may conduct audits to determine the eligibility status of dependents of retired eligible employees covered under OEBB-sponsored benefit plans. If requested, documentation certifying the eligibility of covered dependents must be provided.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602

Hist.: OEBB 13-2008(Temp), f. & cert. ef. 8-15-08 thru 2-11-09; OEBB 3-2009, f. & cert. ef. 1-30-09

111-050-0060

Continuation of Coverage for Active Eligible Employees Covered under the Federal Family Medical Leave Act

OEBB will allow participating districts to continue medical, dental and vision coverage for Active Eligible Employees and covered dependents granted leave under the Federal Family Medical Leave Act (FMLA) as required under related federal rules and regulations.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602

Hist.: OEBB 16-2008(Temp), f. & cert. ef. 10-16-08 thru 4-13-09; OEBB 3-2009, f. & cert. ef. 1-30-09

111-050-0065

Continuation of Coverage for Employees Covered under the Oregon Family Leave Act

OEBB will allow participating districts to continue medical, dental and vision coverage for Active Eligible Employees and covered dependents granted leave under the Oregon Family Leave Act (OFLA) as required under related state rules and regulations.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602

Hist.: OEBB 16-2008(Temp), f. & cert. ef. 10-16-08 thru 4-13-09; OEBB 3-2009, f. & cert. ef. 1-30-09

111-050-0070

Continuation of Coverage for Eligible Employees during an Approved Leave of Absence.

OEBB will allow participating districts to continue medical, dental and vision coverage for Active Eligible Employees and covered dependents granted a leave of absence based on collective bargaining agreements and/or documented district policies in effect on or before October 1, 2008.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602

Hist.: OEBB 16-2008(Temp), f. & cert. ef. 10-16-08 thru 4-13-09; OEBB 3-2009, f. & cert. ef. 1-30-09

111-050-0075

Continuation of coverage for Eligible Employees on Active Military Service

OEBB will allow participating districts to continue medical, dental, and vision coverage for Active Eligible Employees and covered dependents as required under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and related federal rules and regulations.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602

Hist.: OEBB 16-2008(Temp), f. & cert. ef. 10-16-08 thru 4-13-09; OEBB 3-2009, f. & cert. ef. 1-30-09

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111-050-0080

Portability of Coverage

OEBB medical carriers will make portability plans available to members in accordance with related state and federal laws, rules and regulations. Eligibility criteria for this coverage can be found in carrier member handbooks.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(b), 243.866(7), 659A.060 - 659A.069 & 743.600 - 743.602

Hist.: OEBB 16-2008(Temp), f. & cert. ef. 10-16-08 thru 4-13-09; OEBB 3-2009, f. & cert. ef. 1-30-09

Rule Caption: Details methods and requirements for participating districts' payments or premiums to OEBB.

Adm. Order No.: OEBB 4-2009

Filed with Sec. of State: 1-30-2009

Certified to be Effective: 1-30-09

Notice Publication Date: 12-1-2008

Rules Adopted: 111-080-0001, 111-080-0005

Rules Repealed: 111-080-0001(T), 111-080-0005(T)

Subject: OAR 111-080-0001 and 111-080-0005 details methods, requirements and deadlines for participating districts' payments of monthly premiums to OEBB.

Rules Coordinator: April Kelly—(503) 378-6588

111-080-0001

Payment Methods and Dates

(1) For the purpose of this rule:

(a) "ACH credit" means a payment initiated by a Participating District that is cleared through the Automated Clearing House (ACH) network for deposit to the OEBB account;

(b) "ACH debit" means a payment initiated by OEBB and cleared through the ACH network to debit a Participating District's account and credit the OEBB account;

(c) "District Payment" means the monthly district payment to OEBB that includes the contributions of both Participating District and members required to pay the monthly premiums for selected OEBB benefit plans;

(d) "District Payment Invoice" means a monthly itemized statement provided by OEBB that includes the contributions of both Participating District and members required to pay the monthly premiums for selected OEBB benefit plans;

(e) "Due date" means the seventh business day into the current month of coverage;

(f) "Electronic funds transfer" refers to a payment through ACH credit or ACH debit;

(g) "Participating District" means a Subject District, Provisional Non-subject District and Non-subject District participating in OEBB.

(2) Participating Districts will receive a final District Payment Invoice from OEBB on the first of the month that details the payments due for that month.

(3) If the final District Payment Invoice is received on a weekend or legal holiday the receipt date is recognized as the next business day.

(4) Participating Districts are required to submit payment to OEBB through electronic funds transfer no later than the due date.

(5) OEBB reserves the right to issue surcharges or other appropriate measures to Participating Districts that submit monthly payments after the due date.

(6) Participating Districts will select an electronic funds transfer method by:

(a) Submitting an electronic funds transfer authorization form to OEBB by August 15th for payments starting October 1st of the plan year;

(b) Submitting a new electronic funds transfer authorization form to OEBB by August 15th to change the type of payment or update their account information starting October 1st of the plan year.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(a)

Hist.: OEBB 11-2008(Temp), f. & cert. ef. 8-13-08 thru 2-6-09; OEBB 4-2009, f. & cert. ef. 1-30-09

111-080-0005

Overpayments and Underpayments

(1) For the purpose of this rule:

(a) "Overpayment" means the amount of a Participating District's monthly payment to OEBB that exceeded the amount due.

(b) "Underpayment" means a payment submitted by a Participating District that is less than the invoiced amount.

(2) Participating Districts seeking a refund of overpayments must:

(a) Notify OEBB up to 90 calendar days from the date overpayment occurred;

(b) OEBB will resolve member overpayments by requesting a refund from the carrier; except for overpayments submitted after 90 calendar days and overpayments resulting from member misrepresentation;

(c) OEBB will generally reimburse Participating District overpayments through adjustments to future monthly payments.

(3) The Participating District shall submit any underpayment to OEBB as soon as it is discovered.

(4) OEBB reserves the right to issue surcharges or use other appropriate means for Participating District's that submit underpayments.

Stat. Auth.: ORS 243.860 - 243.886

Stats. Implemented: ORS 243.864(a)

Hist.: OEBB 11-2008(Temp), f. & cert. ef. 8-13-08 thru 2-6-09; OEBB 4-2009, f. & cert. ef. 1-30-09

Department of Agriculture

Chapter 603

Rule Caption: Adopting, Amending, and Suspending Rules Governing Notices and Civil Penalties related to Pesticide Violations.

Adm. Order No.: DOA 1-2009(Temp)

Filed with Sec. of State: 1-23-2009

Certified to be Effective: 1-23-09 thru 7-22-09

Notice Publication Date:

Rules Adopted: 603-057-0502, 603-057-0532

Rules Amended: 603-057-0500, 603-057-0510, 603-057-0520, 603-057-0525, 603-057-0530

Rules Suspended: 603-057-0515

Subject: The temporary rules fully implement ORS 634.900 as amended in 2007 and update procedures by amending, adopting, and suspending rules related to notices and civil penalties issued for violations of pesticide laws. Among other things, the temporary rules define "gross negligence" and "willful misconduct." The temporary rules establish criteria that the Director will use to set the amounts of the civil penalties for violations that result from gross negligence or willful misconduct. They also modify some of the criteria used to determine the amounts of the civil penalties for violations that do not result from gross negligence or willful misconduct. The temporary rules also update and summarize procedures.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-057-0500

Definitions

In addition to the definitions set forth in ORS 634.006 and OAR 603-057-0001, the following shall apply:

(1) "Director" means the Director of the Department of Agriculture or the Director's authorized deputies or officers.

(2) "Enforcement" means any documented action taken by the department to address a violation.

(3) "Flagrant" means any violation where the department has documented evidence that the respondent had actual knowledge of the law and knowingly committed the violation.

(4) "Gravity of Effect" is the ranking of a violation with respect to its effect, or potential effect, on the public interests reflected in ORS 634. A violation is ranked as high, medium, or low.

(5) "Gross negligence" means an act or omission that does not reflect an exercise of reasonable care under the circumstances and that is characterized by conscious indifference to or reckless disregard of any purpose of the State Pesticide Control Act.

(6) "Injury" includes, but is not limited to, adulteration.

(7) "Intentionally" means the person acts, or fails to act, with a deliberate or an express purpose. For instance, a person acts intentionally when the person either consciously chooses not to determine whether a pesticide label authorizes use of a pesticide on a particular crop, or when the person knows that a pesticide label does not authorize use of the pesticide on a particular crop but still chooses to apply the pesticide to the crop.

(8) "Knowingly" means the person acts, or fails to act, with a practical understanding of, or a distinct skill in, the general activity that was obtained through such means as instruction, study, practice, or experience.

(9) "Magnitude of Violation" is the categorization of a violation in relation to other types of violations after considering its potential to affect

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the public interests reflected in ORS 634. A violation is categorized as major, moderate, or minor.

(10) "Person" includes individuals, corporations, associations, firms, joint stock companies, public and municipal corporations, political subdivisions of the state and any agencies thereof, and the Federal Government and any agency thereof.

(11) "Violation" is an act or omission that does not comply with a provision of ORS 634 that relates to pesticide application, sale, or labeling.

(12) "Willfully" means the person acted, or failed to act, after calculating and considering the potential effects and consequences.

(13) "Willful misconduct" means an act or omission that is characterized by or resulting from calculation and consideration of effects and consequences, and with awareness that the act or omission will be incompatible with any purpose of the State Pesticide Control Act.

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, 634.900 - 634.915
Hist.: AD 4-1990, f. & cert. ef. 3-16-90; DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

603-057-0502

Civil Penalties Generally

(1) In addition to any other penalty provided by law, the Director may assess a civil penalty for violation of any provision of ORS 634 relating to pesticide application, sale or labeling.

(2) Where the Director determines that a violation did not result from gross negligence or willful misconduct, or if the violation occurred before June 25, 2007, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0530. The amount of such civil penalty for a first violation shall not exceed \$1,000, and the amount of such civil penalty for any subsequent violation of the same provision shall not exceed \$2,000.

(3) Where the Director determines that a violation resulted from gross negligence or willful misconduct and occurred on or after June 25, 2007, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0525 and 603-057-0532. The amount of such civil penalty for a first or a subsequent violation shall not exceed \$10,000.

(4) Where the Director determines that a violation involves a failure to comply with a confidentiality agreement related to the pesticide use reporting program, the Director will determine the amount of any civil penalty for that violation using OAR 603-057-0420. The amount of such civil penalty for a first or subsequent violation of such confidentiality agreement shall not exceed \$10,000.

(5) If a person requests a hearing, nothing in this division of administrative rules prevents the Department from amending the notice to impose civil penalties for the violation under OAR 603-057-0525 and 603-057-0530 and, in the alternative, under OAR 603-057-0525 and 603-057-0532. The amended notice will specify which civil penalty will be assessed if the hearing does not occur for any reason.

(6) A civil penalty imposed under the applicable statutes and these rules may be remitted or reduced upon such terms and conditions as the Director considers proper and consistent with public health and safety.

(7) Civil penalties shall be due and payable ten (10) business days after the order becomes final by operation of law or on appeal. A person may pay a civil penalty before an order becomes final. Payment of a civil penalty before an order becomes final is an admission by the person of all of the allegations in the Notice of Imposition of Civil Penalty.

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, & 634.900 - 634.915
Hist.: DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

603-057-0510

Notice of Violation, Notice of Assessment of Civil Penalties, and Notice of Contested Case Rights and Procedures

(1) The Director may determine that a person violated a provision of ORS 634 and decide to not impose a civil penalty. In such circumstances, the Director will issue a written Notice of Violation. The Notice of Violation shall inform a person of the existence of a violation and the consequences of non-compliance.

(2) The Director may determine that a person violated a provision of ORS 634 relating to pesticide application, sale or labeling, and decide to impose a civil penalty. In such circumstances, the Director will issue a written Notice of Imposition of Civil Penalty. The Notice of Imposition of Civil Penalty will inform the person of the existence of a violation, state the amount of the penalty imposed for the violation, and summarize how the penalty was calculated.

(3) Notices of Violation and Notices of Imposition of Civil Penalties shall be served by registered or certified mail.

(4) Notices of Violation and Notices of Imposition of Civil Penalties shall include, but not be limited to:

(a) A caption with the name of the Department and with the name of the person to whom the notice is issued;

(b) A reference to the particular sections of the statutes and administrative rules involved;

(c) A short and plain statement of the matters asserted or charged;

(d) A statement of the person's right to be represented by counsel and that legal aid organizations may be able to assist a person with limited financial resources;

(e) A statement of the person's right to request a hearing;

(f) A statement of the procedure to request a hearing, including but not limited to the following:

(A) Any request for hearing must be in writing;

(B) Any request for hearing must be received by the Department within ten (10) business days of the date the Department mailed the notice; and

(C) The address to which a request for hearing must be sent;

(g) A statement that if a request for hearing is not received by the Department within the time stated in the notice the person will have waived the right to a contested case hearing;

(h) A statement of the authority and jurisdiction under which a hearing will be held on the matters asserted or charged;

(i) A statement that if the person requests a hearing a Notice of Contested Case Rights and Procedures will be provided before any hearing;

(j) A statement indicating whether and under what circumstances an order by default may be entered, including but not limited to, that the notice becomes a final order unless the person makes a timely written request for a hearing; and

(k) Other information required by law.

(5) Notices of Violation and Notices of Imposition of Civil Penalties may also include additional information deemed appropriate by the Director, including but not limited to the following:

(a) A statement that the record of the proceeding to date, including information in the Department's file or files on the subject of the contested case and all materials submitted by a person, automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

(b) A statement that a collaborative dispute resolution process is available if the person requests a hearing as stated in the notice.

(6) If a person timely requests a hearing for either a Notice of Violation or a Notice of Imposition of Civil Penalty, the Department will mail a written Notice of Contested Case Rights and Procedures to the person before the commencement of the hearing, or request that an administrative law judge inform the person of the rights and procedures.

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, 634.900 - 634.915
Hist.: AD 4-1990, f. & cert. ef. 3-16-90; DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

603-057-0515

Hearing Procedures

All hearings shall be conducted pursuant to the applicable contested case procedures as outlined in ORS 183.310 to 183.550, and the Attorney General's Uniform and Model Rules of Procedure (OAR chapter 137, 1989).

Stat. Auth.: ORS 561 & 634

Stats. Implemented: ORS 634.306

Hist.: AD 4-1990, f. & cert. ef. 3-16-90; Suspended by DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

603-057-0520

Entry of Order and Appeal Rights

(1) If a person, having been served a Notice of Violation or a Notice of Imposition of Civil Penalty, fails to request a hearing as specified in OAR 603-057-0510(4)(f), or if a hearing is not held for any reason, or if after the hearing the person is found to be in violation, an order may be issued by the Director. If a Notice of Imposition of Civil Penalty was served, the order may assess a civil penalty.

(2) The order shall be signed by the Director.

(3) The order, if not appealed as provided in ORS 183.480 to 183.497 or if sustained on appeal, shall constitute a judgment. If any civil penalty has not been paid when due and payable, the order may be recorded with the county clerk in any county of this state. The clerk shall record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. Recording the order has the effects provided for

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in ORS 205.125 and 205.126, including but not limited to the effect of becoming a lien upon the title of any interest in real property located in that county and owned by the person. The Department may enforce the order as provided in ORS 205.125 and 205.126, bring an action in a court of this state to recover the civil penalty, or take any other action authorized by law to enforce the order.

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, 634.900 - 634.915

Hist.: AD 4-1990, f. & cert. ef. 3-16-90; DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

603-057-0525

Civil Penalties; Magnitude of Violation and Gravity of Effect

(1) The Director will consider the magnitude of the violation and its gravity of effect when calculating a civil penalty for a violation.

(a) Determine the magnitude of the violation as specified in subsection (2) of this section. (b) Determine the gravity of effect pertinent to the violation as specified in subsection (3) of this section.

(2) Magnitude of Violation: Violations are categorized as to their magnitude of violation as follows:

(a) Category I (Major):

(A) Make false or misleading claims through any media, relating to the effect of pesticides or application methods to be utilized (ORS 634.372(1));

(B) As a pesticide applicator or operator intentionally or willfully apply or use a worthless pesticide or any pesticide inconsistent with its labeling (ORS 634.372(2));

(C) As a pesticide consultant recommend the application or use of any pesticide inconsistent with its labeling (ORS 634.372(2));

(D) As a pesticide dealer knowingly distribute any pesticide for application or use inconsistent with its labeling (ORS 634.372(2));

(E) Perform pesticide application activities in a faulty, careless or negligent manner (ORS 634.372(4));

(F) As a pesticide dealer refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection, which include, but are not limited to, the purchaser's name, address and certification number, sale date, and identification and quantity of product sold (ORS 634.372(5), OAR 603-057-0140). Four or more items of required information missing and/or incorrectly recorded;

(G) As a pesticide operator, public applicator or pesticide applicator not employed by a pesticide operator, refuse or neglect to prepare required pesticide application records, and to maintain those records for at least three years prior to the date of inspection, which include the name of the employer or customer, location, date, approximate time application was made, supplier and identity of product applied, amount of product applied, the specific property or the crop to which application was made, type of application equipment used, and the full name of the applicator or trainee who made the application (ORS 634.372(5); 634.146(1); OAR 603-057-0130). Four or more items of required information missing and/or incorrectly recorded;

(H) Prepare required records, reports or application forms which are false, misleading or fraudulent (ORS 634.372(6));

(I) Operate pesticide applicators' apparatus, machinery or equipment without a licensed pesticide applicator or certified private applicator performing the actual application, or supervising such application if performed by a pesticide trainee (ORS 634.372(7));

(J) As a pesticide applicator, work or engage in the application of any classes of pesticides without first obtaining and maintaining a pesticide applicator's license, or apply pesticides which are not specifically authorized by such license (ORS 634.372(8)). No license;

(K) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides on the property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by the license issued by the department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee (ORS 634.372(9));

(i) Firm licensing — No license;

(ii) Employee licensing — No license.

(L) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's license and is otherwise in compliance with the provisions of this chapter (ORS 634.372(10)). No license;

(M) Act as or purport to be, a pesticide dealer or advertise as such without first obtaining and maintaining a pesticide dealer's license (ORS 634.372(11));

(N) Act as or purport to be a pesticide consultant without first obtaining and maintaining a pesticide consultant's license (ORS 634.372(12));

(O) Apply any pesticide classified as a restricted-use or highly toxic pesticide to agricultural, horticultural or forest crops on land owned or leased by the person without first obtaining and maintaining a private applicator certificate (ORS 634.372(13));

(P) As a person described in ORS 634.106(5), use power-driven pesticide application equipment or devices (use hand or backpack types only), or use or apply any pesticide other than those prescribed by the department (ORS 634.372(14));

(Q) Deliver, distribute, sell or offer for sale any pesticide which has been misbranded (ORS 634.372(15));

(R) Formulate, deliver, distribute, sell or offer for sale any pesticide which is adulterated (ORS 634.372(16));

(S) Make application of pesticides, by aircraft or otherwise, within a protected or restricted area without first obtaining a permit for such application from the committee of the protected or restricted area in which the application is to be made, nor shall such person make such an application contrary to the conditions or terms of the permit so issued (ORS 634.372(20));

(T) Use isopropyl ester of 2,4-D, or any other ester of equal or higher volatility with regard to plant damage as determined by the department, without first obtaining a permit for such use as provided in ORS 634.322(10); 634.372(21));

(U) Sell, use or remove any pesticide or device subjected to a "stop sale, use or removal" order until the pesticide or device has been released therefrom as provided in ORS 634.322(3) (634.372(22));

(V) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(b) Category II (Moderate):

(A) Operate a faulty or unsafe spray apparatus, aircraft or other application device or equipment (ORS 634.372(3));

(B) As a pesticide dealer refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection, which include, but are not limited to, the purchaser's name, address and certification number, sale date, and identification and quantity of product sold (ORS 634.372(5); OAR 603-057-0140). Two or three items of required information missing and/or incorrect;

(C) As a pesticide operator, public applicator or pesticide applicator not employed by a pesticide operator, refuse or neglect to prepare required pesticide application records, and to maintain those records for at least three years prior to the date of inspection, which include the name of the employer or customer, the location, date, approximate time application was made, supplier and identity of product applied, amount of product applied, the specific property or the crop to which application was made, type of application equipment used, and the full name of the applicator or trainee who made the application (ORS 634.372(5); 634.146(1); OAR 603-057-0130). Two or three items of required information missing and/or incorrectly recorded;

(D) As a pesticide applicator, work or engage in the application of any classes of pesticides without applicator's license, or apply pesticides which are not specifically authorized by such license (ORS 634.372(8)). Inappropriate license;

(E) As a pesticide operator, engage in the business of, or represent or advertise as being in the business of, applying pesticides on the property of another, without first obtaining and maintaining a pesticide operator's license, nor shall such person engage in a class of pesticide application business which is not specifically authorized by the license issued by the department. Further, no such person shall employ or use any person to apply or spray pesticides who is not a licensed pesticide applicator or pesticide trainee (ORS 634.372(9));

(i) Firm licensing — Inappropriate license;

(ii) Employee licensing — Inappropriate license.

(F) As a pesticide trainee, work or engage in the application of any class of pesticides without first obtaining and maintaining a pesticide trainee's certificate and is otherwise in compliance with the provisions of this chapter (ORS 634.372(10)). Inappropriate license;

(G) Formulate, deliver, distribute, sell or offer for sale any pesticide which has not been registered as required by ORS 634.016 (634.372(17));

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(H) Formulate, deliver, distribute, sell or offer for sale any powdered pesticide containing arsenic or any highly toxic fluoride which is not distinctly colored (ORS 634.372(18));

(I) Distribute sell or offer for sale any pesticide except in the manufacturers original unbroken package (ORS 634.372(19));

(J) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(c) Category III (Minor):

(A) As a pesticide dealer refuse or neglect to prepare required records of restricted use and highly toxic pesticide product sales and to maintain those records for at least three years prior to the date of inspection, which include, but are not limited to, the purchaser's name, address and certification number, sale date, and identification and quantity of product sold (ORS 634.372(5); OAR 603-057-0140). One item of required information missing and/or incorrectly recorded;

(B) As a pesticide operator, public applicator or pesticide applicator not employed by a pesticide operator, refuse or neglect to prepare required pesticides application records, and to maintain those records for at least three years prior to the date of inspection, which include the name of the employer or customer, the location, date, approximate time application was made, supplier and identity of product applied, amount of product applied, the specific property or the crop to which application was made, type of application equipment used, and the full name of the applicator or trainee who made the application (ORS 634.372(5); 634.146(1); OAR 603-057-0130). One item of required information missing and/or incorrectly recorded;

(C) Other violations with a substantially similar potential to affect the public interests reflected in ORS 634.

(3) Gravity of Effect: The Director shall rank the violation as to its gravity of effect. Following are the factors that may be considered in assigning a gravity ranking to a specific violation. The existence of one or more factors determined to be of high level shall result in the gravity being ranked high level. Lacking any factor determined to be high level, the existence of one or more factors determined to be of medium level shall result in the gravity being ranked medium level. Lacking any factor determined to be of high or medium level shall result in the gravity being ranked low level:

(a) Rank -- High Level:

(A) Human Threat: Injury or illness occurred which was confirmed by medical evaluation conducted through the Oregon Pesticide Analytical And Response Center to have been caused by the pesticide exposure;

(B) Environmental Threat:

(i) Evidence of injury to crops, wildlife, and/or livestock documented by the department or other appropriate federal or state agency; or

(ii) Evidence of surface or groundwater contamination documented by the department or other appropriate federal or state agency.

(C) Pesticide:

(i) Designated as restricted use or highly toxic; or

(ii) Use or distribution halted due to emergency suspension.

(D) Conditions of Usage:

(i) Wide area of application;

(ii) Use in area of high population density (e.g., urban, suburban); or

(iii) Usage resulted in a pesticide residue or metabolite on a food or feed crop, on a raw agricultural commodity, or on a crop having food or feed by-products, and for which there is no tolerance or exemption from tolerance established, or for which the established tolerance was exceeded.

(b) Rank -- Medium Level:

(A) Human Threat: Physical irritation occurred which was confirmed by medical evaluation conducted through the Oregon Pesticide Analytical And Response Center to have been caused by pesticide exposure.

(B) Environmental Threat: Symptoms of exposure visible in crops, wildlife, and/or livestock documented by the department or other appropriate federal or state agency.

(C) Conditions of Usage:

(i) Moderate area of application; or

(ii) Use in area of medium population density.

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, 634.900 - 634.915

Hist.: AD 4-1990, f. & cert. ef. 3-16-90; DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

603-057-0530

Civil Penalty For A Violation Not Resulting From Gross Negligence or Willful Misconduct; Formula for Amount

(1) When the Director determines that the violation did not result from gross negligence or willful misconduct, or if the violation occurred

before June 25, 2007, the Director will determine the amount of the civil penalty using this section. To determine the amount of the civil penalty, calculate it utilizing the formula:

$$NB + [(1 \times NB) \times (P + H + R + C)] = \text{Penalty Amount}$$

where:

(a) N = the number of times, within a period of three years prior to and including the date of the current violative act, that the person has been determined by the Director to have committed that violative act;

(b) B = the base penalty determined using the following matrix: [Matrix not included. See ED. NOTE.]

(A) The Magnitude of Violation is determined according to OAR 603-057-0525(2).

(B) The Gravity of Effect is determined according to OAR 603-057-0525(3).

(c) P = past occurrence of unrelated violations under ORS Chapter 634 for a period of three years prior to the date of the current violative act. P will be weighted from 0 to 6 in the following manner:

(A) 0 = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of an unrelated Category III violation;

(C) 2 = past occurrence of an unrelated Category II violation or two unrelated Category III violations;

(D) 3 = past occurrence of an unrelated Category I violation, two unrelated Category II violations or three unrelated Category III violations;

(E) 4 = past occurrence of two unrelated Category I violations, three unrelated Category II violations or four unrelated Category III violations;

(F) 5 = past occurrence of three unrelated Category I violations, four unrelated Category II violations, or five or more unrelated Category III violations;

(G) 6 = past occurrence of three or more unrelated Category I violations or five or more unrelated Category II violations.

(d) H = History of the person in taking all feasible steps or procedures necessary or appropriate to correct a violative action. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps or procedures to correct any prior violations;

(B) 0 = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps or procedures to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(e) R = preventability of violation. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be violative were unavoidable;

(B) 0 = information is insufficient to make any finding;

(C) 3 = the person's actions determined to be violative were reasonably avoidable;

(D) 7 = the person's actions were flagrant.

(f) C = cooperativeness on the part of the person to assist the department in its investigation and to the extent possible, rectify the violation. C will be weighted from -2 to 2 in the following way:

(A) -2 = the person is cooperative;

(B) -1 = the person provides limited cooperation;

(C) 0 = the person is neither cooperative nor uncooperative;

(D) 1 = the person is generally uncooperative;

(E) 2 = the person is uncooperative.

(2) If the calculation utilizing the formula in this section results in an amount more than \$1,000 for a first violation of any provision of ORS 634, the Director shall assess a civil penalty of \$1,000. If the calculation utilizing the formula in this section results in an amount more than \$2,000 for any subsequent violation of the same provision of ORS 634, the Director shall assess a penalty of \$2,000. In addition, the Director may consider this adjustment if the Director remits or reduces the amount as provided in ORS 634.910 or OAR 603-057-0502(6).

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

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, 634.900 - 634.915

Hist.: AD 4-1990, f. & cert. ef. 3-16-90; AD 16-1990(Temp), f. & cert. ef. 8-10-90; AD 22-1990, f. & cert. ef. 12-17-90; DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

603-057-0532

Civil Penalty For A Violation Resulting From Gross Negligence or Willful Misconduct; Formula for Amount

(1) When the Director determines that the violation resulted from gross negligence or willful misconduct and that the violation occurred on or after June 25, 2007, the Director will determine the amount of the civil

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penalty using this section. To determine the amount of the civil penalty, calculate it utilizing the formula:

$$NB + [(1 \times NB) \times (P + H + C)] = \text{Penalty Amount where}$$

(a) N = the number of times, within a period of three years prior to and including the date of the current violative act, that the person has been determined by the Director to have committed that violative act;

(b) B = the base penalty determined using the following matrix: [ED. NOTE: Matrix referenced are available from the agency.]

(A) The Magnitude of Violation is determined according to OAR 603-057-0525(2).

(B) The Gravity of Effect is determined according to OAR 603-057-0525(3).

(c) P = Past occurrence of unrelated violations under ORS Chapter 634 for a period of three years prior to the date of the current violative act. P will be weighted from 0 to 6 in the same manner as described in OAR 603-057-0530(1)(c).

(d) H = History of the person in taking all feasible steps or procedures necessary or appropriate to correct a violative action. H will be weighted from -2 to 2 in the same manner as described in OAR 603-057-0530(1)(d).

(e) C = Cooperativeness on the part of the person to assist the department in its investigation and to the extent possible, rectify the violation. C will be weighted from -2 to 2 in the same manner as described in OAR 603-057-0530(1)(f).

(2) If the calculation utilizing the formula in this section results in an amount more than \$10,000, the Director will assess a penalty of \$10,000. In addition, the Director may consider this adjustment if the Director remits or reduces the amount as provided in ORS 634.910 or OAR 603-057-0502(6).

Stat. Auth.: ORS 561, 634 & 183.335(5)

Stats. Implemented: ORS 183.745, 634.006, 634.306, 634.322, 634.372, & 634.900 - 634.915

Hist.: DOA 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

Rule Caption: Civil Penalty Determination Procedure.

Adm. Order No.: DOA 2-2009

Filed with Sec. of State: 1-30-2009

Certified to be Effective: 1-30-09

Notice Publication Date: 1-1-2009

Rules Amended: 603-074-0080

Subject: Correcting dollar amount in Administrative Rule 603-074-0080 due to typographical error.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-074-0080

Civil Penalty Determination Procedure

In determining the amount of a civil penalty to be assessed for any violation, the department shall apply the following procedure:

(1) Determine the magnitude of the violation as specified in OAR 603-074-0070(4).

(2) Determine the gravity of effect pertinent to the violation as specified in OAR 603-074-0070(5).

(3) Using the magnitude of the violation and the gravity of effect identified, and depending on whether it is the first or a repeat violation, determine the base penalty (B) by reference to the appropriate matrix contained in OAR 603-074-0080.

Civil Penalty Matrix for First Violation

Gravity of Effect		Magnitude of Violation		
		High	Medium	Low
Category I (Major)	\$1,200	\$800	\$400	
Category II (Moderate)		\$600	\$400	\$200
Category III (Minor)	\$240	\$120	\$50	

Civil Penalty Matrix for Repeat Violations

Gravity of Effect		Magnitude of Violation		
		High	Medium	Low
Category I (Major)		\$5,000	\$2,400	\$800
Category II (Moderate)	\$400	\$1,600	\$800	\$400
Category III (Minor)	\$400	\$200	\$100	

(4) Calculate the amount of the civil penalty to be assessed utilizing the formula: $B + [(1 \times B) (P + H + R)] = \text{Penalty Amount where}$:

(a) B = Base penalty is the primary penalty for a given violation derived from the appropriate matrix contained in OAR 603-074-0080;

(b) P = Past occurrence of violations. P will be weighted from 0 to 6 in the following manner:

(A) 0 = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of a category III violation;

(C) 2 = past occurrence of a Category II violation or two category III violations;

(D) 3 = past occurrence of a Category I violation, two Category II violations, or three Category III violations;

(E) 4 = past occurrence of two Category I violations, three Category II violations or four Category III violations;

(F) 5 = past occurrence of three Category I violations, four Category II violations, or five or more Category III violations;

(G) 6 = past occurrence of more than three Category I violations or five or more Category II violations.

(c) H = History of the person in taking all feasible steps or procedures necessary and appropriate to prevent or correct a violation. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps to correct any prior violations:

(B) 0 = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(d) R = Preventability of the violation and whether negligence or misconduct was involved. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be in violation were unavoidable and the person notified the department of the violation in accordance with the terms of the person's permit;

(B) -1 = the person's actions determined to be in violation were unavoidable;

(C) 0 = information is insufficient to make any finding;

(D) 2 = the person's actions determined to be in violation were reasonably avoidable and the person notified the department of the violation in accordance with the terms of the person's permit;

(E) 4 = the person's actions determined to be in violation were reasonably avoidable;

(F) 7 = the person's actions were flagrant or reckless.

(5) A civil penalty imposed under the applicable statutes and these rules may be remitted or reduced at the director's discretion upon such terms and conditions that are proper and consistent with public health and safety.

(6) At the discretion of the director, a respondent who is unable to pay the full amount of a civil penalty may be allowed to pay the civil penalty by means of a schedule of payments that may include payment of interest on the unpaid balance for any delayed payments.

Stat. Auth.: ORS 468B.217, 468B.230 & 561

Stats. Implemented: ORS 561.175

Hist.: AD 8-1994, f. & cert. ef. 7-26-94; DOA 30-2003, f. 9-11-03, cert. ef. 10-1-03; DOA 2-2009, f. & cert. ef. 1-30-09

Rule Caption: Plant quarantine update: corrects scientific names, clarifies disposal period for cull onions.

Adm. Order No.: DOA 3-2009

Filed with Sec. of State: 2-13-2009

Certified to be Effective: 2-13-09

Notice Publication Date: 12-1-2008

Rules Amended: 603-052-0129, 603-052-0153, 603-052-0160, 603-052-0201, 603-052-0265, 603-052-0360

Subject: The proposed amendments would update scientific names in the following plant quarantines: Exotic Phytophagous Snail (603-052-0129), Wasco County Control Area Apple Maggot, San Hose Scale and Codling Moth (603-052-0153), Jackson County Control Area Pear and Apple Insects (603-052-0160), Umatilla County Control Area (603-052-0201), and Hood River County Control Area and Eradication of Insects and Disease in Pear, Quince, Apple, Peach and Apricot Trees and Orchards (603-052-0260). The proposed amendments to Onion Maggot Control Area in Malheur County (603-052-0360) would clarify that the approved method disposal requirements for cull onions runs from March 15 to July 1.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0129

Quarantine; Against Exotic Phytophagous Snails

(1) Establishing Quarantine. A quarantine is established against exotic phytophagous snails that are members of the Phylum Mollusca of the Class Gastropoda characterized by a calcareous shell covering the visceral

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hump. This quarantine applies to exotic phytophagous snails in any stage of development, and includes, but is not limited to: brown garden snail (*Cornu aspersum* Müller), white garden snail (*Theba pisana* Müller), milk snail (*Otala lactea* Müller), giant African snail (*Achatina* spp.), giant South American snail (*Megalobulimus oblongus* Müller), and all other exotic phytophagous snails (hereafter, "exotic phytophagous snails"). These snails are very important garden and agricultural pests causing severe damage to leaves and fruits of many plants.

(2) Areas Under Quarantine. The entire states of Arizona, California, Hawaii, Michigan, New Mexico, Texas, Utah, Washington, and any other state or territory where exotic phytophagous snails are established.

(3) Covered Commodities. Exotic phytophagous snails in any stage of development. Grass sod and all plants with roots in soil and any other plant material or articles capable of transporting exotic phytophagous snails into Oregon are hereby declared to be hosts or possible carriers of the pests herein quarantined and are prohibited entry into this state directly, indirectly, diverted, or reconsigned unless there is compliance with section (4) of this rule.

(4) Conditions:

(a) Covered commodities from regulated areas may be permitted entry into Oregon only when such commodities are accompanied by a certificate of quarantine compliance issued by an authorized official from the state of origin which certifies that it has been determined by official inspection immediately prior to shipment that such covered commodities were found to be free of all life stages of exotic phytophagous snails or that such commodities originate from an area determined by official inspection to be free of exotic phytophagous snails. The original certification document shall be forwarded to the Oregon State Department of Agriculture, Plant Division, 635 Capitol St. NE, Salem, Oregon 97310, immediately by First Class mail or fax (503) 986-4786. Each lot or shipment of the covered commodities shall be accompanied by a copy of the above described certification document. The Oregon receiver to whom the commodities are shipped shall notify the department immediately upon receipt of such commodities and shall hold the same until they are released by the department.

(b) Cut greens, cut flowers and soil-free plants including bare root plants, plant crowns, roots for propagation, bulbs, corms, tubers, and rhizomes of plants washed free of adherent soil are excepted from the quarantine, if such plant materials are found upon inspection not to be infested with exotic phytophagous snails or are found not to bear soil accumulations sufficient to carry or obscure any life stage of exotic phytophagous snails.

(c) Certified and noncertified covered commodities shall not be shipped together in the same transporting vehicle, and any such mixing of certified and noncertified covered commodities shall nullify certification and result in the rejection of the entire shipment of covered commodities. Upon inspection and determination by the Oregon State Department of Agriculture that the transporting vehicle or any properly certified covered commodities are infested with any life stage of exotic phytophagous snails, such shipment shall be found in violation of this quarantine.

(5) Heliculture Prohibited. Raising, maintaining, selling, shipping and/or holding live exotic phytophagous snails within the State of Oregon is prohibited.

(6) Disposition of Commodities in Violation of the Quarantine. All covered commodities described in section (3) of this rule found to be in violation of this quarantine shall be returned immediately to point of origin by the Oregon receiver, or at the receivers option be destroyed under the supervision of the department, without expense to or indemnity paid by the department.

(7) Exceptions. Upon request, and upon investigation and finding that unusual circumstances exist justifying such action, the department may issue a permit allowing entry into this state of covered commodities without meeting the requirements of subsection (4)(a) of this rule. However, all conditions specified in the permit shall be met before such permit will be recognized.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510-561.600, 570.305, 570.405, 570.410 - 570.415
Hist.: AD 14-1983, f. 11-15-83, ef. 12-1-83; AD 12-1997, f. & cert. ef. 7-31-97; DOA 8-1999, f. & cert. ef. 5-14-99; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 2-2007, f. & cert. ef. 1-30-07; DOA 7-2008, f. & cert. ef. 2-8-08; DOA 3-2009, f. & cert. ef. 2-13-09

603-052-0153

Definitions

As used in OAR 603-052-0154 to 603-052-0158, unless the context requires otherwise:

(1) "Host Tree" means cherry (*Prunus* spp.), pears (*Pyrus* spp.), apples (*Malus* spp.) and Hawthorns (*Crataegus* spp.) and may include other rosaceous hosts of Apple Maggot (*Rhagoletis pomonella*) as may be deemed necessary by the Department.

(2) "Insect" means Apple Maggot (*Rhagoletis pomonella*), San Jose Scale (*Aspidiotus perniciosus*) and Codling Moth (*Cydia pomonella*).

Stat. Auth.: ORS 561 & 570

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

Hist.: AD 13-1981, f. 7-24-81, ef. 8-7-81; DOA 3-2009, f. & cert. ef. 2-13-09

603-052-0160

Definitions

As used in OAR 603-052-0165 to 603-052-0185, unless the context requires otherwise:

(1) "Host Tree" means Pear (*Pyrus* spp.), apples (*Malus* spp.) and Hawthorns (*Crataegus* spp.) and may include other rosaceous hosts of Apple Maggot (*Rhagoletis pomonella*) deemed necessary by the Oregon Department of Agriculture.

(2) "Insect" means Codling Moth (*Cydia pomonella*), Apple Maggot (*Rhagoletis pomonella*), and Pear Pyslla (*Psylla pyricola*).

Stat. Auth.: ORS 561 & 570

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

Hist.: AD 3-1977, f. 2-9-77, ef. 3-1-77; AD 16-1981, f. 7-24-81, ef. 8-7-81; DOA 3-2009, f. & cert. ef. 2-13-09

603-052-0201

Definition

As used in OAR 603-052-0206 to 603-052-0209 unless the context requires otherwise:

(1) "Disease Organism" means *Venturia inaequalis* causal organism of Apple Scab.

(2) "Insect" means Codling Moth (*Cydia pomonella*), Peach Twig Borer (*Anarsia lineatella*), San Jose Scale (*Aspidiotus perniciosus*), Western Peach Tree Borer (*Synhedon existiosa*), Oblique Banded Leafroller (*Choristoneura rosaceana*) and Apple Maggot (*Rhagoletis pomonella*).

(3) "Host Plants" or "Host Trees" means the plant or tree herein identified for the particular disease organism or insect herein defined:

(a) Apple Scab:

(A) Mountain Ash — *Sorbus* spp.;

(B) Firethorn — *Pyracantha* spp.;

(C) Hawthorne — *Crataegus* spp.;

(D) Apple, crab apple — *Malus* spp.

(b) Codling Moth (*Cydia pomonella*): Apples, pears, crab apple, apricots, cherries, peaches, plums, prunes, and similar fruit;

(c) Peach Twig Borer (*Anarsia lineatella*): Peach, apricot, apple, cherry, plum;

(d) San Jose Scale (*Aspidiotus perniciosus*): Apple, crab apples, pear, peach, plum, prune, cherry, quince, apricot, willow;

(e) Western Peach Tree Borer (*Synhedon existiosa*): Peach, apricot and prune, plums, cherries and (any trees on peach root stock);

(f) Oblique Banded Leafroller (*Choristoneura rosaceana*): Peaches, prunes, and cherries;

(g) Apple Maggot (*Rhagoletis pomonella*): Apple, crab apple, pear, hawthorne, and may include other rosaceous hosts of Apple Maggot.

Stat. Auth.: ORS 561 & 570

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

Hist.: AD 1031(22-74), f. 6-20-74, ef. 7-11-74; AD 15-1981, f. 7-24-81, ef. 8-7-81; DOA 3-2009, f. & cert. ef. 2-13-09

603-052-0265

Definitions

As used in OAR 603-052-0260 to 603-052-0280, unless the context requires otherwise:

(1) "Disease Organisms" means the diseases *Pseudomonas* blight (*Pseudomonas syringae*), Coryneum blight (*Coryneum carpophilum*), Peach leaf curl (*Taphrina deformans*), Fire blight (*Erwinia amylovora*), and Apple scab (*Venturia inaequalis*).

(2) "Host Plant" or "Host Tree" means Pear (*Pyrus* spp.), Quince (*Cydonia* spp.), Apple (*Malus* spp.), Peach (*Prunus* spp.), and Apricot (*Prunus* spp.), Hawthorn (*Crataegus* spp.), and may include other rosaceous hosts of Apple Maggot as deemed necessary by the Oregon Department of Agriculture.

(3) "Insect" means Codling Moth (*Cydia pomonella*), Oriental Fruit Moth (*Grapholitha molesta*), Pear Psylla (*Psylla pyricola*), San Jose Scale (*Aspidiotus perniciosus*), Shot Hole Borer (*Scolytus rugulosus*), Apple Maggot (*Rhagoletis pomonella*) and Peach Twig Borer (*Anarsia lineatella*).

Stat. Auth.: ORS 561 & 570

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

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Hist.: AD 818(6-66), f. 4-12-66, ef. 4-27-66; AD 874(5-68), f. 4-1-68, ef. 4-15-68; AD 1106(27-76), f. & ef. 9-15-76; AD 14-1981, f. 7-24-81, ef. 8-7-81; DOA 16-2008, f. & cert. ef. 7-11-08; DOA 3-2009, f. & cert. ef. 2-13-09

603-052-0360

Control Area: Onion Maggot — Malheur County

(1) A control area is established within the boundaries of Malheur County for the protection of the onion industry by the eradication or control of the insect pest known as the onion maggot. This control area order is based on IPM principles first recognized and used by Malheur County growers in 1957.

(2) The following methods of eradication and control are declared to be the proper methods used in this control area order:

(a) All cull or waste onions in Malheur County shall be disposed of by a method approved by this control order prior to March 15 each year; for onions sorted after that date until July 1, the resulting cull and waste onions shall be disposed of within one week after such sorting;

(b) Disposal of cull or waste onions shall be accomplished only as set forth below:

(A) Disposal by covering in a dump site approved by the Oregon Department of Environmental Quality (DEQ). Culls and onion debris shall be dumped and covered by at least 12 inches of onion-free soil by March 15 each year;

(B) Disposal by animal feeding. Culls and onion debris shall be completely removed from feeding areas by March 15 and buried under 12 inches of onion-free soil. Onions tramped into the soil so they cannot be removed shall be plowed to a depth of 12 inches;

(C) Disposal by chopping or shredding. Chopped or shredded onion debris that is incapable of sprouting may be returned to the field at a tonnage rate no higher than the DEQ-approved rate of 80 tons per acre and plowed to a depth where no onion parts are exposed on the surface;

(D) Composting. All onion debris shall be incorporated into the compost bed and completely covered by 12 inches of onion-free soil;

(E) Disposal of residue in onion producing fields. Commercial onion fields where sort out bulbs are left at harvest shall be disked to destroy the bulbs and shall be plowed to a depth of at least 12 inches by March 15 each year. Seed bulbs shall be disposed of in the same manner following the last harvest. The owner of the field is ultimately responsible for compliance with this rule;

(F) If inclement weather prevents plowing, the culls will be treated with an EPA-labeled insecticide currently listed in the PNW Insect Control Handbook at prescribed intervals until proper disposal occurs.

[Publications referenced are available from the agency.]

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

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

Hist.: AD 590, f. 9-10-58, ef. 9-28-58; AD 784(8-64), f. 4-29-64, ef. 5-15-64; AD 4-1995, f. & cert. ef. 4-5-95; DOA 3-1999, f. & cert. ef. 1-29-99; DOA 1-2006, f. & cert. ef. 1-13-06; DOA 2-2007, f. & cert. ef. 1-30-07; DOA 7-2008, f. & cert. ef. 2-8-08; DOA 3-2009, f. & cert. ef. 2-13-09

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

Rule Caption: Adopts amendments to the 2008 Oregon Residential Specialty Code regarding seismic and window sill safety.

Adm. Order No.: BCD 1-2009

Filed with Sec. of State: 1-30-2009

Certified to be Effective: 2-1-09

Notice Publication Date: 11-1-2008

Rules Amended: 918-480-0010

Rules Repealed: 918-480-0010(T)

Subject: The rule contains two interim amendments to the 2008 Oregon Residential Specialty Code. The first interim amendment prohibits the use of alternate braced panels in interior braced wall lines, a practice designed to improve the structural integrity and seismic safety of residential dwellings. The second interim amendment regulates the height and glazing of window sills located a certain distance from either the finished grade or surface below, respectively. This proposed amendment addresses a life and safety issue regarding small children and other individuals who might fall through or climb out of a window.

Rules Coordinator: Shauna Parker—(503) 373-7438

918-480-0010

Amendments to the Oregon Residential Specialty Code

(1) The **Oregon Residential Specialty Code** is adopted and amended pursuant to OAR chapter 918, division 8. Amendments adopted for inclusion into the **Oregon Residential Specialty Code** are placed in this rule, showing the section reference, a descriptive caption, and a short description of the amendment.

(2) Effective April 1, 2008:

(a) The **2006 Edition of the Uniform Plumbing Code**, as published by the International Association of Plumbing and Mechanical Officials and amended by the division, is adopted to provide the plumbing provisions of the **Oregon Residential Specialty Code**; and

(b) The **2008 Edition of the NFPA 70, National Electrical Code** as amended by the division is adopted to provide the electrical provisions of the **Oregon Residential Specialty Code**. See OAR chapter 918, division 305 for Oregon amendments to **NFPA 70, National Electrical Code**.

(3) Effective April 1, 2007 Appendix N, Low-Rise Multiple-Family Dwelling Construction is moved from the **2005 Oregon Residential Specialty Code** to the **2007 Oregon Structural Specialty Code**.

(4) During the phase-in period established in OAR 918-480-0005(3), plans designed to the **2005 Oregon Residential Specialty Code** must use the plumbing and electrical provisions included in that 2005 code. Plans that are designed to the **2008 Oregon Residential Specialty Code** must use the plumbing and electrical provisions adopted in this rule.

(5) Effective October 1, 2008, the **2008 Oregon Residential Specialty Code** is amended as follows:

(a) Section R 109.1.4.1 is deleted and replaced with the following: The requirement in R318.2 that all moisture-sensitive wood framing members used in construction shall have a moisture content of not more than 19 percent of the weight of dry wood framing members is not subject to inspection by the authority having jurisdiction.

(b) Section R318.2 is amended to read: Moisture content. Prior to issuance of the insulation/vapor barrier approval required by R109.1.5.2 of this code:

(A) All moisture-sensitive wood framing members used in construction shall have a moisture content of not more than 19 percent of the weight of dry wood framing members.

(B) The general contractor or the owner who was issued the structural permit shall notify the building official, on a division-approved form, that the contractor or the owner who was issued the structural permit is aware of and has taken steps to meet the requirement in paragraph (A).

(6) Effective February 1, 2009, the **2008 Oregon Residential Specialty Code** is amended as follows:

(a) Section R602.10.9 is amended to read: R602.10.9 Interior braced wall support. In buildings located in Seismic Design Category D₁ and one-story buildings located in Seismic Design Category D₂, interior braced wall lines shall be supported on continuous foundations at intervals not exceeding 70 feet (21,336 mm). Braced wall panels located in interior braced wall lines at less than 70-foot (21,336 mm) intervals shall be supported by double floor joists or blocking between floor joists. Where floor joists are perpendicular to the braced wall line, blocking shall be provided for the length of braced panel and shall extend to the next available joist below for braced panels whose ends are not aligned with joists below. The length to width ratio of the horizontal diaphragm supporting interior braced wall lines shall not exceed 4 to 1. Use of alternate braced panels in interior braced wall lines is not permitted.

(b)(A) Section R613.2 is added to the **2008 Oregon Residential Specialty Code**: R613.2 Window sills. In dwelling units, where the opening of an operable window is located more than 72 inches (1829 mm) above the finished grade or surface below, the lowest part of the clear opening of the window shall be a minimum of 24 inches (610 mm) above the finished floor of the room in which the window is located. Operable sections of windows shall not permit openings that allow passage of a 4 inch diameter sphere where such openings are located within 24 inches of the finished floor.

(B) Exceptions.

(i) Windows whose openings will not allow a 4-inch-diameter (102 mm) sphere to pass through the opening when the opening is in its largest opened position.

(ii) Openings that are provided with window fall prevention devices that comply with ASTM F 2090-08.

(c) Section R.613.2.1 is added to the **2008 Oregon Residential Specialty Code**: R613.2.1 Operation for Emergency Escape. The window opening fall prevention device shall not reduce the minimum net clear

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opening area of the window unit below what is required by Section R310.1.1 of the code.

(d) Chapter 43 of the **2008 Oregon Residential Specialty Code** is amended to read: ASTM F 2090-08 (revised/updated 2008).

[Publications referenced are available for review at the division. See division web site for information on where to purchase publications.]

Stat. Auth.: ORS 455.020, 455.110, 455.525 & 455.610

Stats. Implemented: ORS 455.610

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCA 29-1993, f. 11-24-93, cert. ef. 12-1-93; BCD 6-1995, f. 3-31-95, cert. ef. 4-1-95; BCD 3-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 22-1996(Temp), f. 10-1-96, cert. ef. 10-4-96; BCD 5-1997, f. 3-21-97, cert. ef. 4-1-97; Administrative Reformatting 1-19-98; BCD 3-1998, f. 1-29-98, cert. ef. 4-1-98; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 3-2000, f. 1-14-00 cert. ef. 4-1-00; BCD 19-2000(Temp), f. & cert. ef. 8-15-00 thru 2-10-01; BCD 32-2000, f. 12-27-00, cert. ef. 1-1-01; BCD 3-2001, f. 2-9-01, cert. ef. 3-1-01; BCD 2-2002, f. 3-5-02, cert. ef. 4-1-02; BCD 22-2002(Temp), f. 9-13-02 cert. ef. 10-1-02 thru 3-29-03; BCD 30-2002, f. 12-6-02, cert. ef. 1-1-03; BCD 1-2003(Temp), f. & cert. ef. 1-10-03 thru 3-31-03; BCD 33-2002, f. 12-20-02 cert. ef. 4-1-03; BCD 15-2004, f. 9-10-04, cert. ef. 10-1-04; BCD 5-2005, f. & cert. ef. 3-28-05; BCD 9-2006, f. 6-30-06, cert. ef. 7-1-06; BCD 1-2007, f. 2-15-07, cert. ef. 4-1-07; BCD 5-2008, f. 2-22-08, cert. ef. 4-1-08; BCD 13-2008(Temp), f. 7-1-08, cert. ef. 7-3-08 thru 12-30-08; BCD 21-2008, f. 9-30-08, cert. ef. 10-1-08; BCD 24-2008(Temp), f. & cert. ef. 10-6-08 thru 4-1-09; BCD 1-2009, f. & cert. ef. 1-30-09

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

Rule Caption: Adopt rules to exempt memberships in certain non-profit manufactured dwelling cooperatives from securities registration.

Adm. Order No.: FCS 1-2009

Filed with Sec. of State: 2-3-2009

Certified to be Effective: 2-3-09

Notice Publication Date: 12-1-2008

Rules Adopted: 441-025-0060

Subject: The proposed rule exempts, from the securities requirements, membership certificates issued to natural persons by a non-profit cooperative formed under ORS 62.800-62.815 that meet certain criteria including membership price limitations and a requirements that the certificate be returned to the cooperative upon the termination of membership for the same price originally paid by the individual.

Rules Coordinator: Shelley Greiner—(503) 947-7484

441-025-0060

Memberships in a Non-profit Cooperative

Pursuant to authority in ORS 59.025(14), the director exempts any certificate evidencing membership issued by a non-profit cooperative that meets all of the following criteria:

(1) The issuing cooperative is formed pursuant to ORS 62.800 to 62.815;

(2) The issuing cooperative owns or leases land in Oregon on which manufactured dwellings are or will be located;

(3) Only a natural person who owns and occupies a manufactured dwelling that is located on land owned or leased by the issuing cooperative may be issued a membership certificate;

(4) The issuing cooperative issues not more than one membership certificate for any space lease in the cooperative, regardless of the number of occupants in the manufactured dwelling located on the space.

(5) The issuing cooperative sets the price of membership at a reasonable level, not to exceed \$1,000; and

(6) Each membership certificate includes a condition that requires the certificate must be returned to the cooperative in exchange for no more than the price originally paid by the purchasing individual upon termination of the individual's membership in the cooperative.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.025(14)

Hist.: FCS 1-2009, f. & cert. ef. 2-3-09

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Rule Caption: Sets fees for banking and consumer finance programs.

Adm. Order No.: FCS 2-2009

Filed with Sec. of State: 2-3-2009

Certified to be Effective: 2-3-09

Notice Publication Date: 1-1-2009

Rules Amended: 441-500-0020, 441-730-0030

Subject: These rules revise the annual licensing fees or assessments paid by state-chartered banks and consumer finance lenders.

Rules Coordinator: Shelley Greiner—(503) 947-7484

441-500-0020

Fees for Banks, Trust Companies, Savings Banks, Extranational Institutions, Savings Associations and Call for Reports

(1) Definitions.

(a) As used in this rule, "assets" means;

(A) The average assets of an Oregon based insured institution; or

(B) The average Oregon assets of an extranational institution.

(b) For the purposes of determining averages in subsections (1)(a):

(A) Average assets for an Oregon based insured institution shall be determined from the quarterly Call Reports of Condition and Income filed with the applicable federal supervisory agency for the calendar year immediately preceding the due date of the fee assessment; and

(B) Average Oregon assets in for an extranational institution shall be determined from the quarterly reports of Oregon Assets filed with the Director for the calendar year immediately preceding the due date of the assessment.

(2) Call for Reports. To the extent any report used to determine the fee assessment is not required to be filed or made available to the Director under other Banking Rules, the specific reports shall be provided by the insured institution or extranational institution upon the call of the Director to allow the fee assessments to be determined.

(3) Subject to section (9) of this rule, the annual fee assessment under ORS 706.530 for an insured institution subject to the jurisdiction of the Director, including a savings association, is: If assets are:

(a) Less than \$10 million, \$800 plus .000275 of all assets;

(b) \$10 million or more but less than \$25 million, \$1,625 plus .000200 of all assets;

(c) \$25 million or more but less than \$100 million, \$2,895 plus .000153 of all assets;

(d) \$100 million or more but less than \$500 million, \$9,795 plus .000090 of all assets;

(e) \$500 million or more but less than \$1 billion, \$22,795 plus .000066 of all assets;

(f) \$1 billion or more but less than \$2 billion, \$24,795 plus .000064 of all assets;

(g) \$2 billion or more but less than \$3 billion, \$26,795 plus .000063 of all assets;

(h) \$3 billion or more but less than \$4 billion, \$29,795 plus .000062 of all assets;

(i) \$4 billion or more, \$33,795 plus .000061 of all assets.

(4) Subject to section (9) of this rule, the annual regulatory fee assessment under ORS 706.530 for each trust company subject to the Director's jurisdiction is \$2,000 plus:

(a) .000060826 of the first \$150 million in managed assets; and .000030413 of managed assets greater than \$150 million;

(b) .0000152065 of the first \$150 million in custodial assets; and .0000076075 of custodial assets greater than \$150 million.

(5) Subject to section (9) of this rule, the annual regulatory fee assessment under ORS 706.530 and 713.090 for each extranational institution is: If Oregon assets are:

(a) Less than \$10 million, \$845 plus .000310 of all assets;

(b) \$10 million or more but less than \$25 million, \$2,545 plus .000140 of all assets;

(c) \$25 million or more but less than \$100 million, \$3,545 plus .000100 of all assets;

(d) \$100 million or more but less than \$500 million, \$6,745 plus .000068 of all assets;

(e) \$500 million or more, but less than \$1 billion, \$10,245 plus .000061 of all assets;

(f) \$1 billion or more but less than \$2 billion, \$15,245 plus .000056 of all assets;

(g) \$2 billion or more, \$17,245 plus .000055 of all assets.

(6) The fees assessed by this rule are not subject to prorate or refund.

(7) If no fee is assessed during any year under sections (3) or (4) of this rule because an insured institution did not have Oregon assets during the calendar year immediately preceding the due date of the assessment, the insured institution may be charged for actual cost, if the Director participates in any examination of the institution during the same calendar year. Actual cost shall be determined in the same way as provided in OAR 441-500-0030.

ADMINISTRATIVE RULES

(8) All fees assessed under sections (3) to (5) of this rule are due and payable on March 1 of each calendar year.

(9)(a) The Director may by order reduce the fees assessed for any specific year.

(b) When a fee is assessed under sections (3) to (5) of this rule, the assessment shall not be less than:

(A) \$5,000 for an insured institution, including a savings association, under section (3);

(B) \$2,500 for a trust company under section (4) and an extranational institution under section (5).

(10) The charges for special examination and special attention provided in OAR 441-500-0030 are in addition to and not in lieu of the fees assessed by this rule.

Stat. Auth.: ORS 706.530

Stats. Implemented: ORS 706.530

Hist.: FID 2-1986, f. & ef. 3-7-86; FID 3-1986, f. & ef. 5-15-86; FID 4-1986, f. & ef. 7-25-86; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-002-0100; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; FCS 1-1993, f. & cert. 2-23-93; FCS 4-1994, f. & cert. ef. 4-25-94; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-505-0020; FCS 6-2007, f. & cert. ef. 10-22-07; FCS 1-2008, f. & cert. ef. 1-28-08; FCS 2-2009, f. & cert. ef. 2-3-09

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 March 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 March 1 of each calendar year.

(2) A licensee who surrenders a license before the March 1 payment date must pay a fee of \$55 as a limited annual license fee.

(3) 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 725.185(2).

(4) Notwithstanding the rate of charge fixed by section (3) 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.

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

(6) In addition to the charges fixed by sections (3) and (4) 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 725.310.

(7) 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

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Adoption of Annual and Supplemental Statement Blanks and Instructions for Reporting Year 2008.

Adm. Order No.: ID 1-2009

Filed with Sec. of State: 1-29-2009

Certified to be Effective: 1-29-09

Notice Publication Date: 1-1-2009

Rules Amended: 836-011-0000

Subject: This rulemaking prescribes, for reporting year 2008, the required forms for the annual and supplemental financial statements required of insurers and health care service contractors under ORS 731.574, as well as the necessary instructions for completing the forms.

Rules Coordinator: Sue Munson—(503) 947-7272

836-011-0000

Annual Statement Blank and Instructions

(1) For the purpose of complying with ORS 731.574, every authorized insurer, including every health care service contractor, shall file its financial statement required by 731.574 for the 2008 reporting year on the annual statement blank approved for the 2008 reporting year by the National Association of Insurance Commissioners, for the type or types of insurance transacted by the insurer.

(2) Every authorized insurer, including every health care service contractor, shall complete its annual statement blank under section (1) of this rule for the 2008 reporting year, according to the applicable instructions published for that year by the National Association of Insurance Commissioners, for completing the blank, as required by ORS 731.574.

(3) Every authorized insurer, including every health care service contractor, shall file each annual statement supplement for the 2008 reporting year, as required by the applicable instructions published for that year by the National Association of Insurance Commissioners, and shall complete the supplement according to those instructions.

(4) This rule is adopted under the authority of ORS 731.244, 731.574 and 733.210 for the purpose of implementing 731.574 and 733.210.

Stat. Auth.: ORS 731.244, 731.574 & 733.210

Stats. Implemented: ORS 731.574 & 733.210

Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 10-1994, f. & cert. ef. 12-14-94; ID 7-1995, f. & cert. ef. 11-15-95; Renumbered from 836-013-0000; ID 4-1996, f. 2-28-96, cert. ef. 3-1-96; ID 16-1996, f. & cert. ef. 12-16-96; ID 11-1997, f. & cert. ef. 10-9-97; ID 16-1998, f. & cert. ef. 11-10-98; ID 5-1999, f. & cert. ef. 11-18-99; ID 1-2001, f. & cert. ef. 2-7-01; ID 4-2002, f. & cert. ef. 1-30-02; ID 6-2003, f. & cert. ef. 12-3-03; ID 1-2006, f. & cert. ef. 1-23-06; ID 9-2007, f. & cert. ef. 11-8-07; ID 1-2009, f. & cert. ef. 1-29-09

Department of Consumer and Business Services, Oregon Medical Insurance Pool Board Chapter 443

Rule Caption: Updates rules to be current with 2009 OMIP contract, application, handbook and policies.

Adm. Order No.: OMIPB 1-2009(Temp)

Filed with Sec. of State: 2-12-2009

Certified to be Effective: 2-12-09 thru 8-10-09

Notice Publication Date:

Rules Amended: 443-002-0070

Subject: Benefit, benefit limitations, exclusions and claims administration: This section is required to be updated annually to refer to the current OMIP Benefit Contract year.

Rules Coordinator: Linnea Saris—(503) 378-5672

443-002-0070

Benefits, Benefit Limitations, Benefit Exclusions and Claims Administration

Benefits, Benefit Limitations, Benefit Exclusions and Claims Administration for the OMIP program are set forth in the OMIP individual benefit plan contracts as of January 1, 2009, the OMIP application as of January 1, 2009, the OMIP handbook as of January 1, 2009, the OMIP Premium Rates and Instructions pamphlet as of January 1, 2009, the OMIP Benefit Summary pamphlet as of January 1, 2009 and any applicable endorsements. These documents are hereby incorporated into this rule by reference.

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

Stat. Auth.: ORS 735.610(6) & 735.625

Stats. Implemented: ORS 735.600 - 735.650

Hist.: OMIPB 2-2004, f. 12-30-04, cert. ef. 1-1-05; OMIPB 2-2005, f. 12-30-05, cert. ef. 1-1-06; OMIPB 1-2007(Temp), f. & cert. ef. 7-23-07 thru 1-5-08; OMIPB 1-2008, f. & cert. ef. 1-2-08; OMIPB 1-2008(Temp), f. & cert. ef. 2-12-09 thru 8-10-09

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

Rule Caption: Adopt changes to Agricultural Labor Housing (ALH).

Adm. Order No.: OSHA 1-2009

Filed with Sec. of State: 1-26-2009

ADMINISTRATIVE RULES

Certified to be Effective: 1-26-09

Notice Publication Date: 12-1-2008

Rules Amended: 437-004-1120

Subject: These changes are necessary to resolve issues expressed by Federal OSHA toward making our rules at least as effective as theirs. In addition, the removal of the heater language is to recognize new safety technology.

437-004-1120(16) Living Areas.

We will delete paragraph (c)(B) to reflect changes in heater technology. Paragraph (C) will become (B) and (D) will become (C). Paragraph (B) is adequate to address any hazards related to ribbon-type heaters as they now come with safety devices to shut them off if they overheat.

437-004-1120(16) Living Areas.

Wording added to paragraph (n) will close a gap in coverage pointed out by Federal OSHA. The result is that existing housing will be good until the 2018 change date unless it is remodeled. New construction and existing housing remodeled between this adoption and 2018 will have to meet the new requirements in paragraph (n).

437-004-1120(18) Common use cooking and eating facilities and equipment.

Federal OSHA requires adding this language to be as effective as their rule. It requires enclosed, screened shelters for common use cooking and eating facilities.

437-004-1120(19) Dining Halls and equipment.

Federal OSHA requires adding this language to be as effective as their rule. It requires enclosed, screened shelters for dining halls.

Please visit OR-OSHA's web site at www.orosha.org

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-004-1120

Agricultural Labor Housing and Related Facilities

(1) Application.

(a) These rules apply to any place, or area of land, where there are living areas, manufactured or prefabricated homes or dwellings or other housing provided by a farmer, farm labor contractor, agricultural employer or other person in connection with the recruitment of workers on an agricultural establishment.

(b) These rules apply to any type of labor housing and related facilities together with the tract of land, established, or to be established, operated or maintained for housing workers with or without families whether or not rent is paid or collected.

(c) Manufactured dwellings and homes must comply with specifications for construction of sleeping places, unless they comply with ORS 446.155 to 446.185 and OAR 918-500-0020(2) that have the requirements and specifications for sanitation and safety design for manufactured dwellings.

(d) These rules apply to housing given to, rented, leased to or otherwise provided to employees for use while employed and provided or allowed either by the employer, a representative of the employer or a housing operator.

(e) These rules, unless otherwise stated, apply to all occupants of the labor housing and facilities.

(f) These rules apply to all labor housing sites owned, operated, or allowed to operate on property under the jurisdiction of any state or municipal authority.

(g) Violations relating to the occupants' personal housekeeping practices in facilities that are not common use will not result in citations to the employer.

(h) For the purposes of OAR 437-004-1120, labor contractors as defined in ORS 658.405 are employers.

(2) These rules do not apply to:

(a) hotels or motels that provide similar housing commercially to the public on the same terms as they do to workers.

(b) accommodations subject to licensing as manufactured dwelling parks, organizational camps, traveler's accommodations or recreation vehicle parks and open to the general public on the same terms.

(c) manufactured homes or dwellings being moved regularly from place to place because of the work when at parks or camps meant for parking mobile vehicles and open to the general public on the same terms.

(3) Charging occupants for required services. Operators may not charge for services required by this rule (OAR 437-004-1120). This pro-

hibits pay-per-use toilets, pay-per-use bathing facilities or any other method of paying for individual service requirements.

(4) Definitions.

(a) Clean means the absence of soil or dirt or removal of soil or dirt by washing, sweeping, clearing away, or any method appropriate to the material at hand.

(b) Common use facilities are those for use by occupants of more than one housing unit or by occupants of dormitory-style housing.

(c) Common use cooking and eating facility is a shared area for occupants to store, prepare, cook, and eat their own food.

(d) Dining hall is an eating place with food furnished by and prepared under the direction of the operator for consumption, with or without charge, of the occupants.

(e) Facility means a living area, drinking water installation, toilet installation, sewage disposal installation, food handling installation, or other installation required for compliance with the labor housing and related facility rules.

(f) Garbage means food wastes, food packaging materials or any refuse that has been in contact with food stuffs.

(g) Housing site is a place where there are living areas.

(h) Livestock operation is any place, establishment or facility with pens or other enclosures in which livestock is kept for purposes including, but not limited to, feeding, milking, slaughter, watering, weighing, sorting, receiving, and shipping. Livestock operations include, among other things, dairy farms, corrals, slaughterhouses, feedlots, and stockyards. Operations where livestock can roam on a pasture over a distance are outside this definition.

(i) Living area is any room, structure, shelter, tent, manufactured home or dwelling or prefabricated structure, vehicle or other place housing one or more persons.

(j) Manufactured dwelling is a residential trailer, built before January 1, 1962, for movement on the highway, that has sleeping, cooking and plumbing facilities; or, a mobile home, constructed for movement on the highway, that has sleeping, cooking and plumbing facilities, built between January 1, 1962 and June 15, 1976 and meeting the requirements of Oregon mobile home law in effect at the time of construction.

(k) Manufactured home is a structure built for movement on the highway that has sleeping, cooking and plumbing facilities and is used as a residence. Built on or after June 15, 1976 to comply with federal manufactured housing standards and regulations in effect at the time of construction. More information on these definitions is in ORS 446.003(26).

(l) Operator means any person or company that operates labor housing and/or related facilities.

(m) Potable water is water meeting the bacteriological and other requirements of the Public Health Division of the Oregon Department of Human Services.

(n) Prefabricated structure means a building or subassembly which has been in whole or substantial part manufactured or assembled using closed construction at an off-site location to be wholly or partially assembled on-site; but does not include a manufactured home or dwelling. Prefabricated structures are manufactured in accordance with the Oregon state building code and rules adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services in OAR 918-674.

(o) Privy is the same as outhouse or pit toilet but is not the same as portable toilets.

(p) Recyclable material means containers that are returnable for refund of a deposit or materials gathered as part of a recycling program.

(q) Refuse includes waste materials such as paper, metal, discarded items, as well as debris, litter and trash.

(r) Sanitary means free from agents that may be injurious to health.

(s) Sewage means the water-carried human and animal wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with such ground-water infiltration, surface waters, or industrial wastes as may be present.

(t) Toilet room is a room in or on the premises of any labor housing, with toilet facilities for use by employees and occupants of that housing.

(5) Housing registration requirements.

(a) ORS 658.705 requires the operator of Agricultural Labor Housing and Related Facilities to register such housing with Oregon OSHA as in (b) below, except the following:

(A) Housing occupied solely by members of the same family,

(B) Housing occupied by five or fewer unrelated persons, and

(C) Housing on operations that do not produce or harvest farm crops (Oregon OSHA considers "production of crops" to mean production of farm crops for sale").

ADMINISTRATIVE RULES

(b) Each year, before occupancy, the operator or employer must register agricultural labor housing and related facilities with Oregon OSHA as set out below.

(A) The operator must contact Oregon OSHA at least 45 days before the first day of operation or occupancy of the housing and related facilities. Instructions and additional information will come later by mail.

(B) If the housing and related facilities were not registered in the previous year, the operator must call Oregon OSHA to request a consultation visit to the housing. Oregon OSHA will register housing and related facilities not previously registered only after a pre-occupancy consultation that finds the housing or facility to be substantially in compliance with all applicable safety and health rules.

(C) If there were significant changes in the circumstances of the housing or facilities since the last registration, Oregon OSHA may, at its discretion, refer the employer for a consultation prior to re-registering the housing and facilities.

(D) Once registered, the operator must display the registration certificate provided by Oregon OSHA in a place frequented by employees. The operator must also provide and display a translation of the certificate in the language or languages used to communicate with employees.

(c) The Director of the Department of Consumer and Business Services or designee may revoke a labor housing and related facilities registration if Oregon OSHA determines that any of the following apply:

(A) The application had any negligent or willful material misrepresentation, or false statement.

(B) The conditions under which the registration was accepted no longer exist or have changed.

(C) The housing and related facilities are not substantially in compliance with the applicable safety and health rules.

(d) When Oregon OSHA revokes the registration of agricultural labor housing and related facilities, operators or their agents have 30 days to file a written appeal. On receipt of such appeal, the Director of the Department of Consumer and Business Services will hold a contested case hearing on that appeal under ORS 183.413, et seq.

(e) Any group or individual may protest the proposed registration, continued registration or renewal of any labor housing and related facilities registration under the following conditions:

(A) The signed and dated protest must be submitted in writing and received by the Director before issuance of the registration or renewal.

(B) The protest must include the name, address and phone number of the individual or group filing it.

(C) The protest must clearly identify which housing and related facilities is the subject of the protest, including the exact physical location and name of the applicant.

(D) The protest must clearly state the facts and reasons for the protest. Such facts and reasons must be based on factors that are within the scope of ORS 654, 658.705 through 658.850 and any relevant regulations.

(E) When the above provisions are met, such group or individual may participate in the contested case as a party or limited party under OAR 137-003-0005.

(6) Site requirements:

(a) The grounds of labor housing and related facilities must be substantially free from waste water, sewage, garbage, recyclable material, refuse or noxious plants such as poison oak and poison ivy.

(b) During housing occupancy, grass, weeds and brush must be cut back at least 30 feet from buildings.

(c) All housing site land must have adequate drainage. The site must not be subject to flooding when occupied.

(d) Adequately dispose of the waste water and food waste under outside water hydrants.

(e) The operator of labor housing is responsible for the maintenance and operation of the housing and its facilities.

(f) Store all toxic materials such as pesticides, fertilizers, paints and solvents in a safe place.

(g) Do not leave empty pesticide containers such as drums, bags, cans, or bottles in the housing area.

(h) Prevent or control the breeding of mosquitoes, flies, and rodents in the immediate housing area and within 200 feet of any labor housing and related facilities owned or under lawful control or supervision of the operator.

(i) Do not locate labor housing within 500 feet of livestock operations unless the employees in the housing are employed to tend or otherwise work with the animals. NOTE: This does not apply to animals owned by the housing occupants.

(j) Provide electricity to all housing units and related facilities. Subdivision 4/S, Electricity applies to ALH.

(k) Extension cords or plug strips must have circuit breaker or fuse protection either as part of the set or part of the building wiring.

(l) Facilities built or remodeled before December 15, 1989, must have a ceiling or wall-type electric light fixture in working order and at least one wall-type electrical outlet in every living area. Facilities built or remodeled after that date must comply with the code in effect at the time of construction or remodeling.

(m) Provide a ceiling or wall-type electric light in toilet rooms, lavatories, shower or bathing rooms, laundry rooms, hallways, stairways, the common eating area or other hazardous dark areas.

(n) Light privies either directly or indirectly from an outside light source.

(o) Provide enough light in corridors and walkways to allow safe travel at night.

(p) Each housing site must have its street numbers displayed to be easily visible to responding emergency vehicles on public highways or roads.

(q) The lowest point of wooden floor structures must be at least 12 inches above ground.

(7) Water supply.

(a) All domestic water furnished at labor housing and related facilities must conform to the standards of the Public Health Division of the Oregon Department of Human Services.

(A) The site water system must supply at least 15 psi at the outlet end of all water lines regardless of the number of outlets in use.

(b) Have a bacteriological analysis done on the water before occupancy and as often as needed to assure a potable water supply, except when the water comes from a community water system.

(c) Provide enough potable water in the labor housing area for drinking, hand washing, bathing and domestic use. An ample supply is at least 35 gallons of water per day per occupant.

(d) Arrange, construct and if necessary, periodically disinfect the water storage and distribution facilities to satisfactorily protect the water from contamination. Install all new plumbing in labor housing and related facilities to comply with the Oregon state building code.

(e) When potable water is not available in each dwelling unit, there must be a potable water source within 100 feet of each unit and there must be a working, clean drinking fountain for each 100 occupants or fraction thereof.

(f) Post as, "Unsafe for drinking," non-potable water that is accessible to occupants. The posting must be in the language of the camp occupants or with a universal symbol.

(g) Portable water containers with spigots and tight fitting lids are acceptable for providing and storing drinking water in the housing.

(A) These containers must be made of impervious non-toxic materials that protect the water from contamination.

(B) Wash and sanitize them at least every 7 days.

(h) Do not use containers such as barrels, pails or tanks that require dipping or pouring to get the water.

(i) Do not use cups, dippers or other utensils for common drinking purposes.

(j) Do not allow cross connection between a system furnishing water for drinking purposes and a non-potable supply.

(8) Bathing, hand washing, laundry, and toilet facilities — General.

(a) Provide an adequate supply of hot and cold water under pressure for all common use bathing, hand washing, and laundry facilities at all labor housing and related facilities.

(b) In installations with bathing, laundry facilities, or flush toilets, the floor and walls must be of readily cleanable finish and impervious to moisture.

(c) All common use bathing, hand washing, and laundry facilities must be clean, sanitary and operating properly.

(d) Buildings for common use bathing, hand washing, laundry, and toilet facilities must have heating capable of keeping the facility at 68 degrees or more during use.

(9) Bathing facilities.

(a) Provide drains in all showers to remove waste water. Slope floors so they drain. Do not use slippery materials for flooring.

NOTE: Paragraph (b) is effective April 1, 2009. Until then the old ratio of 1 to 15 applies.

(b) Provide at least one shower head with hot and cold water under pressure for every 10 occupants or fraction thereof.

(A) Unisex shower rooms are acceptable in the same ratios. They must have working locks and provide privacy.

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(c) Separate common use bathing facilities used for both sexes in the same building by a solid, non-absorbent wall extending from the floor to the ceiling.

(d) Mark separate sex bathing facilities, if provided, with "women" and "men" in English and in the native language of employees expected to occupy the housing or with easily understood pictures or symbols.

(10) Hand washing facilities.

NOTE: Paragraph (a) is effective April 1, 2009. Until then the old ratio of 1 to 15 applies.

(a) Provide at least one hand washing sink or basin with hot and cold water under pressure for every 6 occupants or fraction thereof. Each 24 linear inches of "trough" type sink with individual faucets counts as one basin. When each living unit does not have hand washing facilities, locate common use facilities either close to the toilet facilities or close to the sleeping places.

(b) In common use facilities, do not use a single common towel. If you provide paper towels, there must be a container for their disposal.

(11) Laundry facilities.

NOTE: Paragraph (a) is effective April 1, 2009. Until then the old rule applies which reads: 437-004-1120(11)

(a) When public laundry and drying facilities are not available within 5 miles, the housing must have readily accessible laundry and drying facilities.

(b) Laundry facilities in the housing area must have trays or tubs, plumbed with hot and cold water in the ratio of 1 for each 25 occupants.

(c) Mechanical washers are optional in the ratio of 1 to 50 occupants with one laundry tray per 100 occupants.

(d) Provide laundry trays, tubs, or machines with plumbed hot and cold water in the combined ratio of 1 for each 30 occupants or each part of 30.

(e) Provide clothes lines or drying facilities to serve the needs of the occupants.

(f) Laundry rooms must have drains to remove waste water.

(g) Each common use laundry room must have a slop sink.

(12) Toilet facilities.

(a) Locate toilet facilities in labor housing and related facilities within 200 feet from the living area that they serve.

(b) Locate toilets, chemical toilets, or urinals in rooms built for that purpose.

(c) Maintain a usable, unobstructed path or walkway free of weeds, debris, holes or standing water from each living area to the common use toilet facilities.

(d) Provide at least one toilet for every 15 occupants or fraction thereof for each gender in the labor housing. Toilets must assure privacy:

(A) If urinals are in the toilet facility and where three or more toilets are required for men, one urinal substitutes for one toilet (24 inches of trough-type urinal equals one urinal), to a maximum of one-third of the total required toilets.

(B) Existing urinals must be non-absorbent, non-corrosive materials that have a smooth and cleanable finish. Urinals installed after the effective date of this standard must meet Oregon state building code.

(C) If there are no common use toilet facilities, calculate the required ratio without regard to gender.

(e) Clean common use toilet facilities daily or more often when needed to maintain sanitation.

(f) Mark separate sex toilet facilities, when provided, with "women" and "men" in English and in the native language of employees expected to occupy the housing or with easily understood pictures or symbols.

(g) Ventilate all labor housing toilet rooms according to the Oregon state building code.

(h) Separate common use toilet facilities used for both sexes in the same building by a solid, non-absorbent wall extending from the floor to the ceiling.

(i) Install privacy partitions between each individual toilet or toilet seat in multiple toilet facilities. The partitions may be less than the height of the room walls:

(A) The top of the partition must be not less than 6 feet from the floor and the bottom of the partition not more than 1-foot from the floor. The width of the partition must extend at least 1 1/2 feet beyond the front of the toilet seat.

(B) Provide a door or curtain so the toilet compartment is private.

(j) Provide common use toilet facilities with toilet paper and holders or dispensers. Also provide disposal containers with lids.

(k) Do not allow obstruction of the path or access to a toilet room. If access is through another room, that room must not be lockable.

(13) Portable toilets, chemical toilets and privies.

(a) The location and construction of privies must conform to Oregon Department of Environmental Quality standards.

(b) Privies must be at least 100 feet from any living area or any facility where food is prepared or served.

(c) Portable toilets and privies must have adequate lighting.

(d) When in use, service portable and chemical toilets at least weekly or often enough to keep them from becoming a health hazard. Clean portable toilets, chemical toilets and privies at least daily.

(14) Sewage disposal and plumbing.

(a) Connect the sewer lines from the labor housing and related facilities to a community sewer system, a septic tank with subsurface disposal of the effluent, pit type privies or other sanitary means conforming to Department of Environmental Quality standards.

(b) Install all plumbing in labor housing and related facilities to comply with Department of Environmental Quality standards and the Oregon state building code.

(15) Garbage and refuse disposal outside of buildings.

NOTE: Recyclable material is not garbage or refuse referred to in this section (15).

(a) Keep refuse and garbage containers clean and in good repair.

(b) Provide at least one 30-gallon or larger container per 15 occupants. Containers must be inside the housing site area and accessible to all occupants.

(c) Empty garbage bins and dumpsters at least weekly during use, but always before they become a health hazard or full enough to interfere with full closing of the lid.

(d) Empty common use cans and portable containers into a bin or dumpster, when full or twice weekly whichever is more frequent. Do not allow garbage on the ground.

(e) Keep all refuse and garbage containers covered and the garbage storage area clean to control flies and rodents.

(f) Do not burn any food, garbage or wet refuse.

(g) Dispose of garbage and refuse according to Department of Environmental Quality standards that govern the disposal of garbage, refuse and other solid wastes.

(16) Living areas.

(a) Keep all living areas, safe and in good repair structurally and stable on their foundations. They must provide shelter for the occupants against the elements and protect the occupants from ground and surface water as well as rodents and insects.

(b) The walls and roof must be tight and solid. Floors must be rigid and durable, with a smooth and cleanable finish in good repair.

(c) For living areas without a working permanent heating system or heaters, the ALH operator must supply portable heaters at no cost to the occupant. These heaters must be capable of keeping the temperature in the living area at a minimum of 68 degrees. Heaters must meet these requirements:

(A) Operate by electricity only.

(B) Have working safety devices installed by the manufacturer for the particular type heater.

(C) Be in good working order with no defects or alterations that make them unsafe.

(d) Permanently installed solid fuel or gas fired heaters must meet the following:

(A) Install and vent any stoves or other sources of heat that use combustible fuel to prevent fire hazards and dangerous concentration of gases:

(i) Solid or liquid fuel heaters or stoves installed on or before December 15, 1989, must sit on a concrete slab, insulated metal sheet or other fire resistant material when used in a room with wood or other combustible flooring. Extend it at least 18 inches beyond the perimeter of the base of the stove.

(ii) Solid or liquid fuel heaters or stoves must meet the manufacturer's specifications and the Oregon state building code in effect at the time of installation.

(B) Install fire resistant material on any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stove pipe. Provide a vented metal collar around the stovepipe, or vent passing through a wall, ceiling, floor or roof or combustible material.

(C) Heating systems with automatic controls must cut off the fuel supply on failure or interruption of the flame or ignition, or when they exceed a pre-determined safe temperature or pressure.

(D) All gas appliances and gas piping must comply with the Oregon state building code in effect at time of installation and the manufacturer's instructions.

(E) Do not locate stoves so they block escape from a sleeping place.

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(e) Provide screens of at least 16 mesh on the doors and windows of the living area. All screen doors must be tight-fitting, in good repair, and self-closing.

(f) Provide beds, bunks or cots for each occupant and suitable storage facilities, such as wall cabinets or shelves, for each occupant or family unit.

(A) The camp operator must provide a mattress or pad for each bed or bunk.

(i) If you provide foam pads, they must be thicker than 2 inches.

(ii) Do not provide uncovered foam pads.

(iii) Mattresses or pads must not sit on the floor.

(iv) The sleeping surface must be at least 12 inches above the floor.

(g) Mattresses or pads furnished by the camp operator must be clean, in good repair, and free from insects and parasites.

(A) Fumigate mattresses or pads, used uncovered, or treat with an effective insecticide before each season's occupancy. If you provide covers, clean them before each season's occupancy.

(B) Store mattresses or pads in a clean, dry place.

(h) Space the beds, bunks or cots so that there is enough room to allow for rapid and safe exiting during an emergency.

NOTE: Do not count children 2 years old and younger when calculating square footage requirements in paragraphs (i), (j), (k), and (l).

(i) In living areas built after August 1, 1975, where workers cook, live, and sleep, provide at least 100 square feet per occupant.

(j) In living areas built before August 1, 1975, where workers cook, live and sleep, provide at least 60 square feet per occupant.

(k) Each sleeping room without double bunk beds must have at least 50 square feet of floor space per employee. Where there are double bunk beds, provide 40 square feet per occupant. Do not use triple bunks.

(l) Beginning on January 1, 2018 all agricultural labor housing, where workers cook, live and sleep in the same area, must provide 100 square feet per occupant.

(m) For units built after April 3, 1980 at least one-half the required floor space in each living area must have a minimum ceiling height of 7 feet. Floor space with a ceiling height less than 5 feet does not count toward the minimum required floor space.

(n) Beginning on January 1, 2018 only areas with a 7 foot ceiling height will count toward the required square footage of any living or sleeping area. Housing built or remodeled between January 26, 2009 and January 1, 2018 must have minimum 7 foot high ceilings for the space to count toward any required square footage.

(o) Provide separate private sleeping areas for unrelated persons of each sex and for each family unit.

NOTE: Paragraph (p) is effective April 1, 2009.

(p) Provide windows or skylights with a total area equal to at least 10 percent of the required floor area. At least one-half (nominal) the total required window or skylight area must be openable to the outside. Adequate mechanical ventilation may substitute for openable window space. Not more than one-half the required space can be met with skylights. Openable, screened windows in doors count toward this requirement.

(q) Before occupancy clean all living areas and eliminate any rodents, insects, and animal parasites.

(17) Fire protection.

(a) All fires must be in equipment designed for that use. Do not allow open fires within 25 feet of structures.

(b) Each season, at the time of initial occupancy, each living area must have a working approved smoke detector.

NOTE: The camp operator is not responsible for daily maintenance of the detector or the actions of occupants that defeat its function.

(c) Provide fire extinguishing equipment in a readily accessible place, not more than 50 feet from each housing unit. The equipment must provide protection equal to a 2A:10BC rated extinguisher.

NOTE: Hoses are acceptable substitutes for extinguishers only if the water supply is constant and reliable. Hoses must be immediately available for firefighting use.

(d) All living areas with more than one room, built before December 15, 1989, with one door, must have, in addition to a door, a window in each sleeping room that can be an exit in case of fire:

(A) This window must have an openable space at least 24 inches by 24 inches, nominal.

(B) The lowest portion of the opening must be less than 48 inches above the floor.

(C) This window must open directly to the outdoors and be readily openable by the occupants from inside without breaking the glass.

(D) Label the escape window as an emergency exit.

(e) Living areas built on or after December 15, 1989, must meet the requirements for emergency exits in applicable rules of the Building Codes Division of the Oregon Department of Consumer and Business Services, including the following:

(E) Required emergency exit windows in sleeping rooms must have a clear net opening of at least 5.7 square feet, minimum vertical opening of 22 inches and minimum horizontal opening of 20 inches.

NOTE: Construct and maintain all living areas in labor housing and related facilities to comply with other applicable local and state laws and regulations in effect at the time of construction or remodel.

(f) A second story must have at least two exits when its occupant load is 10 or more. Comply with the Oregon state building code.

(g) Occupants on floors above the second story and in basements must have access to at least two separate exits from the floor or basement as required by the Oregon state building code.

(18) Common use cooking and eating facilities and equipment.

(a) When provided, common use cooking or food preparation facilities or equipment must have the following:

(A) A gas or electric refrigerator, capable of keeping food at or below 41 degrees F.

(B) A minimum equivalent of two cooking burners for every 10 persons or part thereof, or 2 families, whichever requires the most burners.

(i) If a gas or electric hotplate or wood stove is within 18 inches of a wall, that wall must be made of or finished with smooth cleanable, nonabsorbent, grease-resistant and fire-resistant material.

NOTE: Labeled and listed appliances are exempt from the 18-inch requirement when installed according to their listing.

(C) No liquid petroleum gas (LPG like propane) tanks in use inside any occupied building. Outside tanks must connect to appliances with lines approved for that purpose.

(D) Food storage shelves, food preparation areas, food contact surfaces and floors in food preparation and serving areas must be made of or finished with smooth, non-absorbent, cleanable material; and

(E) A table and chairs or equivalent seating and eating arrangements to accommodate the number of occupants living in the sleeping place.

(b) Refrigerators and stoves or hot plates must always be in working condition.

(c) Clean the facilities and equipment before each occupancy.

(d) Common use kitchen and dining areas must be separate from all sleeping quarters. There can be no direct opening between kitchen or dining areas and any living or sleeping area.

(e) If the operator becomes aware of or has reason to suspect that anybody preparing, cooking or serving food has a communicable disease as listed in paragraph (22), the operator must bar them from the cooking facility until the disease is no longer communicable.

(f) Buildings must have heating capable of keeping the facility at 68 degrees or more during use.

(g) Facilities must be in buildings or shelters. Doors, windows and openings, if any, must have screens of 16 mesh or smaller.

(19) Dining halls and equipment.

(a) When provided, dining halls or equipment must have the following:

(A) A gas or electric refrigerator, capable of keeping food at or below 41 degrees F.

(B) A minimum equivalent of two cooking burners for every 10 persons or part thereof, 2 families, whichever requires the most burners.

(i) If a gas or electric hotplate or wood stove is within 18 inches of a wall, that wall must be made of or finished with smooth cleanable, nonabsorbent, grease-resistant and fire resistant material.

NOTE: Labeled and listed appliances are exempt from the 18-inch requirement when installed according to their listing.

(C) No liquid petroleum gas (LPG like propane) tanks in use inside any occupied building. Outside tanks must connect to appliances with lines approved for that purpose.

(D) Food storage shelves, food preparation areas, food contact surfaces and floors in food preparation and serving areas must be made of or finished with smooth, non-absorbent, cleanable material; and

(E) A table and chairs or equivalent seating and eating arrangements to accommodate the number of occupants living in the sleeping place.

(b) Refrigerators and stoves or hot plates must always be in working condition.

(c) Clean the facilities and equipment before each occupancy.

(d) Common use kitchen and dining areas must be separate from all sleeping quarters. There can be no direct opening between kitchen or dining areas and any living or sleeping area.

(e) If the operator becomes aware of or has reason to suspect that anybody preparing, cooking or serving food has a communicable disease as listed in paragraph (22), the operator must bar them from the cooking facility until the disease is no longer communicable.

(f) Buildings must have heating capable of keeping the facility at 68 degrees or more during use.

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(g) The facility must comply with the 2005 edition of the FDA Food Code.

NOTE: Follow Division 4, Agriculture when it differs from the FDA Food Code. The code is available at: <http://www.cfsan.fda.gov/~dms/foodcode.html> or contact the Oregon OSHA Resource Center at 800-922-2689 or in Salem 503-378-3272.

(h) Facilities must be in buildings or shelters. Doors, windows and openings, if any, must have screens of 16 mesh or smaller.

(20) Single unit cooking facilities.

(a) When provided, single unit cooking, eating and dining facilities or equipment must have the following:

(A) A gas or electric refrigerator, capable of keeping food at or below 41 degrees F.

(B) A minimum equivalent of two burners for cooking for every 10 persons or part thereof, or 2 families, whichever requires the most burners.

(i) If a gas or electric hotplate or wood stove is within 18 inches of a wall, that wall must be made of or finished with smooth cleanable, nonabsorbent, grease-resistant and fire resistant material.

NOTE: Labeled and listed appliances are exempt from the 18-inch requirement when installed according to their listing.

(C) No liquid petroleum gas (LPG like propane) tanks in use inside. Outside tanks must connect to appliances with lines approved for that purpose.

(D) Food storage shelves, food preparation areas, food contact surfaces and floors in food preparation and serving areas made of or finished with smooth, non-absorbent, cleanable material.

(E) A table and chairs or equivalent seating and eating arrangements to accommodate the number of occupants living in the sleeping place.

(F) A refrigerator and stove or hot plate in working condition.

(b) Clean the facilities before each occupancy.

(21) First aid. OAR 437-004-1305, Medical and First Aid, applies to all labor housing and related facilities. This rule includes requirements for first aid supplies, an emergency medical plan and a plan of communication.

NOTE: Division 4/K requires all employees know about the first aid requirements and emergency medical plans. If employees' native language is other than English, this must be taken into account in meeting this requirement.

(22) Disease Reporting. The camp operator must comply with OAR 333-018-0000, Who Must Report and OAR 333-018-0015, What To Report And When: 333-018-0000 Who Must Report.

(23) Each Health Care Provider knowing of or attending a case or suspected case of any of the diseases, infections, or conditions listed in OAR 333-018-0015 shall report such cases as specified. Where no Health Care Provider is in attendance, any individual knowing of such a case shall report in a similar manner. 333-018-0015 What to Report and When.

(24) Reportable diseases, infections, microorganisms, and conditions, and the time frames within which they must be reported are as follows:

(a) Immediately, day or night: *Bacillus anthracis* (anthrax); *Clostridium botulinum* (botulism); *Corynebacterium diphtheriae* (diphtheria); Severe Acute Respiratory Syndrome (SARS) and infection by SARS-coronavirus; *Yersinia pestis* (plague); intoxication caused by marine microorganisms or their byproducts (for example, paralytic shellfish poisoning, domoic acid intoxication, ciguatera, scombroid); any known or suspected common-source Outbreaks; any Uncommon Illness of Potential Public Health Significance.

(b) Within 24 hours (including weekends and holidays): *Haemophilus influenzae* (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); measles (rubeola); *Neisseria meningitidis* (any invasive disease; for laboratories, any isolation or identification from a normally sterile site); Pesticide Poisoning; poliomyelitis; rabies (human or animal); rubella; *Vibrio* (all species).

(c) Within one Local Public Health Authority working day: *Bordetella pertussis* (pertussis); *Borrelia* (relapsing fever, Lyme disease); *Brucella* (brucellosis); *Campylobacter* (campylobacteriosis); *Chlamydia* (*Chlamydia*) *psittaci* (psittacosis); *Chlamydia trachomatis* (chlamydia); *lymphogranuloma venereum*; *Clostridium tetani* (tetanus); *Coxiella burnetii* (Q fever); Creutzfeldt-Jakob disease and other transmissible spongiform encephalopathies; *Cryptosporidium* (cryptosporidiosis); *Cyclospora cayentanensis* (cyclosporiasis); *Escherichia coli* (Shiga-toxigenic, including *E. coli* O157 and other serogroups); *Francisella tularensis* (tularemia); *Giardia* (giardiasis); *Haemophilus ducreyi* (chancroid); hantavirus; hepatitis A; hepatitis B (acute or chronic infection); hepatitis C; hepatitis D (delta); HIV infection (does not apply to anonymous testing) and AIDS; *Legionella* (legionellosis); *Leptospira* (leptospirosis); *Listeria monocytogenes* (listeriosis); mumps; *Mycobacterium tuberculosis* and *M. bovis* (tuberculosis); *Neisseria gonorrhoeae* (gonococcal infections); pelvic inflammatory disease (acute, non-gonococcal); *Plasmodium* (malaria); *Rickettsia* (all species: Rocky Mountain spotted fever, typhus, others); *Salmonella* (salmonellosis, including typhoid); *Shigella* (shigellosis);

Taenia solium (including cysticercosis and undifferentiated *Taenia* infections); *Tréponema pallidum* (syphilis); *Trichinella* (trichinosis); *Yersinia* (other than *pestis*); any infection that is typically arthropod vector-borne (for example: Western equine encephalitis, Eastern equine encephalitis, St. Louis encephalitis, dengue, West Nile fever, yellow fever, California encephalitis, ehrlichiosis, babesiosis, Kyasanur Forest disease, Colorado tick fever, etc.); human bites by any other mammal; CD4 cell count < 200/₁ (mm³) or CD4 proportion of total lymphocytes < 14%; hemolytic uremic syndrome.

(d) Within 7 days: Suspected Lead Poisoning (for laboratories; this includes all blood lead tests performed on persons with suspected lead poisoning).

(25) Access to ORS and OAR. Those wishing access to any of the Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR) referenced here, may contact the Oregon OSHA Resource Center in Salem or the nearest Oregon OSHA Field Office.

(26) Closure and alternative housing:

(a) The operator of agricultural labor housing must provide replacement lodging without charge to the occupants if a government agency with the authority to enforce building, health or safety standards declares the housing or facilities to be uninhabitable and orders them vacated.

(b) The operator must provide replacement lodging for 7 consecutive days from the time the housing was closed or until the closing agency allows the original housing to reopen, whichever is shorter.

(c) Replacement lodging must meet or exceed the health and safety standards of Oregon OSHA. Oregon OSHA must approve the location of the replacement housing before employees are sent to it.

(d) Operators must arrange for replacement lodging not later than the end of the day the original housing closes or another date designated by the closing agency.

(e) Post the address of the replacement housing:

(A) Not later than the end of the day the original housing closes.

(B) In a place convenient to affected workers.

(C) In all languages spoken by the occupants.

(f) The posting in (e) above must state that the replacement housing is free to occupants of the closed housing.

(g) The operator must give Oregon OSHA a list of names of the occupants and the location of the replacement housing, for each.

(h) When the cause of the closure is beyond the control of the agricultural labor housing operator, sections (a), (b), (c), (d), (e) and (g) above do not apply. To determine whether the cause of closure was beyond the control of the operator, Oregon OSHA will consider these circumstances, including but not limited to:

(A) Whether the cause of the closure is a natural disaster;

(B) Whether the circumstances leading to the closure were known or should have been known to the operator;

(C) Whether operator diligence could have avoided the circumstances leading to the closure.

(i) Agricultural labor housing occupants entitled to temporary replacement housing under this rule must accept or reject that housing when the original housing closes. These rules do not obligate operators to reimburse displaced occupants for housing they obtain without the operator's knowledge or consent.

(A) The operator is responsible for replacement lodging only for as many people as occupied the original closed housing. When an occupant rejects the replacement housing, the operator has no obligation to reimburse that occupant for other replacement housing.

(j) Oregon OSHA may issue a citation and assess a monetary penalty for violation of these rules as in ORS 654.071 and 654.086.

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

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

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 5-2000, f. 5-18-00, cert. ef. 6-1-00; OSHA 4-2008, f. 3-24-08, cert. ef. 4-1-08; OSHA 1-2009, f. & cert. ef. 1-26-09

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

Adm. Order No.: OSHA 2-2009

Filed with Sec. of State: 1-27-2009

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Rules Amended: 437-001-0015, 437-001-0160, 437-001-0205, 437-001-0760, 437-001-1015, 437-001-1020

ADMINISTRATIVE RULES

Subject: After consideration of comments received about the proposed changes to Division 1, General Administrative Rules, Oregon OSHA takes the following actions:

New language to clarify when Oregon OSHA rules cover corporate officers generated no comments and will be made.

We will not adopt the proposed changes covering when we cite a violation as a repeat. The definition and penalty criteria will remain as they were before the proposal except for minor grammar changes like changing “shall” to “must” or “will.” Comments suggested that more work is needed to assure any changes are understood. Comments in support of the proposed changes raised issues that will be considered in future work on this subject.

Proposed changes to our method of delivering citations and notices of penalties generated no comments and will be made as proposed.

The proposed change related to supervisors or persons in charge of work will be made as proposed. This change involves no new requirements but moves the rule to a more logical position.

The proposed change to language about guaranty contracts caused no comments and will go as proposed.

Please visit OR-OSHA’s web site at www.orosha.org

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-001-0015

Definitions

The following definitions shall apply to OAR 437, unless the context requires otherwise:

(1) Abatement — Action by an employer to comply with a cited violation of the Oregon Safe Employment Act.

(2) Accepted Disabling Claims — Claims accepted for disabling occupational injuries or illnesses only. A disabling injury or illness entitles the worker to compensation for disability or fatality. This type of claim excludes temporary total disability suffered during the first three calendar days after the employee leaves work as a result of the injury unless the worker is an inpatient in a hospital.

(3) Accepted Disabling Claims Rate — The ratio of accepted disabling claims to annual average employment, times 100. Claims and employment figures are based upon the best knowledge of the Department at the time the rate is calculated (ADCR = Number of claims times 100 divided by the number of employees).

(4) Act — The Oregon Safe Employment Act (ORS 654.001 to 654.295, 654.750 to 654.780, and 654.991).

(5) Administrator — The Administrator of the Oregon Occupational Safety and Health Division (OR-OSHA).

(6) Affected employee — An employee who, in the course and scope of employment, may be or may have been exposed to a condition or practice described in a citation, order, application for an extension date or variance.

(7) Agent of the employer — The manager, superintendent, foreperson or other person in charge or control of all or part of the place of employment.

(8) Appeal — A written request for a hearing in which to contest a citation, notice or order issued by the Division. Unless the context otherwise requires, any writing which clearly contests, objects to or seeks relief from a Division citation, notice or order shall be construed as an appeal.

(9) Audiometric Zero — The lowest sound pressure level that the average, young adult with normal hearing can hear.

(10) Board — The Workers’ Compensation Board created by ORS 656.712.

(11) Catastrophe — An accident in which two or more employees are fatally injured, or three or more employees are admitted to a hospital or an equivalent medical facility.

(12) Citation — A document issued by the Division pursuant to ORS 654.071 to cite a violation. A citation may include a notice of penalty and a correction order.

(13) Complaint — A written or oral report from an employee, employee representative or other person that an occupational safety or health violation may exist at a place of employment. A complaint may be classified as one of the following:

- (a) Imminent danger
- (b) Serious
- (c) Other than serious

(14) Compliance Officer — A designated Division employee whose responsibility is to conduct inspections or investigations to identify possi-

ble violations and hazards and to propose citations, penalties and correction dates, and to assist employers and employees with information to correct violations and hazards.

(15) Comprehensive Consultation — is a consultation to cover the entire establishment and entails a physical hazard assessment evaluation, reviews of records, written programs and the employer’s illness and injury prevention plan. Comprehensive consultations include a written report by the provider including findings, recommendations, and the guidance necessary to resolve the problems noted in the report.

(16) Consultant — A designated Division employee whose responsibility is to provide a full range of occupational safety and health assistance including, but not limited to, providing employers, employees and other agency staff with information, advice and recommendations on maintaining safe employment or a place of employment; on correcting violations or hazards; and on applicable occupational safety and health rules, techniques, devices, methods, practices and development of safety and health programs.

(17) Correction order — A written Division order which directs a person to stop a violation within a given period of time. The term also includes a Red Warning Notice issued pursuant to OAR 437-001-0096.

(18) Days Away, Restricted, or Transferred (DART) — The number of lost workday injury and illness cases experienced by 100 full-time workers (DART rate = Number of lost workday cases times 200,000 divided by the number of employee hours worked).

NOTE: Lost Workday cases include both days away from work and days of restricted time.

(19) Decibel (dB) — Unit of measurement of sound level. For purposes of this rule, decibels refer to the combined average of the readings at 2000, 3000, and 4000 Hz on the audiogram.

(20) Department — The Department of Consumer and Business Services.

(21) Director — The Director of the Department of Consumer and Business Services, or the Director’s designee.

(22) Division — The Oregon Occupational Safety and Health (OR-OSHA) Division of the Department of Consumer and Business Services.

(23) Emphasis Program — A special program that targets Division activity to industries that, according to national or state data, have a high potential for serious injuries or illnesses.

(24) Employee — Any individual who is currently employed or formerly employed, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, financial or otherwise, subject to the direction and control of an employer, and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, or any individual who is provided with workers’ compensation coverage as a subject worker pursuant to ORS Chapter 656, whether by operation of law or by election.

(25) Employee exposure record — A record of monitoring or measuring which contains a qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

(26) Employee medical record — A record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

- (a) The results of medical examinations and tests;
- (b) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and
- (c) Any employee medical complaints relating to workplace exposure.

Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

(27) Employee representative — A bargaining unit representative, or an individual selected by employees, who serves as their spokesperson.

(28) Employer:

- (a) Any person who has one or more employees; or
- (b) Any sole proprietor or member of a partnership who elects workers’ compensation coverage as a subject worker pursuant to ORS 656.128; or

(c) Any corporation in relation to the exposure of its corporate officers except for corporations without workers’ compensation coverage under ORS 656.128 and whose only employee is the sole owner of the corporation; or

(d) Any successor or assignee of an employer. For purposes of this definition and ORS 654.005(5)(c), a business or enterprise is substantially the same entity as the predecessor employer if:

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(A) A majority of the current business or enterprise is owned by the former owners or their immediate family members, and

(B) One or more of the following criteria exist for both the current and predecessor business or other enterprise: Substantially the same type of business or enterprise. Similar jobs and working conditions. A majority of the machinery, equipment, facility, or methods of operation. Similar product or service. A majority of the same supervisory personnel. A majority of the same officers and directors.

NOTE: Not every element need be present to find an employer to be a successor. The cumulative facts will determine the employer's status.

(29) Employer representative — An individual selected by the employer, to serve as spokesperson or, in the absence of a selected spokesperson, the person in charge of the place of employment at the time of the inspection.

(30) Environmental Exposure Sampling — Sampling of the workplace environment, performed for a variety of reasons including, identification of contaminants present and their sources, determination of worker exposures and checking the effectiveness of controls.

(31) Establishment — An establishment is a single physical location doing business or offering services or with industrial operations. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is the main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities.

(a) One location/multiple establishments. Normally, one business location has only one establishment. Under limited conditions, two or more separate businesses that share a single location are separate establishments. An employer may divide one location into two or more establishments only when:

(A) each of the establishments represents a distinctly separate business;

(B) each business is engaged in a different economic activity;

(C) no one industry description in the Standard Industrial Classification Manual (1987) applies to the joint activities of the establishments; and

(D) separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, each business can be a separate establishment.

(b) Multiple locations/one establishment. Only under certain conditions. An employer may combine two or more physical locations into a single establishment only when:

(A) The employer operates the locations as a single business operation under common management;

(B) The locations are all near each other; and

(C) The employer keeps one set of business records for all the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(c) Telecommuting from home. For employees who telecommute from home, the employee's home is not a business establishment, do not keep a separate 300 Log. Link employees who telecommute to one of your establishments under 437-001-0700(15)(c).

(32) Farm operation — Any operation involved in the growing or harvesting of crops or the raising of livestock or poultry.

(33) Filed — A document shall be deemed to have been filed on the date of postmark if mailed or on the date of receipt if transmitted to OSHA, DCBS, or the WCB by other means.

(34) First aid — Any one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters or similar injuries which do not ordinarily require medical care. Such one-time treatment and subsequent observation is considered first aid even though provided by a physician or registered professional personnel.

(35) Fixed place of employment — The entire facility maintained by an employer at one general location, regardless of the size or number of departments or buildings in the facility. For the purpose of determining repeat violations fixed place of employment includes employers or owners engaged in construction activity who will be at a single worksite continuously for more than 24 months.

(36) Hazard — A condition, practice or act which could result in an injury or illness to an employee.

(37) Health Hazard — Health hazards mean carcinogens, lead, silica, toxic metals and fumes, vapors or gases, toxic or highly corrosive liquids or

chemicals, chemical sensitizers, pesticides, fungicides, solvents, biological agents and harmful physical stress agents.

(38) Imminent danger — A condition, practice or act which exists in any place of employment and could reasonably be expected to cause death or serious physical harm immediately.

(39) Injury or illness — An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. (Note: Record injuries and illnesses only if they are new, work-related cases that meet one or more of the recording criteria.)

(40) Inspection — An official examination of a place of employment by a Compliance Officer to determine if an employer is in compliance with the Act. An inspection may be classified as:

(a) Programmed.

(A) Routine inspection — An inspection of a place of employment which is made based principally on that place of employment's record of workers' compensation claims or Standard Industrial Classification and number of employees;

(i) Emphasis inspection — An inspection made in response to a national or state Emphasis Program.

(B) Periodic inspection — An inspection made because of a time-related factor, including, but not limited to, intermittent or seasonal employment activity;

(C) Area inspection — An inspection made because of a geographic factor;

(D) Random inspection — An inspection scheduled and conducted pursuant to written neutral administrative standards.

(b) Unprogrammed.

(A) Follow-up inspection — An inspection made to determine if a previously cited violation has been corrected or after a request for an extension, a stay of correction time or a variance has been denied;

(B) Complaint inspection — An inspection made in response to a complaint;

(C) Accident investigation — A systematic appraisal of an accident sequence to determine causal factors, corrective actions and preventative measures; and

(D) Referral inspection — An inspection made in response to a referral.

(41) Letter of Corrective Action — A letter stating the corrective action(s) taken by the employer to comply with the violation(s) that were not corrected at the time of the inspection.

(42) Lost workdays — The actual number of days after, but not including, the day of injury or illness during which the employee would have worked, but could not perform all or any part of his/her normal assignment during all or any part of the employee's next regular workday or shift because of the occupational injury or illness.

(43) Lost Workday Cases Incidence Rate (LWDCIR) (Also see DART) — The number of lost workday injury and illness cases experienced by 100 full-time workers (LWDCIR = Number of lost workday cases times 200,000 divided by the number of employee hours worked).

(44) Medical treatment — Treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel, nor does it include treatment ordinarily considered diagnostic or preventative in nature.

(45) North American Industry Classification System (NAICS) — A classification system developed by the Executive Office of the President/Office of Management and Budget, for use in classifying establishments by the type of activity in which they are engaged. Each establishment is assigned an industry code for its major activity. The 2002 edition of the NAICS manual is used for coding.

(46) Owner — Every person having ownership, control or custody of any place of employment or of the construction, repair or maintenance of any place of employment.

(47) Person — One or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons, and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations or subdivisions.

(48) Personal exposure samples — Measurement of contaminants or physical agents to characterize the environment in the breathing or hearing zone of individual workers in order to evaluate their specific work exposures. Personal samplers are placed on the worker to obtain either one

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continuous sample covering a portion of the workday or consecutive samples covering a stated time period.

(49) Physician or Other Licensed Health Care Professional — A physician or other licensed health care professional is an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows them to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

(50) Place of employment — Includes every place, whether fixed or movable, whether indoors or out or underground, and the premises and structures appurtenant thereto, where either temporarily or permanently an employee works or is intended to work and every place where there is carried on any process, operation or activity related, either directly or indirectly, to an employer's industry, trade, business or occupation, including a labor camp provided by an employer for his/her employees or by another person engaged in providing living quarters or shelters for employees, but place of employment does not include any place where the only employment involves nonsubject workers employed in or about a private home. Any corporate farm where the only employment involves the farm's family members, including parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, sons-in-law, nieces, nephews or grandchildren.

(51) Record — Any recorded information regardless of its physical form or character.

(52) Recordable occupational injuries or illnesses — Any occupational injuries or illnesses which result in:

(a) Fatalities, regardless of the time between the injury and death, or the length of the illness;

(b) Lost workday cases, other than fatalities, that prevent the employee from performing his/her normal assignment during any part of the employee's next regular, or any subsequent workday or shift; or

(c) Nonfatal cases, without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(53) Referral — A notification made to the responsible agency of safety or health violations observed by a Division employee, other federal, state or local government representatives, or the media.

(54) Rule — Any agency directive, standard, regulation, or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedures or practice requirements of the agency and is adopted according to the Administrative Procedure Act. The term includes the amendment or repeal of a prior rule, but does not include, unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public.

(55) Scheduling List — An electronic or paper list of places of employment or employers scheduled for inspection. Lists can be in electronic form, paper form or both.

(56) Serious physical harm:

(a) Injuries that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body. Examples of such injuries are amputations, fractures (both simple and compound) of bones, cuts involving significant bleeding or extensive suturing, disabling burns, concussions, internal injuries, and other cases of comparable severity.

(b) Illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body, even though the effects may be cured by halting exposure to the cause or by medical treatment. Examples of such illnesses are cancer, pneumoconiosis, narcosis, or occupational infections (caused by biological agents), and other cases of comparable severity.

(57) Standard Industrial Classification (SIC) — A classification system developed by the Office of Statistical Standards, Executive Office of the President/Office of Management and Budget, for use in classifying establishments by the type of activity in which they are engaged. Each establishment is assigned an industry code for its major activity, which is determined by the value of receipts or revenue for services rendered or products produced, or in some cases by the employment or payroll. The 1987 edition of the SIC manual is used for coding.

(58) Standard Threshold Shift (STS) — A change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more in either ear.

(59) Substantial failure to comply — When an employer engaged in the production of crops intended for human consumption fails to provide

acceptable and accessible toilet facilities, handwashing facilities or drinking water, and that failure exposes affected workers to a serious hazard likely to result in an injury or illness.

(60) Suspended penalty — A penalty which is determined but not assessed.

(61) Variance — The written authority given by the Division to an employer permitting the use of a specific alternative means or method to comply with the intent of a rule. Specific types of variances are:

(a) Permanent — A variance that remains in effect until modified or revoked in accordance with OAR 437-001-0430;

(b) Temporary — A variance granted for a stated period of time to permit the employer to achieve compliance with a new rule;

(c) Research — A variance granted for a stated period of time to allow industrial or governmental research designed to demonstrate or validate new and improved safety or health techniques or products; and

(d) Interim order — The temporary authority for an employer to use an alternative means or method by which the employer effectively safeguards the safety and health of employees until final action can be taken on the variance request.

(62) Violation — The breach of a person's duty to comply with an Oregon occupational safety or health statute, regulation, rule, standard or order.

(a) Specific classifications of violations are:

(A) Serious violation — A violation in which there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use in a place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation;

(B) Other than serious violation — A violation which is other than a serious or minimal violation; and

(C) Minimal violation — A violation which does not have a direct or immediate relationship to the safety or health of employees.

(b) Specific types of the above classifications are:

(A) Willful violation — A violation that is committed knowingly by an employer or supervisory employee who, having a free will or choice, intentionally or knowingly disobeys or recklessly disregards the requirements of a statute, regulation, rule, standard or order.

(B) Unabated violation — A violation that has not been fully corrected by the date ordered.

(C) Repeat violation:

(i) An employer's second or subsequent violation of the requirements of the same statute, regulation, rule, standard or order.

(ii) Subsequent violations shall not be considered to be a repeat when more than 36 months have elapsed and the violation has not reoccurred.

(iii) In these rules, Repeat, Repeated and Repeatedly are used as synonyms.

(D) First-instance violation — An employer's first violation of a particular statute, regulation, rule, standard or order.

(E) Egregious — Those conditions which normally constitute a flagrant violation of the OSEAct or OR-OSHA standards or regulations such that each instance of the violation is cited separately.

(c) Combined violation — Multiple violations of the same statute, regulation, rule, standard or order within an establishment which have been combined as one violation to indicate an overall lack of compliance with a safety or health statute, regulation, rule, standard or order.

(d) Grouped violation — Multiple violations of different statutes, regulations, rules, standards or orders, within an establishment which have been combined as one violation:

(A) To indicate an increase in the severity or probability of the violation; or

(B) Recordkeeping and posting requirements involving the same document; or

(C) The violations are so closely related as to constitute a single hazardous condition.

Stat. Auth.: ORS 654.025(2), 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD, 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; WCD 9-1983, f. & ef. 11-15-83; WCD 2-1984, f. 3-2-84, ef. 3-15-84; WCD 12-1984, f. 9-20-84, ef. 11-1-84; WCD 9-1986, f. 10-7-86, ef. 12-1-86; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 10-1990(Temp), f. & cert. ef. 5-31-90; OSHA 24-1990, F. & cert. ef. 10-10-90; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 2-1996, f. & cert. ef. 6-13-96; OSHA 5-1998, f. & cert. ef. 10-15-98; OSHA 7-1999, f. & cert. ef. 7-15-99; OSHA 11-1999(Temp), f. & cert. ef. 10-20-99 thru 4-14-00; OSHA 4-2000, f. 4-14-00, cert. ef. 4-15-00; OSHA 11-2001, f. 9-14-01, cert. ef. 1-1-02; OSHA 7-2002, f. & cert. ef. 11-15-02; OSHA 6-2003, f. & cert. ef. 11-26-03; OSHA 7-2006, f. & cert. ef. 9-6-06; OSHA 5-

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2007(Temp), f. & cert. ef. 9-5-07 thru 2-29-08; OSHA 1-2008, f. 2-22-08, cert. ef. 3-1-08; OSHA 2-2009, f. 1-27-09, cert. ef. 2-3-09

437-001-0160

Penalty Criteria — Repeat Violation

Oregon OSHA will assess penalties for repeat violations as follows:

(1) A violation of any statute, regulation, rule, standard or order will be cited as repeated when, upon reinspection, another violation of the previously cited statute, regulation, rule, standard or order is found.

(2) Where a previously cited violation is under appeal and not yet final:

(a) The second violation will be cited as a repeat violation; and

(b) Such citation will state that the earlier violation is under appeal and the repeat classification of the current violation will be rescinded if the earlier violation does not become final.

(3) At fixed places of employment, "high serious" and "death" rated violations will be issued as repeat violations at all of an employer's places of employment in the state. Repeat violations for all other violation types will be limited to the cited place of employment.

(4) For employers at nonfixed places of employment, repeat violations will be based on earlier violations occurring anywhere within the state.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74; APD 7-1989(Temp), f. & ef. 5-1-89; APD 10-1989, f. & cert. ef. 7-7-89; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 2-2009, f. 1-27-09, cert. ef. 2-3-09

437-001-0205

Citation and Notice of Penalty

(1) If the Division concludes from the review of an inspection report that a rule or order was violated, a citation will be issued to the employer which shall:

(a) State the name of the employer, place of employment, and date of inspection. If the violation occurred on other than the inspection date, the date of the violation will be included;

(b) Describe factually the nature and location of the violation;

(c) State the type of violation, if other than general;

(d) Identify the rule or order violated;

(e) Fix a time for the correction of each violation not corrected at the time of inspection;

(f) State the penalty for each violation;

(g) Identify which, if any, penalties are suspended;

(h) State the total dollar amount of assessed penalties;

(i) Inform the employer of the right to appeal the citation, the civil penalty or the period of time fixed for correction of the violation to the Board;

(j) Inform affected employees of their right to appeal the time fixed for correction of the violation; and

(k) Notify the employer that the citation becomes a final order if an appeal is not filed within 30 days of receipt of the citation by the employer.

(2) Citations and notices of penalties will be served on employers by certified mail, in person, or any method acceptable to the employer.

(3) Each employee representative shall be sent a copy of all citations and notices of penalties issued.

Stat. Auth.: ORS 654.025(2), 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 10-2007, f. 12-3-07, cert. ef. 1-1-08; OSHA 2-2009, f. 1-27-09, cert. ef. 2-3-09

437-001-0760

Rules for All Workplaces

(1) Employers' Responsibilities.

(a) The employer must see that workers are properly instructed and supervised in the safe operation of any machinery, tools, equipment, process, or practice that they are authorized to use or apply. This rule does not require a supervisor on every part of an operation nor prohibit workers from working alone.

(b) The employer shall take all reasonable means to require employees:

(A) To work and act in a safe and healthful manner;

(B) To conduct their work in compliance with all applicable safety and health rules;

(C) To use all means and methods, including but not limited to, ladders, scaffolds, guardrails, machine guards, safety belts and lifelines, that

are necessary to safely accomplish all work where employees are exposed to a hazard; and

(D) Not to remove, displace, damage, destroy or carry off any safety device, guard, notice or warning provided for use in any employment or place of employment while such use is required by applicable safety and health rules.

(c) Every employer shall be responsible for providing the health hazard control measures necessary to protect the employees' health from harmful or hazardous conditions and for maintaining such control measures in good working order and in use.

(d) Every employer shall inform the employees regarding the known health hazards to which they are exposed, the measures which have been taken for the prevention and control of such hazards, and the proper methods for utilizing such control measures.

(e) Any supervisors or persons in charge of work are the agents of the employer in the discharge of their authorized duties, and are responsible for:

(A) The safe performance of the work under their supervision; and

(B) The safe conduct of the crew under their supervision; and

(C) The safety of all workers under their supervision.

(2) Employees' Responsibilities.

(a) Employees shall conduct their work in compliance with the safety rules contained in this code.

(b) All injuries shall be reported immediately to the person in charge or other responsible representative of the employer.

(c) It is the duty of all workers to make full use of safeguards provided for their protection. It shall be a worker's responsibility to abide by and perform the following requirements:

(A) A worker shall not operate a machine unless guard or method of guarding is in good condition, working order, in place, and operative.

(B) A worker shall stop the machine or moving parts and properly tagout or lockout the starting control before oiling, adjusting, or repairing, except when such machine is provided with means of oiling or adjusting that will prevent possibility of hazardous contact with moving parts.

(C) A worker shall not remove guards or render methods of guarding inoperative except for the purpose of adjustment, oiling, repair, or the setting up a new job.

(D) Workers shall report to their supervisor any guard or method of guarding that is not properly adjusted or not accomplishing its intended function.

(E) Workers shall not use their hands or any portion of their bodies to reach between moving parts or to remove jams, hangups, etc. (Use hook, stick, tong, jig or other accessory.)

(F) Workers shall not work under objects being supported that could accidentally fall (such as loads supported by jacks, the raised body of a dump truck, etc.) until such objects are properly blocked or shored.

(G) Workers shall not use defective tools or equipment. No tool or piece of equipment should be used for any purpose for which it is not suited, and none should be abused by straining beyond its safe working load.

(d) Workers shall not remove, deface, or destroy any warning, danger sign, or barricade, or interfere with any other form of accident prevention device or practice provided which they are using, or which is being used by any other worker.

(e) Workers must not work underneath or over others exposed to a hazard thereby without first notifying them and seeing that proper safeguards or precautions have been taken.

(f) Workers shall not work in unprotected, exposed, hazardous areas under floor openings.

(g) Long or unwieldy articles shall not be carried or moved unless adequate means of guarding or guiding are provided to prevent injury.

(h) Hazardous conditions or practices observed at any time shall be reported as soon as practicable to the person in charge or some other responsible representative of the employer.

(i) Workers observed working in a manner which might cause immediate injury to either themselves or other workers shall be warned of the danger.

(j) Before leaving a job, workers shall correct, or arrange to give warning of, any condition which might result in injury to others unfamiliar with existing conditions.

(3) Investigations of Injuries.

(a) Each employer shall investigate or cause to be investigated every lost time injury that workers suffer in connection with their employment, to determine the means that should be taken to prevent recurrence. The employer shall promptly install any safeguard or take any corrective measure indicated or found advisable.

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(b) At the request of authorized Department representatives, it shall be the duty of employers, their superintendents, supervisors and employees to furnish all pertinent evidence and names of known witnesses to an accident and to give general assistance in producing complete information which might be used in preventing a recurrence of such accident. At the request of the Department, persons having direct authority shall preserve and mark for identification, materials, tools or equipment necessary to the proper investigation of an accident.

(4) Intoxicating Liquor and Drugs. The use of intoxicating liquor on the job is strictly prohibited. Anyone whose ability to work safely is impaired by alcohol, drugs, or medication shall not be allowed on the job while in that condition.

(5) Horseplay. There must be no horseplay, scuffling, practical jokes, or any other activity of a similar nature.

(6) Extraordinary Hazards. When conditions arise that cause unusual or extraordinary hazards to workers, additional means and precautions shall be taken to protect workers or to control hazardous exposure. If the operation cannot be made reasonably safe, regular work shall be discontinued while such abnormal conditions exist, or until adequate safety of workers is ensured.

(7) Inspections.

(a) All places of employment shall be inspected by a qualified person or persons as often as the type of operation or the character of the equipment requires. Defective equipment or unsafe conditions found by these inspections shall be replaced or repaired or remedied promptly.

(b) Wherever required in this safety code, a written and dated report, signed by the person or persons making the inspection, shall be kept.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 1-1967, f. 1-12-67, ef. 1-15-67; WCB 3-1997, f. 10-6-75, cert. ef. 11-1-75; WCD 11-1976, f. & ef. 5-5-76; WCB 15-1976, f. 7-6-76, cert. ef. 8-1-76; WCD 10-1982, f. & ef. 7-30-82; OSHA 6-1994, f. & cert. ef. 9-30-94, Renumbered from 437-040-0020, 437-040-0025, 437-040-0030, 437-040-0035, 437-040-0040, 437-040-0050, 437-040-0055 & 437-137-0010(1) & (2); OSHA 2-2009, f. 1-27-09, cert. ef. 2-3-09

437-001-1015

Definitions

(1) Establishment: A single physical location where business is conducted or where services or industrial operations are performed. Where distinctly separate activities are performed at a single physical location, each activity shall be treated as a separate establishment.

(2) Insured employer: An employer insured with a workers' compensation carrier.

(3) Insurer: The State Accident Insurance Fund (SAIF) Corporation or any insurance company authorized or regulated under ORS Chapter 731 to issue workers' compensation insurance policies in Oregon.

(4) Loss prevention effort: An ongoing effort by the self-insured employer to integrate health and safety into the workplace in such a manner that occupational injuries and illnesses are reduced.

(5) Loss prevention plan: A plan developed by the employer with the assistance of the insurer with the primary emphasis on reduction of workplace injuries and illnesses.

(6) Loss prevention services: Services designed to advise and assist employers in the identification, evaluation, and control of existing and potential causes of accidents and occupational health and safety problems.

(7) Loss prevention services program: A program intended to promote occupational health and safety, and to help eliminate and control work hazards to employees.

(8) Self-insured employer: An employer certified under ORS 656.430 as meeting the qualifications of a self-insured employer set out by ORS 656.407.

(9) Substantial failure to comply: The failure by an insurer or self-insured employer to respond or make available timely on-site services; failure to respond or make available in a timely manner specialized consultative services or:

(a) If an insurer fails to identify and advise of in a timely manner reasonably discoverable serious or life-threatening hazards within the scope of the services requested or provided or:

(b) If a self-insured employer fails to identify and control in a timely manner reasonably discoverable serious or life-threatening hazards within the scope of the services requested or provided.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88; Administrative Correction 8-5-97; OSHA 7-1999, f. & cert. ef. 7-15-99; OSHA 2-2009, f. 1-27-09, cert. ef. 2-3-09

437-001-1020

General Requirements

(1) The insurer or self-insured employer shall, within 60 days after the effective date of these rules, submit to the Administrator the following information:

(a) The name of the insurer or self-insured employer;

(b) The insurer's or self-insured employer's Oregon business address where records are kept; and

(c) The name or title, business address, and telephone number of the representative who will act as liaison with the Division in all matters pertaining to loss prevention services.

(2) After the first 60 days these rules are in effect, each new insurer must comply with OAR 437-001-1020(1) at the time of application for the authority to issue insurance policies in Oregon.

(3) After the first 60 days these rules are in effect, each self-insured employer shall submit the information required in OAR 437-001-1020(1) at the time the employer submits its application to the Compliance Section of the Workers' Compensation Division for self-insurance.

(4) Each insurer or self-insured employer shall notify the Division, in writing, of any change in the information in OAR 437-001-1020(1)(a) through (c) within 30 days of that change.

(5) When requested by the Division, each insurer and self-insured employer shall make available with reasonable promptness copies of loss prevention, loss control and related records.

(6) The duty of compliance with OAR 437-001-1005 through 437-001-1065 is that of the insurer or self-insured employer regardless whether the insurer or self-insured employer contracts for assistance for the required services.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 21-1988, f. & cert. ef. 12-27-88; OSHA 8-1991, f. 4-25-91, cert. ef. 5-1-91; Administrative Correction 8-5-97; OSHA 7-1999, f. & cert. ef. 7-15-99; OSHA 2-2009, f. 1-27-09, cert. ef. 2-3-09

Department of Corrections Chapter 291

Rule Caption: Substance of Abuse Urinalysis Testing of Inmates in DOC Facilities.

Adm. Order No.: DOC 1-2009

Filed with Sec. of State: 1-22-2009

Certified to be Effective: 1-22-09

Notice Publication Date: 8-1-2008

Rules Amended: 291-042-0005, 291-042-0010, 291-042-0011, 291-042-0015, 291-042-0025, 291-042-0035

Rules Repealed: 291-042-0045

Subject: Amendment and repeal of these rules is necessary to update the criteria and methodology by which urine samples of inmates incarcerated in Department facilities are collected and tested for substances of abuse. The new methodology will increase the number of substances tested. Other changes are necessary to update terminology and reflect operation changes within the Department.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-042-0005

Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to establish methods and criteria by which substance of abuse urinalysis testing will be governed within the Department of Corrections Facilities.

(3) Policy: It is the policy of the Department of Corrections to:

(a) Eliminate the presence and use of illegal drugs and substances of abuse in its facilities (zero tolerance) and to monitor compliance with laws through the use of substance of abuse urinalysis testing that is accurate and reliable; and

(b) Establish criteria for substance of abuse urinalysis testing of inmates incarcerated in Department of Corrections facilities.

(A) The Department has a responsibility to protect the public, to provide a safe environment for staff and inmates, and to enforce the rules governing inmate prohibited conduct. Substance abuse presents a threat to the safety of all staff and inmates. Substance of abuse testing of inmates through selection and for cause testing criteria, combined with appropriate graduated sanctions, is an effective means of suppressing substance abuse,

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substance trafficking and related violations which are prohibited within Department of Corrections facilities in accordance with the rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(B) These measures are implemented to reduce institution violence, and to the extent feasible, ensure that inmates released from prison are substance abuse free. The testing process further identifies inmates who have continued to have a substance abuse problem while incarcerated, and who could be monitored more closely while on supervision. Substance of abuse testing also provides a mechanism to identify those inmates with substance abuse problems for more frequent testing.

(C) The Department shall use the same gender staff to administer the collection of urine samples.

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

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

Hist.: CD 1-1986(Temp), f. & ef. 1-16-86; CD 5-1986, f. & ef. 3-14-86; CD 18-1990, f. & cert. ef. 9-21-90; CD 31-1993, f. 12-16-93, cert. ef. 1-3-94; CD 9-1997(Temp), f. & cert. ef. 6-13-97; CD 28-1997, f. & cert. ef. 12-5-97; DOC 24-2000, f. & cert. ef. 11-21-00; DOC 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08; Administrative correction 1-23-09; DOC 1-2009, f. & cert. ef. 1-22-09

291-042-0010

Definitions

(1) Adulterated or Invalid: A urine sample that has an unauthorized substance added to it that may not be of a sufficient amount to render a "positive" result.

(2) Chain of Custody: The handling of urine specimens in a way which supports legal testimony to prove that the sample integrity and identification of the sample have not been violated, as well as the documentation describing these procedures from specimen collection to final report.

(3) Clinical Laboratory: A facility licensed by Oregon Health Division or the State licensing board of the State in which the laboratory is operating that is certified by the Substance Abuse Mental Health Services Administration (SAMHSA) to perform confirmatory testing for substances of abuse on urine or other body fluid.

(4) Dilute: A urine sample that has been contaminated, or altered in some manner, that has been tested for Creatinine and Specific Gravity and found to be dilute by the laboratory.

(5) Medical Status Report: A report which lists names of inmates who, due to a documented medical condition, may need additional time or medical assistance besides the initial two-hour time period to provide a urine sample.

(6) Substance of Abuse (SOA) Coordinator: An individual appointed by the functional unit manager who is responsible for all aspects of substance of abuse testing in the facility, including quality control, collecting urine specimens, and completion of required forms and reports.

(7) Substituted: A urine sample found, by the clinical laboratory, to not be consistent with normal human urine.

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

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

Hist.: CD 1-1986(Temp), f. & ef. 1-16-86; CD 5-1986, f. & ef. 3-14-86; CD 18-1990, f. & cert. ef. 9-21-90; CD 31-1993, f. 12-16-93, cert. ef. 1-3-94; CD 9-1997(Temp), f. & cert. ef. 6-13-97; CD 28-1997, f. & cert. ef. 12-5-97; DOC 24-2000, f. & cert. ef. 11-21-00; DOC 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08; Administrative correction 1-23-09; DOC 1-2009, f. & cert. ef. 1-22-09

291-042-0011

Training Requirements

The functional unit manager of sites which are collecting urine samples for the purpose of urinalysis substance of abuse testing will appoint an SOA coordinator. The SOA coordinator will insure that only those persons who have successfully completed training will collect urine samples for the purpose of urinalysis testing.

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

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

Hist.: CD 16-1994, f. 8-17-94, cert. ef. 9-1-94; CD 9-1997(Temp), f. & cert. ef. 6-13-97; CD 28-1997, f. & cert. ef. 12-5-97; DOC 24-2000, f. & cert. ef. 11-21-00; DOC 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08; Administrative correction 1-23-09; DOC 1-2009, f. & cert. ef. 1-22-09

291-042-0015

Urinalysis Testing

(1) Inmates shall furnish Department of Corrections staff with a urine sample when ordered to do so.

(a) If, after receiving an order to provide a urine sample, an inmate indicates that he or she is presently unable to provide a urine sample, the inmate will be permitted an initial two hours to provide the sample. During this time, staff will place the inmate in an area where he/she can be observed. The inmate may be offered an eight ounce container of water

after the first half hour and at 30-minute intervals during this initial two hour period (24 ounces total).

(b) If an inmate has not provided the required sample within this time period and is not listed on the medical status report that he/she should be allowed additional time, staff will proceed in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(2) After the initial two-hour period, inmates listed on the medical status report will be allowed additional time if needed to provide a urine sample. The following will occur:

(a) The inmate will be strip searched, ordered to wash his/her hands, provided alternative clothing and placed in a secure water controlled area that is observable by staff.

(b) The inmate will be ordered to urinate only in the sample bottle and to notify staff before urinating, so the collection can be observed.

(c) At the beginning of the second hour in the water controlled area, the inmate will be offered eight ounces of water and an additional eight ounces of water every hour until the inmate has been given five eight ounce containers (40 ounces total) of water.

(d) The inmate may be held in the water controlled area until the inmate either verbally refuses to supply or supplies the urine sample. Health Services will be notified when an inmate has been held in a water controlled area for 24 hours and has not yet urinated.

(3) If at anytime during either of these processes the inmate refuses to supply a urine sample, staff shall proceed in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(4) Same gender staff should seek to obtain the sample from the inmate in a place and manner that will avoid undue embarrassment to the inmate. Staff shall utilize proper blood and body fluid precautions when taking or processing urine samples.

(5) Before an inmate provides a urine sample, he/she will be ordered to wash his/her hands thoroughly with soap, rinse thoroughly and dry his/her hands with a towel. When providing the sample, the inmate shall lower his/her pants, skirt or other garments to his/her ankles to afford staff an unobstructed view.

(6) If the inmate alters, contaminates or discards a urine sample, staff will proceed in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). The inmate will not be afforded the opportunity to provide another sample at this time.

(7) After a sufficient sample for urinalysis testing has been obtained (minimum of 45 ML), staff, or the inmate under direct observation, shall pour the sample into two vials filling one vial to the 15 ML line and the other to the 30 ML line, secure lids on both vials, rinse the exterior of the vials if necessary, and hand the sample collection vials to staff.

(a) Any remaining urine in the collection cup shall be disposed of into the urinal or toilet and the collection cup shall be disposed of according to established institution bio-hazard protocols.

(b) Staff may ask the inmate to identify any medication he/she is currently taking. If necessary, a separate sheet of paper may be used to list additional medications. This list may be maintained by the SOA coordinator for further use.

(8) Upon taking custody of the vials with the inmate's urine sample, staff shall follow the prescribed procedure for labeling the sample and send the sample to an approved clinical laboratory for testing.

(9) The SOA coordinator shall ensure that the UA Chain of Custody form is properly completed for each inmate tested, or identified to be tested, and reflects the following information:

(a) The name and SID number of the inmate from whom the urine sample was obtained;

(b) The date and time the sample was obtained;

(c) The name and signature of the staff member that collected the sample;

(d) The specific approved panel test requested; and

(e) The signature of the inmate providing the sample along with the date. If the inmate refuses to sign the Chain of Custody form, staff will write "REFUSED" in the signature block, initial it, and record the date.

(10) It is the responsibility of the laboratory that performs the confirmation testing to maintain a proper chain of custody of the sample.

(11) An inmate whose urine sample tests "positive" for a controlled substance shall be issued a misconduct report in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(12) Any urine sample test which returns as a "dilute - positive," "adulterated," "invalid" or "substitute" will be treated as a "positive" for a

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substance of abuse. The inmate providing that sample will be issued a misconduct report in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

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

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

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

Hist.: CD 1-1986(Temp), f. & ef. 1-16-86; CD 5-1986, f. & ef. 3-14-86; CD 18-1990, f. & cert. ef. 9-21-90; CD 31-1993, f. 12-16-93, cert. ef. 1-3-94; CD 9-1997(Temp), f. & cert. ef. 6-13-97; CD 28-1997, f. & cert. ef. 12-5-97; DOC 24-2000, f. & cert. ef. 11-21-00; DOC 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08; Administrative correction 1-23-09; DOC 1-2009, f. & cert. ef. 1-22-09

291-042-0025

Baseline Test Selection Protocol

(1) A percentage of the inmate population will be selected by the Department's Research Unit each month for urinalysis testing. Selection will be completed by a designated computer program. The Research Unit will forward these lists to the functional unit designees that are authorized to receive and secure these lists until testing.

(2) A copy of these lists will be sent to the Investigations Unit.

(3) The list shall remain "confidential" and be marked as such at all times. Only those staff members designated to receive the list and those designated to perform the collection will view the list. Inmates are strictly prohibited from observing the list at any time. Inmates are strictly prohibited from entering any area where the list is located.

(4) Staff will draw samples from each inmate on the list within 72 hours and forward those samples to the approved laboratory. If a listed inmate or an entire list of inmates is not tested for any reason (transferred, out-to-court, staff shortage, etc.), a chain of custody form will be completed for each inmate not tested and forwarded to the laboratory with the other samples.

(5) Results of baseline testing will be maintained at an approved DOC location or storage medium.

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

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

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

Hist.: CD 31-1993, f. 12-16-93, cert. ef. 1-3-94; CD 9-1997(Temp), f. & cert. ef. 6-13-97; CD 28-1997, f. & cert. ef. 12-5-97; DOC 24-2000, f. & cert. ef. 11-21-00; DOC 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08; Administrative correction 1-23-09; DOC 1-2009, f. & cert. ef. 1-22-09

291-042-0035

Testing Profile Requirements

(1) A urine specimen may be obtained by trained Department staff from any inmate, regardless of the inmate's programming when:

(a) The inmate has a history of drug use;

(b) The inmate is going out on or returning from an authorized, unescorted leave;

(c) There is suspicion that the inmate is participating in drug use;

(d) The inmate is selected to provide a urine specimen; or

(e) The inmate is assigned to a work crew outside the facility.

(2) Mandatory Testing: When there is suspicion that an inmate is participating in drug use, a specimen shall be obtained.

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

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

Hist.: CD 31-1993, f. 12-16-93, cert. ef. 1-3-94; CD 9-1997(Temp), f. & cert. ef. 6-13-97; CD 28-1997, f. & cert. ef. 12-5-97; DOC 24-2000, f. & cert. ef. 11-21-00; DOC 15-2008(Temp), f. & cert. ef. 7-1-08 thru 12-28-08; Administrative correction 1-23-09; DOC 1-2009, f. & cert. ef. 1-22-09

Department of Fish and Wildlife Chapter 635

Rule Caption: 2009 Commercial Winter Salmon and Sturgeon Fisheries for the Columbia River.

Adm. Order No.: DFW 6-2009(Temp)

Filed with Sec. of State: 1-30-2009

Certified to be Effective: 2-2-09 thru 8-1-09

Notice Publication Date:

Rules Amended: 635-041-0065, 635-042-0135

Rules Suspended: 635-042-0135(T)

Subject: Amended rules implement the 2009 winter commercial Treaty Indian fisheries in the mainstem Columbia River in all of Zone 6; and modify the non-Indian commercial sturgeon fishery in the mainstem Columbia River below Bonneville Dam. Modification are consistent with action taken January 29, 2009 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0065

Winter Salmon Season

(1) Steelhead, shad, white sturgeon, walleye, catfish, bass, yellow perch and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, from 6:00 a.m. Monday February 2, 2009 to 6:00 p.m. Saturday, March 21, 2009 in all of Zone 6.

(a) Bonneville Pool: Open 6:00 a.m. on Monday through 6:00 p.m. on Friday of each week or until the sturgeon guideline is met.

(b) John Day and The Dalles pools: Open seven days per week or until the sturgeon guideline is met.

(c) White sturgeon, steelhead, walleye, shad, carp, catfish, bass and yellow perch landed during an open commercial fishing period may be sold at any time. Chinook salmon may not be sold but may be retained for ceremonial and subsistence use.

(d) Live release of all oversize and undersize sturgeon is required.

(2) There are no mesh size restrictions.

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) White sturgeon 43–54 inches in fork length in The Dalles and John Day pools and white sturgeon 38–54 inches in fork length in the Bonneville Pool may be sold or kept for subsistence use.

(5) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

(6) 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, including the Yakama Nation subsistence fishery on the Washington shore downstream of Bonneville Dam, are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods, subject to restrictions as specified in sections (1) through (5) above, except that:

(a) Steelhead, walleye, carp, shad, catfish, bass and yellow perch caught from the Washington shore downstream of Bonneville Dam to Beacon Rock may be sold or retained for subsistence;

(b) White sturgeon caught below Bonneville Dam must be released;

(c) Dates of allowable sales are from 6:00 a.m. Monday, February 2 through 6:00 p.m. Saturday, March 21, 2009. Sales may not occur on USACE property.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979. Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, cert. ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; 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 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 thru 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 3-12-06 thru 3-31-06; Administrative correction 4-19-06; 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 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09

635-042-0135

Sturgeon Season

(1) White sturgeon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial salmon fishing seasons with the same fishing gear authorized for the taking of salmon.

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(2) Retention of green sturgeon in all mainstem Columbia River and Select Area commercial fisheries is prohibited.

(3) White sturgeon and adipose fin-clipped salmon may be taken for commercial purposes from the Columbia River below Bonneville Dam during commercial sturgeon/salmon fishing seasons using gill nets with a minimum mesh size of nine inches and a maximum mesh size of 9 3/4 inches. Only white sturgeon and adipose fin-clipped salmon may be sold from this fishery. The open fishing periods are:

(a) 6:00 p.m. Tuesday, January 6 to 6:00 p.m. Wednesday, January 7;

(b) 6:00 p.m. Tuesday, January 13 to 6:00 p.m. Wednesday, January 14;

(c) 6:00 p.m. Tuesday, January 20 to 6:00 p.m. Wednesday, January 21;

(d) 6:00 p.m. Tuesday, January 27 to 6:00 p.m. Wednesday, January 28;

(e) 6:00 p.m. Tuesday, February 3 to 6:00 p.m. Wednesday, February 4 and 6:00 p.m. Thursday, February 5 to noon Friday, February 6; and

(f) 6:00 p.m. Tuesday, February 10 to 6:00 p.m. Wednesday, February 11 and 6:00 p.m. Thursday, February 12 to noon Friday, February 13.

(4) White sturgeon and salmon must be delivered to wholesale fish dealers, canners, or fish buyers undressed (in the round).

(5) It is *unlawful* to:

(a) Take sturgeon and salmon by angling from any vessel that is engaged in commercial fishing (including the period of time the gear is fished) or has been engaged in commercial fishing on that same day or has commercially caught sturgeon or salmon aboard;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) Keep any fish taken under a commercial license for personal use;

(d) Remove the head or tail of any white sturgeon taken for commercial purposes prior to being received at the premises of a wholesale fish dealer or canner;

(e) Sell or attempt to sell unprocessed or processed sturgeon eggs that have been taken from the Columbia River below Bonneville Dam;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale;

(g) Have in possession any white sturgeon smaller than 43 inches or larger than 54 inches in fork length;

(h) Gaff or penetrate sturgeon in any way while landing or releasing it.

(i) Possess or sell more than 12 white sturgeon by each participating vessel during any calendar week (Sunday through Saturday) of the open fishing periods after Monday, February 2, 2009.

(6) The Sandy River closed sanctuary, described in OAR 625-042-0005, is in effect during the fishing periods described in subsection (3) of this rule.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; Renumbered from 635-035-0320; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 20-1982(Temp), f. & ef. 3-25-82; FWC 3-1983, f. & ef. 1-21-83; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 16-1994(Temp), f. & cert. ef. 3-3-94; FWC 3-1997, f. & cert. ef. 1-27-97; FWC 8-1997(Temp), f. & cert. ef. 2-14-97; FWC 42-1997, f. & cert. ef. 8-4-97; DFW 2-1998(Temp), f. 1-9-98, cert. ef. 1-12-98 thru 1-23-98; DFW 58-1998(Temp), f. & cert. ef. 8-4-98 thru 8-21-98; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 84-1998(Temp), f. & cert. ef. 10-22-98 thru 10-23-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 87-1998(Temp), f. & cert. ef. 11-5-98 thru 11-6-98; DFW 101-1998, f. & cert. ef. 12-24-98; DFW 7-1999(Temp), f. 2-12-99 & cert. ef. 2-15-99 thru 2-19-99; DFW 11-1999(Temp), f. 2-24-99, cert. ef. 2-25-99 thru 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; Administrative correction 11-17-99; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 8-2003(Temp), f. 1-27-03, cert. ef. 1-28-03 thru 4-1-03; DFW 10-2003(Temp), f. & cert. ef. 2-3-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 7-2004(Temp), f. & cert. ef. 2-2-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 7-2005(Temp), f. & cert. ef. 2-22-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 8-2007(Temp), f. 2-12-07, cert. ef. 2-13-07 thru 8-11-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 10-2008, f. & cert. ef. 2-11-08; DFW 14-2008(Temp), f. & cert. ef. 2-21-08 thru 8-18-08; Administrative correction 9-29-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09

Rule Caption: Daily Bag Limit for Sport caught Marine Groundfish Increased.

Adm. Order No.: DFW 7-2009(Temp)

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

Certified to be Effective: 2-2-09 thru 7-31-09

Notice Publication Date:

Rules Amended: 635-039-0090

Subject: Amended rule increases the daily bag limit for sport caught marine groundfish from 5 to 6 fish as adopted by the Oregon Fish and Wildlife Commission at its September 2008 meeting. This modification corrects the rule's language to be consistent with the already published 2009 Oregon Sport Fishing Regulations, page 100, under the "Daily Catch Limits" column for "Rockfish ("sea bass," "snapper"), Greenling ("sea trout"), Cabezon, Skates and other marine species not listed on pages 100-101."

Rules Coordinator: Therese Kucera—(503) 947-6033

635-039-0090

Inclusions and Modifications

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish and canary rockfish that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2009 are specified in the Pacific Council Decisions or News documents dated June and November, 2008.

(b) Harvest targets for yelloweye rockfish and canary rockfish effective at the start of the Oregon sport fishery in 2009 are:

(A) Yelloweye rockfish, 3.3 metric tons.

(B) Canary rockfish, 6.6 metric tons.

(c) Harvest targets for yelloweye rockfish and canary rockfish may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) Regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) Inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3)(a) For the purposes of this rule, a "sport harvest cap" is defined as the amount that may be impacted (combined landings and other fishery related mortality) by the Oregon sport fishery in a single calendar year.

(b) For 2009, the sport harvest cap for black rockfish is 318 metric tons.

(4) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (*Sebastes chrysomelas*); brown (*S. auriculatus*); calico (*S. dalli*); China (*S. nebulosus*); copper (*S. caurinus*); gopher (*S. carnatus*); grass (*S. rastelliger*); kelp (*S. atrovirens*); olive (*S. serranoides*); quillback (*S. maliger*); and treefish (*S. serripes*).

(5) For the purposes of this rule a "sport landing cap" is defined as the total landings for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2009 the sport landing caps are:

(a) Black rockfish and blue rockfish combined, 359 metric tons.

(b) Other nearshore rockfish, 11.3 metric tons.

(c) Cabezon, 15.8 metric tons.

(d) Greenling, 5.2 metric tons.

(6) In addition to the regulations for Marine Fish in the **2009 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2009:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the **2009 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 6 fish daily bag limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species *except* Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

ADMINISTRATIVE RULES

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. North of Cape Falcon, retention of Pacific cod also is allowed when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut. Persons must also consult the Pacific Fisheries Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as amended by Federal Regulations to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (6)(a), (6)(b) and (6)(c) including the following:

- (A) Minimum length for lingcod, 22 inches.
- (B) Minimum length for cabezon, 16 inches.
- (C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except that ocean waters are closed for these species during April 1 through July 6, outside of the 40 fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 384 Vol. 71, No. 189, dated September 29, 2006. A 20 fathom, 25 fathom, or 30 fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189, dated September 29, 2006 may be implemented as the management line as in-season modifications necessitate. Ocean waters are closed for species in subsections (6)(a) and (6)(b) during July 7 through December 31, outside of the 20-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 391 Vol. 71, No. 189, dated September 29, 2006. Ocean waters are closed for species in subsection (6)(c) during July 7 through December 31, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 384 Vol. 71, No. 189, dated September 29, 2006.

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 390. Within the YRCA, it is *unlawful* to fish for, take, or retain species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (6)(a), (6)(b) and (6)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (6)(a), (6)(b) and (6)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

(7) Razor clams may be taken by hand, shovel, or cylindrical gun or tube. The opening of the gun/tube must be either circular or elliptical with the circular gun/tube opening having a minimum outside diameter of 4 inches and the elliptical gun/tube opening having minimum outside diameter dimensions of 4 inches long and 3 inches wide.

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

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-

05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(T), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08; DFW 97-2008(Temp), f. 8-18-08, cert. ef. 8-21-08 thru 12-31-08; DFW 105-2008(Temp), f. 9-4-08, cert. ef. 9-7-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 7-2009(Temp), f. & cert. ef. 2-2-09 thru 7-31-09

Rule Caption: Establish 2009 Seasons and Regulations for Game Mammals.

Adm. Order No.: DFW 8-2009

Filed with Sec. of State: 2-3-2009

Certified to be Effective: 2-3-09

Notice Publication Date: 9-1-2008

Rules Amended: 635-069-0000, 635-073-0000, 635-073-0065, 635-073-0070

Subject: Establish 2009 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Therese Kucera—(503) 947-6033

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 2008 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. ef. 6-12-08; DFW 8-2009, f. & cert. ef. 2-3-09

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 2008 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.

ADMINISTRATIVE RULES

[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. ef. 6-12-08; DFW 8-2009, f. & cert. ef. 2-3-09

635-073-0065

Early Western Oregon Bowhunting Seasons

(1) General Deer Bowhunting Seasons — Western Oregon.

(a) Open Season: August 29 — September 27, 2009;

(b) Bag Limit and Hunt Area: The bag limit is one buck deer having not less than a forked antler in the Tioga, Dixon, Sixes, Powers, Evans Creek, Rogue, Chetco, and Applegate units; the bag limit is one deer in the Alsea, Indigo, McKenzie, Melrose, Saddle Mountain, Santiam, Scappoose, Siuslaw, Stott Mountain, Trask, Willamette, and Wilson units,

(2) General Elk Bowhunting Seasons — Western Oregon.

(a) Open Season: August 29 — September 27, 2009;

(b) Bag Limit and Hunt Area: The bag limit is one legal bull elk in the Sixes, Powers, Chetco and Santiam (within the exterior boundary of Mt. Hood National Forest) units; the bag limit is one legal bull or antlerless elk in the Alsea, Applegate, Dixon, Evans Creek, Indigo, McKenzie, Melrose, Rogue, Saddle Mountain, Santiam (within the exterior boundary of Mt. Hood National Forest, antlerless elk cannot be harvested), Scappoose, Siuslaw, Stott Mountain, Tioga, Trask, Willamette, and Wilson units.

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

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

Hist.: DFW 53-2004, f. & cert. ef. 6-16-04; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 8-2009, f. & cert. ef. 2-3-09

635-073-0070

Early Eastern Oregon Bowhunting Seasons

(1) General Deer Bowhunting Seasons — Eastern Oregon.

(a) Open Season: August 29 — September 27, 2009;

(b) Bag Limit and Hunt Area: The bag limit is one buck deer having a visible antler in the Grizzly, Metolius, Upper Deschutes, Paulina, Sprague, Fort Rock, Heppner, Keno, Klamath Falls, Interstate, Warner, Wagonfire, Juniper, Beatys Butte, Steens Mountain, Owyhee, Malheur River, Silvies, Maury, Ochoco, Murderers Creek, Beulah, Fossil, Northside, Desolation, Ukiah, Starkey, Mt. Emily, Walla Walla, Wenaha, Sled Springs, Chesnimnus, Minam, Catherine Creek, Sumpter, Lookout Mountain, Keating, Pine Creek, Imnaha, Snake River, Silver Lake, and Whitehorse units and that part of the White River Unit within the Mt. Hood National Forest except that: That part of the Whitehorse Unit south of Whitehorse Ranch Rd. and west of US Hwy 95 (Trout Creek Mts.), is closed to deer bowhunting during the general bowhunting season unless the hunter has a Trout Creek Mts. controlled bow deer tag. Approximately 40 square miles of the Starkey Experimental Forest within the Starkey Unit shall be closed to all bowhunting. The Chesnimnus Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Chesnimnus controlled bow elk tag (used or unused). The Sled Springs Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Sled Springs controlled bow elk tag (used or unused). The Ochoco Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Ochoco controlled bow elk tag (used or unused). The bag limit is one deer in the Biggs, Columbia Basin (except: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Heppner; north and west State Highway 74 to Lexington; north and east on State Highway 207 to Butter Creek Junction; south on Butter Creek Road to Highway 74 at Vinson; west on Highway 74 to Heppner; point of beginning.), Hood, and Maupin units.

(2) General Elk Bowhunting Seasons — Eastern Oregon.

(a) Open Season: August 29 — September 27, 2009;

(b) Bag Limit and Hunt Area: The bag limit is one legal bull elk in the Metolius, Upper Deschutes, Heppner, Keno, Klamath Falls, Interstate, Warner, Maury, Ukiah, Silver Lake, Sprague, Starkey, Mt. Emily, Walla

Walla, Wenaha, Catherine Creek, Chesnimnus, Minam, Keating, Snake River, Approximately 40 square miles of the Starkey Experimental Forest within the Starkey Unit shall be closed to all bowhunting. The Chesnimnus Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Chesnimnus elk bow tag. The Sled Springs Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Sled Springs elk bow tag. The Ochoco Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Ochoco elk bow tag. The bag limit is one legal bull or antlerless elk in the Beatys Butte, Beulah, Biggs, Columbia Basin (except: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Heppner; north and west State Highway 74 to Lexington; north and east on State Highway 207 to Butter Creek Junction; south on Butter Creek Road to Highway 74 at Vinson; west on Highway 74 to Heppner; point of beginning.), Desolation, Fort Rock, Fossil, Grizzly, Hood, Imnaha, Juniper, Lookout Mountain, Malheur River, Maupin, Murderers Creek, Northside, Ochoco, Owyhee, Paulina, Pine Creek, Silvies, Sled Springs, Steens Mountain, Sumpter, Wagonfire, White River, and Whitehorse units.

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

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

Hist.: 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 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 57-2001, f. & cert. ef. 7-6-01; 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 53-2005, f. & cert. ef. 6-14-05; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. 10-31-07, cert. ef. 2-1-08; DFW 8-2009, f. & cert. ef. 2-3-09

Rule Caption: Modifications to the Recreational Spring Chinook Season in the Willamette River and Tributaries.

Adm. Order No.: DFW 9-2009(Temp)

Filed with Sec. of State: 2-13-2009

Certified to be Effective: 3-1-09 thru 8-15-09

Notice Publication Date:

Rules Amended: 635-017-0090

Subject: Amended rule modifies the recreational spring Chinook retention and bag limit in the Willamette River and tributaries, including the lower Clackamas River downstream of Highway 99 Bridge. Revisions are consistent with action taken February 11, 2009 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-017-0090

Inclusions and Modifications

(1) The **2009 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2009 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

(3) Effective March 1, 2009, regulations for Chinook in the Willamette River downstream of Willamette Falls (including Multnomah Channel and the lower Clackamas River downstream of Highway 99 Bridge) have been modified as follows:

(a) Retention of adipose fin-clipped Chinook allowed seven days per week from Sunday, March 1 through Sunday, March 15, 2009; and three days per week (Thursdays through Saturdays) from March 19 through April

ADMINISTRATIVE RULES

30, 2009. Retention of Chinook is prohibited from May 1 through August 15, 2009.

(b) Daily bag limit will be two adult adipose fin-clipped salmonids per day, only one of which may be a Chinook. All other permanent regulations remain in effect, including open for adipose fin-clipped steelhead entire year.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; FWC 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02, cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 134-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09

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Rule Caption: Modifications to Recreational Spring Chinook Seasons in the Columbia River.

Adm. Order No.: DFW 10-2009(Temp)

Filed with Sec. of State: 2-13-2009

Certified to be Effective: 3-1-09 thru 6-15-09

Notice Publication Date:

Rules Amended: 635-023-0125

Subject: These rule modifications set the Columbia River spring Chinook season regulations with a description of areas, dates, and bag limits for recreational harvest of adipose fin-clipped Chinook salmon, adipose fin-clipped steelhead, and shad for 2009. Revisions are consistent with action taken February 11, 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) The Columbia River is open:

(a) Seven days per week from Sunday, March 1 through Sunday March 15, 2009 and three days per week (Thursday–Saturday) from March 19 through April 18, 2009 from the mouth at Buoy 10 upstream to the Hayden Island powerlines (west towers);

(b) Seven days per week from Sunday, March 1 through Sunday, March 22, 2009 and four days per week (Wednesday–Saturday) from Wednesday, March 25 through Wednesday, April 22, 2009 from the Hayden Island powerlines (west towers) upstream to Bonneville Dam;

(c) Seven days per week from March 16 through April 30, 2009 from the Tower Island power lines (approximately 6 miles below The Dalles Dam) upstream to McNary Dam plus the Oregon and Washington banks between Bonneville Dam and the Tower Island power lines.

(d) From March 1 through May 15, 2009, the mainstem Columbia River will be open for retention of adipose fin-clipped steelhead and shad only during days and seasons open for retention of adipose fin-clipped spring chinook.

(3) Catch Limits:

(a) Adipose fin-clipped Chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Effective March 1, for the area downstream of Bonneville Dam, catch limits of two adult adipose fin-clipped salmon or two adult adipose fin-clipped steelhead may be retained per day, only one of which may be a Chinook. Catch limits for jacks remain in effect as per the 2009 Oregon Sport Fishing Regulations.

(d) Effective March 1, the daily bag limit in Oregon's Select Areas may not include more than one adipose fin-clipped Chinook when the recreational fishery in the mainstem Columbia River below the Hayden Island powerlines (west towers) is open to retention of Chinook.

(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

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Rule Caption: 2009 Treaty Indian Fisheries for the Columbia River.

Adm. Order No.: DFW 11-2009(Temp)

Filed with Sec. of State: 2-13-2009

Certified to be Effective: 2-16-09 thru 7-31-09

Notice Publication Date:

Rules Amended: 635-041-0065

Rules Suspended: 635-041-0065(T)

Subject: Amended rules close the ongoing Treaty Indian winter gill-net fishery in the Bonneville Pool. The ongoing platform/ hook-and-line fishery continues as previously scheduled. White sturgeon from 38 to 54 inches in fork length in the Bonneville Pool may be kept for subsistence use only. Modifications are consistent with action taken

ADMINISTRATIVE RULES

February 13, 2009 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0065

Winter Salmon Season

(1) Steelhead, shad, white sturgeon, walleye, catfish, bass, yellow perch and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, from 6:00 a.m. Monday February 2, 2009 to 6:00 p.m. Saturday, March 21, 2009 in all of Zone 6.

(a) Bonneville Pool: Open 6:00 a.m. on Monday through 6:00 p.m. on Friday of each week through February 13, 2009. The winter gillnet fishery in the Bonneville Pool is closed effective 6:00 a.m. Monday February 16, 2009. The platform/hook-and-line fishery in the Bonneville Pool will continue as previously scheduled except that sturgeon landed in the Bonneville Pool may not be sold, but sturgeon 38 to 54 inches in fork length may be retained for subsistence.

(b) John Day and The Dalles pools: Open seven days per week or until the sturgeon guideline is met.

(c) White sturgeon, steelhead, walleye, shad, carp, catfish, bass and yellow perch landed during an open commercial fishing period may be sold at any time. Chinook salmon may not be sold but may be retained for ceremonial and subsistence use.

(d) Live release of all oversize and undersize sturgeon is required.

(2) There are no mesh size restrictions.

(3) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(4) White sturgeon 43–54 inches in fork length in The Dalles and John Day pools may be sold or kept for subsistence use; white sturgeon 38–54 inches in fork length in the Bonneville Pool may be kept for subsistence use only.

(5) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

(6) 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, including the Yakama Nation subsistence fishery on the Washington shore downstream of Bonneville Dam, are allowed during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods, subject to restrictions as specified in sections (1) through (5) above, except that:

(a) Steelhead, walleye, carp, shad, catfish, bass and yellow perch caught from the Washington shore downstream of Bonneville Dam to Beacon Rock may be sold or retained for subsistence;

(b) White sturgeon caught below Bonneville Dam must be released;

(c) Dates of allowable sales are from 6:00 a.m. Monday, February 2 through 6:00 p.m. Saturday, March 21, 2009. Sales may not occur on USACE property.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 7-1986(Temp), f. & ef. 1-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; 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 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-1-1999; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; 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 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-

5-08 thru 7-28-08; DFW 22-2008(Temp), f. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; DFW 11-2009(Temp), f. 2-13-09, cert. ef. 2-16-09 thru 7-31-09

Rule Caption: 2009 Commercial Salmon and Sturgeon Fisheries for Columbia River Select Areas.

Adm. Order No.: DFW 12-2009(Temp)

Filed with Sec. of State: 2-13-2009

Certified to be Effective: 2-15-09 thru 7-31-09

Notice Publication Date:

Rules Amended: 635-042-0145, 635-042-0160, 635-042-0170, 635-042-0180

Subject: Amend rules to seasons, area boundaries and catch restrictions for Chinook salmon and sturgeon commercial fisheries for in the Columbia River Select Areas. Modifications are consistent with the action taken February 11, 2009 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-042-0145

Youngs Bay Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay.

(a) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (A); the spring fishery, paragraph (B); and summer fishery, paragraph (C), as follows:

(A) Winter Season:

(i) Entire Youngs Bay: Sunday and Wednesday nights from 12:00 noon to 6:00 a.m. (18 hours) beginning Sunday, February 15 through Monday, March 9, 2009 (7 nights).

(ii) Upstream of old Youngs Bay Bridge: 6:00 p.m. Wednesday, March 11 to 6:00 a.m. Thursday, March 12, 2009 (12 hours); 6:00 p.m. Sunday, March 15 to 6:00 a.m. Monday, March 16, 2009 (12 hours); 6:00 p.m. Sunday, March 22 to 6:00 a.m. Monday, March 23, 2009 (12 hours); 9:00 a.m. to 1:00 p.m. Monday, March 30, 2009 (4 hours); and 4:00 a.m. to 8:00 a.m. Monday, April 6 (4 hours).

(iii) Walluski Area: None.

(B) Spring Season: Entire Youngs Bay: 6:00 p.m. Thursday, April 16 to 6:00 a.m. Friday, April 17, 2009 (12 hours); 6:00 p.m. Monday, April 20 to 6:00 a.m. Tuesday, April 21 (12 hours); 6:00 p.m. Thursday, April 23 to 6:00 a.m. Friday, April 24, 2009 (12 hours); 6:00 p.m. Monday, April 27 to 12:00 noon Tuesday, April 28, 2009 (18 hours); and 6:00 p.m. Thursday, April 30 to 12:00 noon Friday, May 1, 2009 (18 hours).

(C) Summer Season: Entire Youngs Bay: 6:00 a.m. Wednesdays to 6:00 a.m. Fridays (48 hours) beginning Wednesday, June 17 through Friday, July 31, 2009 (14 fishing days).

(b) The fishing areas for the winter, spring and summer fisheries are:

(A) From February 15 through March 9 and from April 16 through July 31, the fishing area is identified as the waters of Youngs Bay with the upper boundary markers at the confluence of the Klaskanine and Youngs rivers.

(B) From March 11 through April 6, 2009, the fishing area extends from the old Youngs Bay Bridge upstream to the confluence of the Youngs and Klaskanine rivers.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(a) It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches during the spring and summer seasons.

(b) The use of additional weights or anchors attached directly to the leadline is allowed upstream of markers located approximately 200 yards upstream of the mouth of the Walluski River during all Youngs Bay commercial fisheries.

(3) A maximum of five white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. During the fishing periods identified in (1)(a)(A), (1)(a)(B) and (1)(a)(C), the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81;

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marker "10" thence northwesterly to a marker on the sand bar defining the terminus of South Channel.

(3)(a) Salmon, shad and white sturgeon may be taken for commercial purposes in those waters of Tongue Point and South Channel as described in section (1) and section (2) of this rule. Open fishing periods are:

(b) Spring Season: Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. (12 hours) beginning Monday, April 20 through Tuesday, April 28, 2009 (3 nights).

(4) Gear restrictions are as follows:

(a) In waters described in section (1) as Tongue Point basin, gill nets may not exceed 250 fathoms in length and weight limit on the lead line is not to exceed two pounds on any one fathom. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches. While fishing during the seasons described in this rule, gillnets with lead line in excess of two pounds per fathom may be stored on boats.

(b) In waters described in section (2) as South Channel, nets are restricted to 100 fathoms in length with no weight restrictions on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches. While fishing during the seasons described in this rule, gillnets up to 250 fathoms in length may be stored on boats.

(5) 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. During the fishing periods identified in section (3) above, the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 41-1998(Temp), f. 5-28-98, cert. ef. 5-29-98; DFW 42-1998(Temp), f. 5-29-98, cert. ef. 5-31-98 thru 6-6-98; DFW 45-1998(Temp), f. 6-5-98, cert. ef. 6-6-98 thru 6-10-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998, f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. & cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative Correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06; Administrative correction 1-16-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 44-2008(Temp), f. 4-25-08, cert. ef. 4-28-08 thru 10-24-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon, shad, and white sturgeon may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge.

(2) The fishing seasons are open:

(a) Winter season: Monday nights from 7:00 p.m. to 7:00 a.m. (12 hours) beginning February 16 through March 10, 2009 (4 nights).

(b) Spring season: Sunday and Wednesday nights from 7:00 p.m. to 7:00 a.m. (12 hours) beginning April 15 through April 30, 2009 (5 nights).

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(a) During the winter season, outlined above in (2)(a), it is *unlawful* to use a gill net having a mesh size that is less than 7-inches;

(b) During the spring season, outlined above in (2)(b) it is *unlawful* to use a gill net having a mesh size that is more than 8-inches.

(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. During the fishing periods identified in (2)(a) and (2)(b) above, the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; 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 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09

Department of Human Services, Addictions and Mental Health Division: Mental Health Services Chapter 309

Rule Caption: To amend the conditions under which significant procedures may be administered without informed consent.

Adm. Order No.: MHS 1-2009(Temp)

Filed with Sec. of State: 1-23-2009

Certified to be Effective: 1-23-09 thru 7-22-09

Notice Publication Date:

Rules Amended: 309-114-0005, 309-114-0010, 309-114-0020

Subject: The Addictions and Mental Health Division is amending rules in OAR 309-114 in order to provide that a patient's or resident's past history of violent behavior may be a factor in determining if significant procedures may be administered without informed consent.

Rules Coordinator: Richard Luthe—(503) 947-1186

309-114-0005

Definitions

As used in these rules:

(1) "Certified Law Student" means an eligible law student certified by the Oregon State Bar to appear in court or in an administrative proceeding and is supervised by an attorney licensed by the Oregon State Bar.

(2) "Chief Medical Officer" means the physician designated by the superintendent of each state institution pursuant to ORS 179.360(1)(f) who is responsible for the administration of medical treatment at each state institution.

(3) "Division," as used in these rules means these Divisions of the Department of Human Services:

(a) Addictions and Mental Health Division (AMH) when referring to "patients;" and

(b) The Seniors and People with Disabilities Division (SPD) when referring to "residents;"

(4) "Guardian" means a legal guardian who is a person appointed by a court of law to act as guardian of a minor or a legally incapacitated person.

(5) "Legally Incapacitated" means having been found by a court of law under ORS 426.295 to be unable, without assistance, to properly manage or take care of one's personal affairs.

(6) "Material Risk." A risk is material if it may have a substantial adverse effect on the patient's or resident's psychological or physical health, or both. Tardive dyskinesia is a material risk of neuroleptic medication. Other risks include, but are not limited to, raised blood pressure, onset of diabetes, and metabolic changes.

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(7) "Medication Educator" means a Qualified Mental Health Professional (QMHP) or Qualified Mental Retardation Professional who provides information about the proposed significant procedures to patients and residents.

(8) "Patient" means a person who is receiving care and treatment in a state institution for the mentally ill.

(9) "Person Committed to the Division" or "Person" means a patient or resident committed under ORS 161.327, 161.370, 179.478, 426.130, or 427.215, or certified by the State Training Center Review Board under ORS 427.020.

(10) "Qualified Mental Health Professional" (QMHP) means any person meeting the following minimum qualifications as documented by the state institution:

(a) Graduate degree in psychology;

(b) Bachelor's or graduate degree in nursing and licensed by the State of Oregon;

(c) Graduate degree in social work or counseling;

(d) Graduate degree in a behavioral science field;

(e) Graduate degree in recreational art, or music therapy;

(f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; or

(g) Bachelor's or graduate degree in a relevant area.

(11) "Qualified Mental Retardation Professional" means a person who meets the professional requirements under 42 CFR 483.430.

(12) "Resident" means a person who is receiving care, treatment, and training in a state institution for the mentally retarded.

(13) "Representative" is an individual allowed to represent a party or the agency in an administrative hearing under Oregon law.

(14) "Routine Medical Procedure" means a procedure customarily administered by facility medical staff under circumstances involving little or no risk of causing injury to a patient or resident, including, but not limited to physical examinations, blood draws, influenza vaccinations, tuberculosis (TB) testing, and hygiene.

(15) "Significant Procedure" means a diagnostic or treatment modality, and all significant procedures of a similar class, that pose a material risk of substantial pain or harm to the patient or resident such as, but not limited to, psychotropic medication and electro-convulsive therapy. Significant procedures do not include routine medical procedures.

(16) "Significant Procedures of a Similar Class" means a diagnostic or treatment modality that presents substantially similar material risks as the significant procedure listed on the treating physician's informed consent form and is generally considered in current clinical practice to be a substitute treatment or belong to the same class of medications as the listed significant procedure. Significant procedures of a similar class do not need to be specifically listed on the treating physician's form.

(17) "State Institution" or "Institution" means all Oregon State Hospital campuses, Blue Mountain Recovery Center and Eastern Oregon Training Center.

(18) "Superintendent" means the executive head of the state institution listed in section (17) of this rule, or the superintendent's designee.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

309-114-0010

General Policy on Obtaining Informed Consent to Treatment and Training

(1) Basic Rule. Patients and residents, or parents or guardians of minors, or guardians on behalf of legally incapacitated patients and residents, may refuse any significant procedure and may withdraw at any time consent previously given to a significant procedure. Any refusal or withdrawal or withholding of consent shall be documented in the patient's or resident's record.

(a) Personnel of a state institution shall not administer a significant procedure to a patient or resident unless written informed consent is obtained from or on behalf of the patient or resident in the manner prescribed in these rules, except as follows:

(A) Administration of significant procedures to legally incapacitated patients or residents as provided in section (6) of this rule;

(B) Administration of significant procedures without informed consent in emergencies under OAR 309-114-0015; or

(C) Involuntary administration of significant procedures with good cause to persons committed to the Division under OAR 309-114-0020.

(b) In no case may personnel of a state institution for the mentally retarded administer a procedure using aversive stimuli to a resident without the consent of a parent or legal guardian.

(2) Capacity of patient or resident: In order to consent to, or refuse, withhold, or withdraw consent to significant procedures, the patient or resident must have the capacity to make a decision concerning acceptance or rejection of a significant procedure, as follows:

(a) Unless adjudicated legally incapacitated for all purposes or for the specific purpose of making treatment decisions, a patient or resident shall be presumed competent to consent to, or refuse, withhold, or withdraw consent to significant procedures. A person committed to the Division may be deemed unable to consent to or refuse, withhold, or withdraw consent to a significant procedure only if the person currently demonstrates an inability to reasonably comprehend and weigh the risks and benefits of the proposed procedure, alternative procedures, or no treatment at all including, but not limited to, all applicable factors listed in (3)(a) of this rule. The patient's current inability to provide informed consent is to be documented in the patient's record and supported by the patient's statements or behavior; and may be evidenced in the treating physician's informed consent form, the evaluation form by the independent examining physician, review by disposition boards in the case of a resident, and forms approving or disapproving the procedure by the superintendent or chief medical officer;

(b) A person committed to the Division shall not be deemed unable to consent to or refuse, withhold, or withdraw consent to a significant procedure merely by reason of one or more of the following facts:

(A) The person has been involuntarily committed to the Division;

(B) The person has been diagnosed as mentally ill or mentally retarded;

(C) The person has disagreed or now disagrees with the treating physician's or certified nurse practitioner's diagnosis;

(D) The person has disagreed or now disagrees with the treating physician's or certified nurse practitioner's recommendation regarding treatment.

(c) If a court has determined that a patient or resident is legally incapacitated, then consent shall be sought from the legal guardian.

(3) Procedures for Obtaining Informed Consent and Information to be Given: The person from whom informed consent to a significant procedure is sought shall be given information, orally and in writing, the substance of which is to be found on the treating physician's informed consent form. In the case of medication, there shall be attached a preprinted patient information sheet on the risks and benefits of the medication listed on the treating physician's form. All written materials under this rule will be provided in English. However, if the institution has reason to believe a patient or resident has limited English language proficiency or the patient requests it, then the institution will make reasonable accommodations to provide the patient or resident with meaningful access to the information, such as providing the patient or resident with copies of the materials in the patient or resident's native language if the materials are readily available in that language or providing the opportunity to have an interpreter orally translate written materials into the patient or resident's native language. Specific information about significant procedures of a similar class will not be provided to or discussed with the patient or resident.

(a) The information shall describe:

(A) The nature and seriousness of the patient's or resident's mental illness or condition;

(B) The purpose of the significant procedures listed on the treating physician's form, the intended outcome and the risks and benefits of the procedures;

(C) Any alternatives, particularly alternatives offering less material risks to the proposed significant procedure that are reasonably available and reasonably comparable in effectiveness;

(D) If the proposed significant procedure is medication, facility medical staff shall give the name, dosage range, and frequency of administration of the medication listed on the treating physician's form, and shall explain the material risks of the medication at that dosage range.

(E) The side effects of the intended medication or electro-convulsive therapy;

(F) The predicted medical, psychiatric, social, or legal consequences of not accepting the significant procedure or any comparable procedure, including any potential risk the patient or resident represents to the health and safety of the patient or others, which may include, but is not limited to, a consideration of the patient's or resident's history of violence and its relationship to mental health treatment if he or she does not receive the significant procedure;

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(G) That consent may be refused, withheld or withdrawn at any time; and

(H) Any additional information concerning the proposed significant procedure requested by the patient or resident.

(b) A medication educator shall assist by providing information to the patient or resident that explains the proposed significant procedure, as described in section (3)(a) of this rule;

(c) The treating physician intending to administer a significant procedure shall document in the patient's or resident's chart that the information required in subsections (3)(a) of this rule was explained and that the patient, resident, parent or guardian of a minor or guardian of a legally incapacitated patient or resident explicitly consented, refused, withheld or withdrew consent. The treating physician may document this by completing the informed consent form and make it part of the patient's record.

(4) When discussing the significant procedure with the treating physician and the medication educator, the patient or resident may request additional information about the significant procedure pursuant to OAR 309-114-0010(3)(a)(H) and present additional information relevant to making his or her decision.

(5) Voluntary Consent: Consent to a proposed significant procedure must be given voluntarily, free of any duress or coercion. Subject to the provisions of OAR 309-114-0020, the decision to refuse, withhold or withdraw consent previously given shall not result in the denial of any other benefit, privilege, or service solely on the basis of refusing, withholding or withdrawing consent. A voluntary patient or resident may be discharged from the institution if offered procedures are refused.

(6) Obtaining Consent with Respect to Legally Incapacitated Patients and Residents: A state institution may not administer a significant procedure to a legally incapacitated patient or resident without the consent of the guardian, or, in the case of a minor, the parent or guardian, except in the case of an emergency under OAR 309-114-0015 or where the institution has good cause to involuntarily administer a significant procedure under OAR 309-114-0020. In order to prove good cause, the institution must prove OAR 309-114-0020(1)(a) and (1)(d) in reference to the guardian and 309-114-0020(1)(b) and (1)(c) in reference to the patient.

(7) Reports of Progress: A patient or resident, the parents or guardian of a minor patient or resident, or the guardian of a legally incapacitated patient or resident shall, upon request, be informed of the progress of the patient or resident during administration of the significant procedure.

(8) These rules will be effective as of December 1, 2007 on all new orders for administration of significant procedures without informed consent. This includes new orders written after expiration of the previous order. This rule will be effective for existing, unexpired orders as of January 1, 2008, on a phased-in schedule that will accommodate as many new hearings as is practicable to schedule each week.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

309-114-0020

Involuntary Administration of Significant Procedures to Persons Committed to the Division with Good Cause

(1) Good cause: Good cause exists to administer a significant procedure to a person committed to the Division without informed consent if in the opinion of the treating physician or certified nurse practitioner after consultation with the treatment team the following factors are satisfied:

(a) Pursuant to OAR 309-114-0010(2), the person is deemed unable to consent to, refuse, withhold or withdraw consent to the significant procedure. This determination must be documented in the treating physician's informed consent form and the independent examining physician's evaluation form, and include the specific questions asked and answers given regarding the patient's ability to weigh the risks and benefits of the proposed treatment, alternative treatment, and no treatment, including but not limited to all relevant factors listed in 309-114-0010(3)(a).

(b) The proposed significant procedure will likely restore, or prevent deterioration of, the person's mental or physical health; alleviate extreme suffering; or save or extend the person's life. This factor is established conclusively for purposes of a hearing under OAR 309-114-0025 by introducing into evidence the treating physician's informed consent form and the independent examining physician's evaluation form, unless this factor is affirmatively raised as an issue by the patient or resident or his or her representative at the hearing.

(c) The proposed significant procedure is the most appropriate treatment for the person's condition according to current clinical practice, and

all other less intrusive procedures have been considered and all criteria and information set forth in OAR 309-114-0010(3)(a) were considered. This factor is established conclusively for purposes of a hearing under OAR 309-114-0025 by introducing into evidence the treating physician's informed consent form and the independent examining physician's evaluation form, unless this factor is affirmatively raised as an issue by the patient or resident or his or her representative at the hearing.

(d) The institution made a conscientious effort to obtain informed consent from the patient. This factor is established conclusively for purposes of a hearing under OAR 309-114-0025 by introducing into evidence the treating physician's informed consent form and the medication educator's form or progress note, unless this factor is affirmatively raised as an issue by the patient or resident or his or her representative at the hearing. If the institution has reason to believe a patient or resident has limited English language proficiency or the patient requests it, then the institution will make reasonable accommodations to provide the patient or resident with meaningful access to the informed consent process, such as providing the patient or the resident with the opportunity to have an interpreter orally translate written materials into the patient's native language and provide translation during the treating physician's attempts to obtain informed consent and the medication educator's attempt to provide information about the significant procedure. A "conscientious effort" to obtain informed consent means the following:

(A) The patient's or resident's treating physician made at least two good faith attempts to obtain informed consent by attempting to explain the procedure to the patient or resident and documenting those efforts in the patient's or resident's record; and

(B) The medication educator made at least one good faith attempt to provide the information required in OAR 309-114-0010(3)(a), and explain and discuss the proposed procedure with the patient or resident.

(2) Independent Review: Prior to granting approval for the administration of a significant procedure for good cause to a person committed to the Division, the superintendent or chief medical officer of a state institution for the mentally ill shall obtain consultation and approval from an independent examining physician. The superintendent or chief medical officer shall maintain a list of independent examining physicians and shall seek consultation and approval from independent examining physicians selected on a rotating basis from the list. The independent examining physician shall not be an employee of the Division, shall be a board-eligible psychiatrist, shall have been subjected to review by the medical staff executive committee as to qualifications to make such an examination, shall have been provided with a copy of administration rules OAR 309-114-0000 through 309-114-0030, and shall have participated in a training program regarding these rules, their meaning and application.

(3) Prior to granting approval for the administration of a significant procedure for good cause, the superintendent or chief medical officer of a state institution for the mentally retarded shall refer the matter for review to a disposition board convened for such purpose. The disposition board shall have five members: two employees from the state institution not directly involved in the treatment of the resident and three public members. Members of the disposition board shall be provided a copy of administrative rules OAR 309-114-0000 through 309-114-0030 and shall be part of a training program regarding their meaning and application.

(4) The superintendent or chief medical officer shall provide to a patient or resident to whom a significant procedure is proposed to be administered written advance notice of the intent to seek consultation and approval of an independent examining physician or review by a disposition board for the purpose of administering the procedure without the patient's or resident's consent.

(5) The physician selected to conduct the independent consultation or the disposition board shall:

(a) Review the person's medical chart, including the records of efforts made to obtain the person's informed consent, personally examine the person, or, in the case of the disposition board, interview the resident;

(b) Discuss the matter with the person to determine the extent of the need for the procedure and the nature of the person's refusal, withholding, or withdrawal or inability to consent to the significant procedure. This determination must be documented in the patient's or resident's records as well as the supporting evidence in the form of the specific questions asked and answers given regarding the patient's ability to weigh the risks and benefits of the proposed treatment, alternative treatment, and no treatment;

(c) Consider additional information, if any, presented prior to or at the time of examination or interview as may be requested by the person or anyone on behalf of the person;

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(d) Make a determination whether the factors required under these rules exist for the particular person or that one or more factors are not present, and complete a report of his or her findings, which provides their approval or disapproval of the proposed significant procedure. The written report must be provided to:

(A) The superintendent or chief medical officer; and

(B) The person to whom a significant procedure is proposed to be administered, with a copy being made part of the person's record.

(6) Superintendent's Determination:

(a) The superintendent or chief medical officer shall approve or disapprove of the administration of the significant procedure to a person committed to the Division based on good cause, provided that if the examining physician or disposition board found that one or more of the factors required by section (1) of this rule were not present or otherwise disapproved of the procedure, the superintendent or chief medical officer shall not approve the significant procedure and it shall not be performed;

(b) Approval of the significant procedure shall be only for as long as no substantial increase in risk is encountered in administering the significant procedure or significant procedure of a similar class during the term of a person's commitment but in no case longer than 180 days. Disapproval shall be only for as long as no substantial change occurs in the person's condition during the term of commitment but in no case longer than 180 days;

(c) Written notice of the superintendent's or chief medical officer's determination shall be provided to the person and made part of the person's record. This notice must be delivered to the patient or resident, and fully explained by facility medical staff. This notice must include a clear statement of the decision to treat without informed consent, specific basis for the decision, state what evidence was relied on to make the decision, and include a clear notice of the opportunity to ask for a contested case hearing with an administrative law judge if the patient disagrees with the decision. Attached must be a form with a simple procedure to request a hearing. The patient or resident indicating in writing or verbally to any staff member a desire to challenge the institution's decision will be sufficient to request a contested case hearing pursuant to OAR 309-114-0025. The patient or resident shall have 48 hours to request a contested case hearing after receiving this notice. If the patient or resident does not request a hearing within the 48 hour period or the patient or resident subsequently withdraws his initial hearing request and is not already receiving the significant procedure, the institution may involuntarily administer the significant procedure. A patient or resident retains the right to request an initial hearing on the decision to administer a significant procedure without informed consent at any time.

(d) If the patient or resident withdraws his initial request for hearing or refuses to attend the initial hearing without good cause, the administrative law judge will issue a dismissal order pursuant to OAR 137-003-0672(3). A dismissal order will allow the institution to immediately administer the significant procedure without informed consent as if the patient had never requested a hearing. If a dismissal order is issued, the patient or resident may request a second hearing. If the patient or resident withdraws his second request for hearing or refuses to attend the second hearing without good cause, the hearing will occur as scheduled with the institution presenting a prima facie case pursuant to ORS 183.417(4) and the administrative law judge will issue a proposed order by default. The institution will then issue a final order by default.

(e) Records of all reports by independent examining physicians or disposition boards and of the determinations of the superintendent or chief medical officer under this rule shall be maintained by the superintendent or chief medical officer in a separate file and shall be summarized each year. Such summaries shall show:

(A) Each type of proposed significant procedure for which consultation with an independent examining physician or review by a disposition board was sought;

(B) The number of times consultation or review was sought from a particular independent examining physician or disposition board for each type of proposed significant procedure;

(C) The number of times each independent examining physician or disposition board approved and disapproved each type of proposed significant procedure; and

(D) The number of times the superintendent or chief medical officer approved and disapproved each type of proposed significant procedure;

(E) Such summaries shall be public records and shall be made available to the public during reasonable business hours in accordance with ORS Chapter 192.

(7) When treatment is being administered without informed consent, the ward physician will write a progress note addressing any changes in patient's or resident's capacity to give informed consent every 60 days.

(8) At any time that a patient's or resident's condition changes so that there appears to his or her treating physician to be a substantial improvement in the patient's or resident's capacity to consent to or refuse treatment, a formal re assessment of the patient's or resident's capacity to consent shall occur, as described in OAR 309 114 0010 and OAR 309-114-0020. No order to administer treatment without informed consent in non-emergency situations shall be valid for longer than 180 days, or the duration of the commitment, whichever is shorter, without re-establishing the need for the order by following the procedures described in OAR 309-114-0010 and OAR 309-114-0020.

(9) When a patient or resident is transferred to a state institution from a community hospital or another state institution where he or she was already being treated with a significant procedure without informed consent, the receiving institution must apply OAR 309 114 0000 through 309-114-0030 no later than 7 days after the date of admission to the new institution. A state institution can honor an existing order for involuntary administration of a significant procedure without informed consent if procedures such as those outlined in OAR 309 114 0010 through 309-114-0030 have already been applied and all necessary documentation is in the patient's file.

Stat. Auth.: ORS 179.040

Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-880, cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09

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

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 1-2009

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

Certified to be Effective: 2-2-09

Notice Publication Date: 12-1-2008

Rules Amended: 413-120-0400, 413-120-0420, 413-120-0440, 413-120-0450, 413-120-0455, 413-120-0460, 413-120-0470

Rules Repealed: 413-120-0400(T), 413-120-0410, 413-120-0420(T), 413-120-0440(T), 413-120-0450(T), 413-120-0455(T), 413-120-0460(T), 413-120-0470(T)

Subject: OAR 413-120-0400 and OAR 413-120-0420 to 413-120-0470 about criminal history background checks for providers of care to children in Department of Human Services (DHS) custody are being amended, and OAR 413-120-0410 about criminal history background checks for providers of care to children in DHS custody is being repealed to comply with new federal requirements effective October 1, 2008 governing the criminal background check process for prospective foster and adoptive homes. These rules are being amended and repealed to comply with the new federal law requiring that all foster and adoptive applicants be subject to a fingerprint-based criminal check through the Federal Bureau of Investigation and prohibit approval of individuals who have committed any one of a range of specified criminal offenses. OAR 413-120-0400 and OAR 413-120-0420 to 413-120-0470 also are being amended to make the changes in the temporary rules permanent.

OAR 413-120-0400 about the purpose of this rule division is being amended to restate Department policy on use of criminal offender information to determine the fitness of the subject individual to provide care for children in DHS custody.

OAR 413-120-0410 about the scope of this rule division is being repealed and its relevant provisions are being incorporated into the amended OAR 413-120-0450.

OAR 413-120-0420 about the definitions used in this rule division is being amended to indicate that an "other person in household" includes an individual providing relief or respite care and state the Department definition for relief or respite care as a formal planned arrangement to relieve a certified family's responsibilities by a person temporarily assuming responsibility for the care and supervision of the child or young adult; or assistance provided by a person who comes into the home of the certified family to care for the child or young adult in the care or custody of the Department. This rule also

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is being amended to state that “national crime information databases” means the National Crime Information Center and its incorporated criminal history databases managed by the Federal Bureau of Investigation.

OAR 413-120-0440 about the limited use and sharing of the criminal history reports and information gathered under this rule division is being amended to state Department policy on expedited child-specific foster care certification criminal background checks conducted at local DHS offices. This rule is being amended to state that the required forms and fingerprint cards must be provided to the DHS Criminal Records Unit as soon as possible for purposes of obtaining fingerprint-based criminal offender information.

OAR 413-120-0450 about how criminal history information regarding convictions is considered in making care certifications and fitness determinations under this rule division is being amended to restate that DHS makes issues decisions regarding the fitness of the subject individual to provide care for children in DHS custody, DHS policy on which criminal convictions preclude favorable certifications and determinations, as well as which criminal convictions preclude a favorable certification or determination unless an exception is granted under this rule’s guidelines. This rule also is being amended to prohibit exceptions for certain criminal offenses including felonies involving violence and drug related offenses when the conviction has occurred within the preceding five years. This rule is also being amended to clarify who determines whether to seek an exception for criminal history.

OAR 413-120-0455 about how criminal history information regarding arrests is considered in making care certifications and fitness determinations under this rule division is being amended to restate Department policy on use of criminal arrest information to determine the fitness of the subject individual to provide care for children in DHS custody.

OAR 413-120-0460 about the procedures Department employees utilize to obtain criminal offender information records and reports is being amended to state the Department policy on obtaining fingerprint cards from subject individuals applying to provide care for children in DHS custody, arrested or convicted once already providing care for children in DHS custody, residing outside of Oregon for more than 60 consecutive days during a certification period, and an other person in the household once identified as such. This rule also is being amended to restate Department policy on the assessment of the fitness of the subject individual to provide care for children in DHS custody, how subject individuals are notified of unfavorable fitness determinations, and how they may appeal the determination.

OAR 413-120-0470 about subject individual’s rights to review and appeal Department care certifications and fitness determinations made under this rule division is being amended to restate Department policy on the reviewing and appealing of determinations regarding the fitness of subject individuals to provide care for children in DHS custody.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-120-0400

Purpose

(1) These rules (OAR 413-120-0400 to 413-120-0470) outline the process by which DHS obtains criminal offender information on a subject individual who is seeking to provide relative, foster, or adoptive care to a child in the care or custody of DHS and how DHS uses criminal offender information to determine the fitness of the subject individual to provide relative, foster, or adoptive care.

(2) These rules provide guidelines on the procedures DHS uses when DHS receives a request to conduct a criminal offender information records check from a licensed private agency that is studying an adoptive family for placement of a child in the care or custody of DHS.

(3) These rules set forth the criminal convictions for which DHS does not grant any exception for approving a subject individual as a relative caregiver, foster or adoptive parent, or other person in household.

(4) These rules provide the standards DHS uses in granting allowable exceptions for a subject individual convicted of or arrested for certain

felony and misdemeanor crimes to be approved as a relative caregiver, foster or adoptive parent, or other person in household.

(5) These rules must be used in conjunction with other applicable standards when determining a subject individual’s fitness to provide relative, foster, or adoptive care for a child in the care or custody of DHS.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 - 181.560 & 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09

413-120-0420

Definitions

For purposes of these rules (OAR 413-120-0400 to 413-120-0470):

(1) “Adoption applicant” is an individual who applies for adoption approval.

(2) “Agency agreement” means a written agreement between the Oregon State Police and a Criminal Justice or designated agency as defined by ORS 181.010 authorized to receive criminal offender information, specifying the terms and conditions of accessing and receiving Oregon computerized criminal history information to assure compliance with state and federal regulations.

(3) “Battery” means the use of physical force to injure, damage, or abuse or to cause offensive physical contact.

(4) “CAF” means the Children, Adults, and Families Division of DHS.

(5) “Child” means an individual under the age of 18.

(6) “Computerized Criminal History (CCH) System” means the administration and maintenance of on-line computer files of significant criminal offender information by OSP.

(7) “Contested case hearing” means a hearing conducted under ORS Chapter 183 and applicable administrative rules.

(8) “Criminal offender information” is defined in ORS 181.010(3) and includes records, fingerprints and photographs, received, compiled and disseminated by OSP for purposes of identifying criminal offenders and alleged offenders, as to such individuals’ records of arrests, the nature and disposition of criminal charges, including sentencing, confinement and release, and includes the OSP Computerized Criminal History System.

(9) “Designated agency” means any DHS unit required to access Oregon criminal offender information for the following purposes: to implement a federal or state statute, executive order or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on criminal conduct; for agency employment or licensing purposes; or for other demonstrated and legitimate needs when designated by order of the Governor.

(10) “DHS” means the Department of Human Services, which accesses criminal offender information as a designated agency or a criminal justice agency, and requests fingerprint-based criminal offender information from the FBI and OSP on certain individuals or programs who provide care or treatment to children as regulated by DHS.

(11) “FBI” means the Federal Bureau of Investigation.

(12) “Fingerprint-based criminal offender information” means criminal offender information compiled and maintained by OSP Bureau of Criminal Identification regarding individuals who have been arrested for crimes where law enforcement agencies have submitted fingerprints and other identifying data as required by ORS 181.515 or federal statutes, or as deemed appropriate by the submitting law enforcement agency for the purpose of identification.

(13) “Foster parent” means an individual who operates a home that has been approved by DHS to provide care for an unrelated child or young adult placed in the home by DHS.

(14) “Information required” means all information requested by DHS for processing criminal record checks, including fingerprint checks.

(15) “National crime information databases” means the National Crime Information Center and its incorporated criminal history databases managed by the FBI.

(16) “OSP” means the Oregon State Police.

(17) “Other person in household” means:

(a) An individual 18 years of age or older who is living in the home, and is not a child or young adult as defined by this rule;

(b) An individual providing relief or respite care whether paid or unpaid; or

(c) A member of the household under 18 years of age if there is reason to believe that member may pose a risk to children placed in the home.

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(18) "Private adoption agency" means an agency licensed by the State of Oregon to provide adoption services within the state and which contracts with DHS to study adoptive parents seeking to adopt children in the custody of DHS.

(19) "Relative caregiver" means an individual who operates a home that has been approved by DHS to provide care for a related child or young adult who is placed in the home by DHS.

(20) "Relief or respite care" means:

(a) A formal planned arrangement to relieve a certified family's responsibilities by an individual temporarily assuming responsibility for the care and supervision of the child or young adult; or

(b) Assistance provided by an individual who comes into the home of the certified family to care for the child or young adult in the care or custody of DHS.

(21) "Subject individual" means an individual who:

(a) Applies to adopt a child in the custody of DHS as described in Child Welfare Policies I-G.1.3, "Adoption Applications", OAR 413-120-0190 to 413-120-0240 and I-G.2.1, "Minimum Standards for Adoptive Homes", 413-120-0300 to 413-120-0310;

(b) Applies to be a foster parent, relative caregiver, or pre-adoptive parent as described in Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", 413-200-0301 to 413-200-0401; or

(c) Is an other person in household as described in this rule.

(22) "Violence" means the use of physical force to injure, damage, or abuse.

(23) "Young adult" means an individual aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 - 181.560 & 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09

413-120-0440

Limitations of Inquiries

(1) Only DHS employees who have been fingerprinted and cleared by OSP may access or have access to criminal offender information pursuant to a valid agency agreement. All criminal offender information must be handled in compliance with the agency agreement and rules and procedures of OSP relating to the criminal offender information (OAR 257-010-0010 to 257-010-0050). DHS is responsible for assuring strict compliance with federal and state laws, rules, and procedures regarding criminal offender information access and dissemination.

(2) Criminal offender information obtained from OSP or the FBI may not be given to an unauthorized individual or agency or used for any purpose other than that for which the information was obtained.

(3) Criminal offender information, including fingerprint-based criminal offender information, must be obtained by DHS under this chapter of rules to ascertain whether a subject individual (see OAR 413-120-0420) has been convicted of a crime that is substantially related to fitness for being a relative caregiver, foster or adoptive parent, or fitness as an other person in household.

(4) For purposes of expedited child-specific foster care certification, child welfare staff in a local DHS office may obtain criminal history information from OSP Law Enforcement Data System (LEDS) in accordance with Child Welfare Policy I-AB.6, "Access to Law Enforcement Data System (LEDS) in Local Child Welfare Offices", OAR 413-015-1100 to 413-015-1125. For each criminal history check completed in a local DHS office for purposes of expedited child-specific foster care certification, a completed and signed form 1011F and a properly completed FBI fingerprint card (FD 258) must be provided to the DHS Criminal Records Unit (CRU) for purposes of obtaining fingerprint-based criminal offender information.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 - 181.560 & 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05; CWP 8-2005, f. & cert. ef. 7-28-05; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09

413-120-0450

Consideration of Criminal History

(1) Consistent with these rules (OAR 413-120-0400 to 413-120-0470), DHS issues a decision regarding the fitness of a subject individual to be approved as a relative caregiver, foster or adoptive parent, or other person in household. Unless an exception is allowed under these rules, a conviction for any crime or a false statement about a conviction for any crime may disqualify a subject individual from being approved as a relative caregiver, foster or adoptive parent, or an other person in household.

(2) Notwithstanding the prohibitions contained in section (3) and (4) of this rule, if a subject individual was approved to be a relative caregiver, foster or adoptive parent, or an other person in household prior to October 1, 2008, DHS may place additional children in the home, renew the family's relative caregiver or foster home certificate of approval, or approve the family as an adoptive placement if the DHS Assistant Director for CAF or designee determines that the subject individual was determined to be fit according to the criminal history rules that were in effect at the time of the original fitness determination. Any criminal conviction occurring on or after October 1, 2008, and any criminal conviction not known or evaluated prior to October 1, 2008, must be evaluated under these rules (OAR 413-120-0400 to 413-120-0470).

(3) If a subject individual has been convicted of a crime described in section (4) of this rule, that individual may not be approved or certified as a relative caregiver, foster parent, adoptive parent, or other person in household and no exception may be granted. A subject individual who has been convicted of any crime other than one described in section (4) of this rule may be approved or certified as a relative caregiver, foster or adoptive parent, or other person in household only if an exception is granted as provided in sections (5) to (7) of this rule.

(4) Crimes with no exceptions.

(a) DHS may not issue or renew a certificate of approval to operate a relative caregiver or foster home, or approve an adoption application, and no exception may be granted if a subject individual has been convicted in Oregon or any other jurisdiction of a felony crime that involves:

(A) Violence, including rape, sexual assault, and homicide, but not including other physical assault or battery;

(B) Intentional starvation or torture;

(C) Abuse or neglect of a child;

(D) Spousal abuse;

(E) Aiding, abetting, attempting, soliciting, or conspiring to cause the death of a child;

(F) Sodomy or sexual abuse; or

(G) A child as the victim (including child pornography).

(b) Crimes described under subsection (a) of this section include, but are not limited to, the following crimes under Oregon law, or substantially similar crimes in Oregon or any other jurisdiction:

(A) ORS 162.155 — Escape in the second degree, if the crime involves violence;

(B) ORS 162.165 — Escape in the first degree, if the crime involves violence;

(C) ORS 162.325 — Hindering prosecution, if the crime involves violence;

(D) ORS 163.095 — Aggravated murder;

(E) ORS 163.115 — Murder;

(F) ORS 163.118 — Manslaughter in the first degree;

(G) ORS 163.125 — Manslaughter in the second degree;

(H) ORS 163.145 — Criminally negligent homicide;

(I) ORS 163.149 — Aggravated vehicular homicide;

(J) ORS 163.160 — Assault in the fourth degree, if classified as a felony, and the victim is a child or the subject individual's spouse;

(K) ORS 163.165 — Assault in the third degree if the victim is a child or the subject individual's spouse;

(L) ORS 163.175 — Assault in the second degree if the victim is a child or the subject individual's spouse;

(M) ORS 163.185 — Assault in the first degree if the victim is a child or the subject individual's spouse;

(N) ORS 163.205 — Criminal mistreatment in the first degree if the victim is a child or the subject individual's spouse, or if the crime involves violence;

(O) ORS 163.207 — Female genital mutilation;

(P) ORS 163.213 — Unlawful use of an electrical stun gun, tear gas, or mace in the first degree;

(Q) ORS 163.225 — Kidnapping in the second degree if the victim is a child or the subject individual's spouse, or if the crime involves violence;

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(R) ORS 163.235 — Kidnapping in the first degree if the victim is a child or the subject individual's spouse, or if the crime involves violence;

(S) ORS 163.245 — Custodial interference in the second degree if the victim is a child;

(T) ORS 163.257 — Custodial interference in the first degree if the victim is a child;

(U) ORS 163.355 — Rape in the third degree;

(V) ORS 163.365 — Rape in the second degree;

(W) ORS 163.375 — Rape in the first degree;

(X) ORS 163.385 — Sodomy in the third degree;

(Y) ORS 163.395 — Sodomy in the second degree;

(Z) ORS 163.405 — Sodomy in the first degree;

(AA) ORS 163.408 — Unlawful sexual penetration in the second degree;

(BB) ORS 163.411 — Unlawful sexual penetration in the first degree;

(CC) ORS 163.425 — Sexual abuse in the second degree;

(DD) ORS 163.427 — Sexual abuse in the first degree;

(EE) ORS 163.432 — Online sexual corruption of a child in the second degree;

(FF) ORS 163.433 — Online sexual corruption of a child in the first degree;

(GG) ORS 163.452 — Custodial sexual misconduct in the first degree;

(HH) ORS 163.479 — Unlawful contact with a child;

(II) ORS 163.525 — Incest, if the victim of the offense is a child;

(JJ) ORS 163.535 — Abandonment of a child;

(KK) ORS 163.537 — Buying or selling a person under 18 years of age;

(LL) ORS 163.547 — Child neglect in the first degree;

(MM) ORS 163.555 — Criminal nonsupport;

(NN) ORS 163.670 — Using a child in display of sexually explicit conduct;

(OO) ORS 163.684 — Encouraging child sexual abuse in the first degree;

(PP) ORS 163.686 — Encouraging child sexual abuse in the second degree;

(QQ) ORS 163.688 — Possession of materials depicting sexually explicit conduct of a child in the first degree;

(RR) ORS 163.689 — Possession of materials depicting sexually explicit conduct of a child in the second degree;

(SS) ORS 164.125 — Theft of services, if the theft involves violence and is for services valued at \$750 or more;

(TT) ORS 164.225 — Burglary in the first degree if the crime involves violence;

(UU) ORS 164.395 — Robbery in the third degree if the crime involves violence;

(VV) ORS 164.405 — Robbery in the second degree if the crime involves violence;

(WW) ORS 164.415 — Robbery in the first degree if the crime involves violence;

(XX) ORS 166.015 — Riot if the crime involves violence;

(YY) ORS 166.165 — Intimidation in the first degree if the crime involves violence;

(ZZ) ORS 166.220 — Unlawful use of a weapon if the crime involves violence;

(AAA) ORS 167.017 — Compelling prostitution, if the victim is a child or the subject individual's spouse; or

(BBB) ORS 167.057 — Luring a minor.

(c) DHS may not issue or renew a certificate of approval to operate a relative caregiver or foster home, or approve an adoption application, and no exception will be granted if a subject individual has been convicted in Oregon or any other jurisdiction of a felony crime within the five years preceding the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or other person in household and the felony crime involves:

(A) Physical assault, battery; or

(B) A drug-related offense.

(d) Crimes described under subsection (c) of this section include, but are not limited to, the following crimes under Oregon law, or substantially similar crimes in Oregon or any other jurisdiction, if the conviction occurred within the five years preceding the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or other person in household:

(A) ORS 163.160 — Assault in the fourth degree, if classified as a felony, unless the conviction meets the criteria set forth in subsection (3)(b) of this rule.

(B) ORS 163.165 — Assault in the third degree, unless the conviction meets the criteria set forth in subsection (3)(b) of this rule.

(C) ORS 163.175 — Assault in the second degree, unless the conviction meets the criteria set forth in subsection (3)(b) of this rule.

(D) ORS 163.185 — Assault in the first degree, unless the conviction meets the criteria set forth in subsection (3)(b) of this rule and only if the crime involved violence.

(E) ORS 163.208 — Assaulting a public safety officer.

(F) ORS 167.212 — Tampering with drug records.

(G) ORS 167.262 — Adult using minor in commission of controlled substance offense, if classified as a felony.

(H) ORS 475.846 — Unlawful manufacture of heroin.

(I) ORS 475.848 — Unlawful manufacture of heroin within 1,000 feet of school.

(J) ORS 475.850 — Unlawful delivery of heroin.

(K) ORS 475.852 — Unlawful delivery of heroin within 1,000 feet of school.

(L) ORS 475.854 — Unlawful possession of heroin.

(M) ORS 475.856 — Unlawful manufacture of marijuana.

(N) ORS 475.858 — Unlawful manufacture of marijuana within 1,000 feet of school.

(O) ORS 475.860 — Unlawful delivery of marijuana, if classified as a felony.

(P) ORS 475.862 — Unlawful delivery of marijuana within 1,000 feet of school.

(Q) ORS 475.864 — Unlawful possession of marijuana, if classified as a felony.

(R) ORS 475.866 — Unlawful manufacture of 3,4—methylene—dioxymethamphetamine.

(S) ORS 475.868 — Unlawful manufacture of 3,4—methylene—dioxymethamphetamine within 1,000 feet of school.

(T) ORS 475.870 — Unlawful delivery of 3,4—methylenedioxy—methamphetamine.

(U) ORS 475.872 — Unlawful delivery of 3,4—methylenedioxy—methamphetamine within 1,000 feet of school.

(V) ORS 475.874 — Unlawful possession of 3,4—methylene—dioxymethamphetamine.

(W) ORS 475.876 — Unlawful manufacture of cocaine.

(X) ORS 475.878 — Unlawful manufacture of cocaine within 1,000 feet of school.

(Y) ORS 475.880 — Unlawful delivery of cocaine.

(Z) ORS 475.882 — Unlawful delivery of cocaine within 1,000 feet of school.

(AA) ORS 475.884 — Unlawful possession of cocaine.

(BB) ORS 475.886 — Unlawful manufacture of methamphetamine.

(CC) ORS 475.888 — Unlawful manufacture of methamphetamine within 1,000 feet of school.

(DD) ORS 475.890 — Unlawful delivery of methamphetamine.

(EE) ORS 475.892 — Unlawful delivery of methamphetamine within 1,000 feet of school.

(FF) ORS 475.894 — Unlawful possession of methamphetamine.

(GG) ORS 475.904 — Unlawful manufacture or delivery of controlled substance within 1,000 feet of school.

(HH) ORS 475.908 — Causing another person to ingest a controlled substance.

(II) ORS 475.910 — Application of controlled substance to the body of another person, if the controlled substance is in Schedule I, II, III, or IV.

(JJ) ORS 475.914 — Prohibited acts for registrants related to Schedule I controlled substances.

(KK) ORS 475.962 — Distribution of equipment, solvent, reagent, or precursor substance with intent to facilitate manufacture of controlled substance.

(LL) ORS 475.967 — Possession of precursor substance with intent to manufacture controlled substance.

(MM) ORS 475.977 — Possessing or disposing of methamphetamine manufacturing waste.

(5) Crimes for which DHS may grant an exception.

(a) Unless an exception is granted as provided in subsection (c) of this section and section (7) of this rule, DHS may not issue or renew a certificate of approval to operate a relative caregiver or foster home for children or approve an adoption application if a subject individual has been convicted

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ed of one of the following crimes (which exclude those described in section (4) of this rule).

(A) Any misdemeanor crime of violence against a child.

(B) Any felony involving violence, unless the offense meets the criteria under section (4) of this rule.

(C) A felony drug-related offense, unless the offense meets the criteria under section (4) of this rule.

(b) Examples of crimes described under subsection (a) of this section include, but are not limited to, the following crimes under Oregon law or substantially similar crimes in Oregon or any other jurisdiction:

(A) ORS 162.155 — Escape in the second degree, if the crime involves the threatened use of violence.

(B) ORS 162.165 — Escape in the first degree, if the crime involves the threatened use of violence or a dangerous or deadly weapon.

(C) ORS 163.160 — Assault in the fourth degree, if the conviction is classified as a felony and does not meet the criteria of subsection (4)(b) of this rule and the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(D) ORS 163.160 — Assault in the fourth degree if the victim is a child (misdemeanor conviction only).

(E) ORS 163.165 — Assault in the third degree unless the crime meets the criteria of subsection (4)(b) of this rule and only if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(F) ORS 163.175 — Assault in the second degree unless the crime meets the criteria of subsection (4)(b) of this rule and only if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(G) ORS 163.185 — Assault in the first degree unless the crime meets the criteria of subsection (4)(b) of this rule and only if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(H) ORS 164.125 — Theft of services, if the theft does not involve violence and is for services valued at \$750 or more.

(I) ORS 164.395 — Robbery in the third degree, unless the crime meets the criteria of subsection (4)(b) of this rule.

(J) ORS 164.405 — Robbery in the second degree, unless the crime meets the criteria of subsection (4)(b) of this rule.

(K) ORS 164.415 — Robbery in the first degree, unless the crime meets the criteria of subsection (4)(b) of this rule.

(L) ORS 166.015 — Riot, unless the crime meets the criteria of subsection (4)(b) of this rule.

(M) ORS 166.165 — Intimidation in the first degree, unless the crime meets the criteria of subsection (4)(b) of this rule.

(N) ORS 166.220 — Unlawful use of weapon, unless the crime meets the criteria of subsection (4)(b) of this rule.

(O) ORS 167.017 — Compelling prostitution, unless the crime meets the criteria of subsection (4)(b) of this rule.

(P) ORS 167.212 — Tampering with drug records, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(Q) ORS 475.846 — Unlawful manufacture of heroin, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(R) ORS 475.848 — Unlawful manufacture of heroin within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(S) ORS 475.850 — Unlawful delivery of heroin, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(T) ORS 475.852 — Unlawful delivery of heroin within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(U) ORS 475.854 — Unlawful possession of heroin, if the conviction occurred more than five years from the date of the determination of the sub-

ject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(V) ORS 475.856 — Unlawful manufacture of marijuana, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(W) ORS 475.858 — Unlawful manufacture of marijuana within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(X) ORS 475.860 — Unlawful delivery of marijuana (felony convictions only), if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(Y) ORS 475.862 — Unlawful delivery of marijuana within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(Z) ORS 475.864 — Unlawful possession of marijuana (felony convictions only), if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(AA) ORS 475.866 — Unlawful manufacture of 3,4-methylenedioxymethamphetamine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(BB) ORS 475.868 — Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(CC) ORS 475.870 — Unlawful delivery of 3,4-methylenedioxymethamphetamine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(DD) ORS 475.872 — Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(EE) ORS 475.874 — Unlawful possession of 3,4-methylenedioxymethamphetamine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(FF) ORS 475.876 — Unlawful manufacture of cocaine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(GG) ORS 475.878 — Unlawful manufacture of cocaine within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(HH) ORS 475.880 — Unlawful delivery of cocaine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(II) ORS 475.882 — Unlawful delivery of cocaine within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(JJ) ORS 475.884 — Unlawful possession of cocaine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(KK) ORS 475.886 — Unlawful manufacture of methamphetamine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(LL) ORS 475.888 — Unlawful manufacture of methamphetamine within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a

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relative caregiver, foster or adoptive parent, or an other person in household.

(MM) ORS 475.890 — Unlawful delivery of methamphetamine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(NN) ORS 475.892 — Unlawful delivery of methamphetamine within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(OO) ORS 475.894 — Unlawful possession of methamphetamine, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(PP) ORS 475.904 — Unlawful manufacture or delivery of controlled substance within 1,000 feet of school, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(QQ) ORS 475.908 — Causing another person to ingest a controlled substance, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(RR) ORS 475.910 — Application of controlled substance to the body of another person, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(SS) ORS 475.962 — Distribution of equipment, solvent, reagent, or precursor substance with intent to facilitate manufacture of controlled substance, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(TT) ORS 475.967 — Possession of precursor substance with intent to manufacture controlled substance, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(UU) ORS 475.977 — Possessing or disposing of methamphetamine manufacturing waste, if the conviction occurred more than five years from the date of the determination of the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or an other person in household.

(c) For purposes of making a determination about the fitness of a subject individual to be approved as a relative caregiver, foster or adoptive parent or other person in household under this section or section (6) of this rule, DHS must consider any conviction listed in this section or section (6) of this rule and the following:

- (A) The severity and nature of the crime.
- (B) The number of criminal offenses.
- (C) The circumstances surrounding the crime.
- (D) The subject individual's explanation of the crime.
- (E) The facts that support the conviction or pending indictment or that indicate the making of a false statement.

(F) The relevancy, if any, of the crime or false statement to the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or other person in household.

(G) When the subject individual is seeking to provide care for a specific child, whether disqualification of the subject individual would create emotional harm to the child and placement of the child with the subject individual would be a safe placement that is in the best interest of the child.

(H) Intervening circumstances relevant to the responsibilities and circumstances of the relative caregiver, foster or adoptive parent, or other person in household. Intervening circumstances include, but are not limited to:

- (i) The passage of time since the commission of the crime;
- (ii) The age of the subject individual at the time of the crime;
- (iii) The subject individual's participation in counseling, therapy, education, or employment evidencing rehabilitation or a change in behavior;
- (iv) The likelihood of a repetition of the crime or of the commission of another crime;
- (v) The subsequent commission of another relevant crime;
- (vi) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(vii) A recommendation of an employer of the subject individual.

(d) If a subject individual has been convicted of one or more crimes listed in this section or section (6) of this rule and the caseworker, in consultation with his or her immediate supervisor, determines in accordance

with this rule that the subject individual is not fit, DHS may not certify or approve the subject individual as a relative caregiver, foster or adoptive parent, or other person in household.

(e) If a subject individual has been convicted of one or more crimes listed in this section or section (6) of this rule and the caseworker, in consultation with his or her immediate supervisor, determines in accordance with this rule that the subject individual may be fit, the caseworker or the supervisor may request that an exception be granted to certify or approve the subject individual as a relative caregiver, foster or adoptive parent, or other person in household.

(f) If a subject individual has been convicted of one or more of the crimes listed in this section of the rule and the caseworker or supervisor requests that an exception for certification or approval be granted, the DHS Assistant Director for CAF may grant an exception, in writing, for the subject individual to be certified or approved as a relative caregiver, foster or adoptive parent, or other person in household. The DHS Assistant Director for CAF may designate administrative staff not assigned to or located in a District to grant an exception for approval under this subsection.

(6) If a subject individual has been convicted of any felony or misdemeanor, other than those described in sections (4) or (5) of this rule, DHS may not issue or renew a certificate of approval to operate a relative caregiver or foster home for children or approve an adoption application unless an exception to approve the subject individual is granted as provided in this section and section (7) of this rule. The following persons are authorized to grant an exception as provided in this section and section (7) of this rule:

(a) If a subject individual has been convicted of a misdemeanor, other than one resulting from domestic violence or one described in sections (4) or (5) of this rule, and the caseworker or supervisor requests that an exception for certification or approval be granted in accordance with section (5) of this rule, the District Manager may grant an exception, in writing, for the subject individual to be certified or approved as a relative caregiver, foster or adoptive parent, or other person in household. The District Manager may designate the District Assistant Manager, the Child Welfare Program Manager, or a child welfare supervisor to grant an exception for approval under this subsection.

(b) If a subject individual has been convicted of a felony or any crime involving domestic violence, other than one described in sections (4) or (5) of this rule, and the caseworker or supervisor requests that an exception for certification or approval be granted in accordance with section (5) of this rule, the District Manager may grant an exception, in writing, for the subject individual to be certified or approved as a relative caregiver, foster or adoptive parent, or other person in household. The District Manager may designate the District Assistant Manager or the Child Welfare Program Manager to grant an exception for approval under this subsection.

(7) An individual authorized to grant an exception under sections (5) or (6) of this rule must determine whether the subject individual is fit to be a relative caregiver, foster or adoptive parent, or is fit to be an other person in household, regardless of the criminal conviction or convictions. The individual authorized to grant an exception must document the approval on form DHS 1011D, "Criminal History Exception Request". In determining whether to grant an exception under sections (5) or (6) of this rule, the individual authorized to grant the exception must consider:

- (a) The severity and nature of the crime;
- (b) The number of criminal offenses;
- (c) The circumstances surrounding the crime;
- (d) The subject individual's explanation of the crime;
- (e) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(f) The relevancy, if any, of the crime or the false statement to the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or other person in household;

(g) When the subject individual is seeking to provide care for a specific child, whether disqualification of the subject individual would create emotional harm to the child and placement of the child with the subject individual would be a safe placement that is in the best interests of the child; and

(h) Intervening circumstances relevant to the responsibilities and circumstances of the relative caregiver, foster or adoptive parent, or other person in household. 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 subject individual's participation in counseling, therapy, education, or employment evidencing rehabilitation or a change in behavior;
- (D) The likelihood of a repetition of offenses or of the commission of another crime;

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- (E) The subsequent commission of another relevant crime;
 - (F) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
 - (G) A recommendation of an employer of the subject individual.
- (8) If allowed by current or previously effective rules, an exception for a specific misdemeanor or felony conviction need only be granted one time for a specific subject individual.
- (9) Granting an exception for a specific misdemeanor or felony conviction does not establish a precedent for other cases in which a conviction for the same crime is being considered.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 - 181.560 & 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09

413-120-0455

Consideration of Arrests

(1) Behavior that results in an arrest or a history of arrests may raise concerns about a subject individual's fitness to be a relative caregiver, foster or adoptive parent, or other person in household. If a subject individual has a history of one or more arrests for any of the following offenses, DHS determines whether, considering the behavior that resulted in the arrest, the subject individual is fit to be a relative caregiver, foster or adoptive parent, or other person in household:

- (a) Child abuse or neglect;
- (b) Domestic violence;
- (c) A crime against a child, including pornography;
- (d) A crime involving violence, including rape, sexual abuse, manslaughter, or homicide;
- (e) Physical assault;
- (f) Battery;
- (g) Drug-related or alcohol-related offense; or
- (h) Weapons-related offense.

(2) If a subject individual has been arrested for any of the offenses listed in section (1) of this rule, written approval from the District Manager is required for an exception to certify or approve the subject individual as a relative caregiver, foster or adoptive parent, or other person in household. The District Manager may designate the District Assistant Manager, Child Welfare Program Manager, or a child welfare supervisor to grant an exception under this subsection. In considering whether to grant an approval, the District Manager or designee must consider the following:

- (a) The severity and nature of the behavior that led to the arrest;
- (b) The number of arrests in the subject individual's history for behavior that relates to and raises concerns about the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or other person in household;
- (c) The circumstances surrounding each arrest;
- (d) The subject individual's explanation of the circumstances surrounding the behavior that led to each arrest;
- (e) Whether the subject individual was charged with or indicted for a crime related to each arrest;
- (f) The disposition of any charge or indictment related to each arrest;
- (g) The relevancy, if any, of the behavior that led to the arrest to the subject individual's fitness to be a relative caregiver, foster or adoptive parent, or other person in household;
- (h) When the subject individual is seeking to provide care for a specific child, whether disqualification of the subject individual would create emotional harm to the child and placement of the child with the subject individual would be a safe placement that is in the best interest of the child;
- (i) Intervening circumstances, since the time of the behavior that led to each arrest, that are relevant to the responsibilities and circumstances of the relative caregiver, foster or adoptive parent, or other person in household. Intervening circumstances include but are not limited to:
 - (A) The passage of time since the behavior that led to the arrest;
 - (B) The age of the subject individual at the time of the behavior that led to the arrest;
 - (C) The subject individual's participation in counseling, therapy, education, or employment evidencing rehabilitation or a change in behavior;
 - (D) The likelihood of a repetition of the behavior that led to the arrest; and
 - (E) A recommendation of an employer of the subject individual.

(3) The supervisor and worker may also obtain and review a copy of the police report of the arrest and interview the subject individual about the arrest.

(4) If allowed by current or previously effective rules, an exception for a specific arrest need only be granted one time for a specific subject individual.

(5) Granting an exception for a specific arrest does not establish a precedent for any other case in which an arrest for the same crime is being considered.

(6) The individual authorized to grant an exception under section (2) must document the approval on form DHS 1011D, "Criminal History Exception Request".

(7) Under no circumstances will DHS bar or refuse to approve an individual because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 or 419A.262.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537 & 181.010 - 181.560

Hist.: SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09

413-120-0460

Procedures

(1) Any subject individual applying to be a relative caregiver, foster or adoptive parent, or an other person in household must consent to a criminal offender information records check at the time of application. After an initial certification, a relative caregiver, foster parent, or other person in household of a foster parent or relative caregiver must consent to a criminal offender information records check prior to re-certification every two years. An adoption applicant and other person in household must consent to a criminal offender information records check once a year after the initial criminal records check is completed. Each applicant must be notified of this requirement at the time they apply for a certificate of approval or adoption approval. Criminal offender information records check consent forms must contain a notice that an applicant for a certificate of approval, or adoption approval and an other person in household are subject to a fingerprint-based criminal offender records check of national crime information databases that is conducted as required by ORS 181.537, ORS 181.557, and sections (5) and (6) of this rule.

(2) An adoptive applicant approved as a relative caregiver or foster or adoptive parent and who has submitted to a criminal offender information records check within the 12 months preceding the date on which he or she applied to adopt may be exempt from a new criminal offender information records check.

(3) DHS may not issue a certificate of approval for relative or foster care or approve an adoption home if a subject individual refuses to be fingerprinted when required. DHS may deny a certificate of approval for a relative caregiver or foster parent, or approval as an adoptive parent if a subject individual makes a false statement about having been arrested for or convicted of any crime or crimes.

(4) A subject individual must provide all information required for a criminal offender information records check, including fingerprints where required, on forms and fingerprint cards provided by DHS and according to procedures established by DHS, including:

(a) A properly completed and signed DHS Form CF 1011F from the subject individual;

(b) If the subject individual acknowledges a prior arrest or conviction for a crime listed in these rules (OAR 413-120-0400 to 413-120-0470), an explanation of the relationship between the facts that support the arrest or conviction and all intervening circumstances and written authorization for DHS to verify the information; and

(c) A completed FBI fingerprint card (FD 258) with red overprinting in the reason fingerprinted block from the subject individual when required.

(5) As part of the consent to a criminal offender information records check, DHS may request a subject individual to consent to the use of his or her social security number in conducting the criminal offender information records check. A subject individual indicates consent by signature.

(6) DHS must obtain and forward a fingerprint card to request criminal offender information on a subject individual from OSP and the FBI as follows:

(a) At the time of initial application DHS must obtain a fingerprint card from any subject individual applying to be a relative caregiver, foster or adoptive parent, or an other person in household, and DHS must initiate a fingerprint-based criminal offender records check of national crime information databases.

ADMINISTRATIVE RULES

(b) If a subject individual is arrested or convicted for a crime within the certification period of a currently certified home, and the home remains certified after the arrest or conviction, DHS must obtain a fingerprint card and initiate a fingerprint-based criminal offender records check of national crime information databases prior to re-certification.

(c) If a subject individual lives outside of Oregon for more than 60 consecutive days within the certification period of a currently certified home, DHS must obtain a fingerprint card and initiate a fingerprint-based criminal offender records check of national crime information databases prior to re-certification.

(d) An other person in household, as defined in OAR 413-120-0420, not in the home at the time of certification, is subject to a fingerprint-based criminal offender records check at the time he or she is identified as an other person in household. DHS must obtain a fingerprint card and initiate a fingerprint-based criminal offender records check of national crime information databases prior to re-certification.

(7) DHS may grant an exception to the fingerprint requirement of this rule if DHS determines that the subject individual is unable to submit fingerprints due to a physical or mental condition that makes compliance impossible or presents an undue safety risk to applicant or staff. To grant an exception, the Criminal History Exception Request Form (DHS 1011D) must be signed by the District Manager or designee.

(8) No applicant may be issued or may retain a certificate of approval as a relative caregiver or a foster parent, or approval as an adoptive parent unless the following criminal offender information safety standards are met:

(a) Completion of a documented check of Oregon LEDS;

(b) Authorization and initiation of the other requirements to complete the criminal offender information records check process, including a fingerprint-based criminal offender check of national crime information databases when required for a subject individual;

(c) Granting of an exception for approval as required and authorized by OAR 413-120-0450 for any criminal convictions either acknowledged by the applicant or reported by the criminal offender information system; and

(d) Reconsideration of the approval upon receipt of any criminal history information not available at the time of previous approval.

(9) DHS reviews the criminal offender information, including fingerprint-based criminal offender information when obtained, of a subject individual. The assessment of fitness, based on the criminal offender information, that reflects the decision-making criteria, must be documented and filed in the relative caregiver, foster home, or adoption home record. The LEDS, OSP, and FBI reports may not be filed in these records and must be destroyed within 90 days. A denial of the application or certification, based on criminal offender information, is considered preliminary until the subject individual has been given notice of an opportunity to challenge the criminal record report, or to request a contested case hearing under sections (12) and (13) of this rule. Except as provided in OAR 413-120-0450(4), a finding of fitness based on criminal offender information is only one factor DHS will use in deciding whether to issue a certificate of approval for a relative caregiver or foster parent, or to approve an adoptive parent. The final determination to grant or deny an exception for a certificate of approval for a relative caregiver or foster parent, or approval of an adoptive parent based solely on criminal offender information is made by the District Manager or designee. Criminal offender information received from OSP or the FBI is confidential and is not released to any unauthorized person or agency.

(10) A subject individual determined not fit to be approved as an adoptive resource pursuant to these rules must be denied approval for adoption of a child in the custody of DHS.

(11) Unless an exception for approval is granted under these rules DHS must revoke a certificate of approval for a foster parent or relative caregiver, deny a renewal application, or remove from consideration for child placement an approved relative caregiver, family foster home, or approved adoption applicant if a subject individual is convicted of a crime in Oregon or any other jurisdiction since the time of the last approval.

(12) If DHS determines that the subject individual is not fit to be certified or approved as a relative caregiver or foster or adoptive parent based on criminal offender information or a false statement related to criminal offender information in the application, unless the subject individual voluntarily withdraws from the process, the Child Welfare field office must notify the subject individual, via certified mail, that the subject individual:

(a) Has a right to inspect and challenge his or her Oregon criminal offender information through OSP procedures as adopted per ORS 181.555(3) and OAR 257-010-0035;

(b) May challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, D.C., 20537-9700; and

(c) May appeal DHS's determination of unfitness or indicate an intent to challenge information in the OSP or FBI report by requesting a contested case hearing pursuant to ORS 183.413 to 183.470 and OAR 413-120-0470 provided that DHS receives the request for a contested case hearing in writing within 30 days from the date of mailing the notice. After 30 days from the date of mailing the notice have elapsed, designated staff within the District must inform the certifier or adoption worker or private agency adoption worker that either:

(A) The subject individual has been notified that he or she is not fit for approval as a relative caregiver or foster or adoptive parent based on criminal offender information or a false statement related to criminal offender information in the application and that the caseworker may not approve the relative care, foster care, or adoption application because the subject individual has waived or timely declined, to exercise his or her right to a contested case hearing regarding his or her fitness; or

(B) The subject individual has requested a contested case hearing and that the field office will be notified of the subject individual's fitness as a relative caregiver or foster or adoptive parent upon issuance of the hearing decision.

(13) Upon the determination of DHS that an applicant for relative care, foster care, or adoption of a child in the custody of DHS under Child Welfare rules is not fit based on the criminal offender information or false statement of criminal offender information of an other person in household, the certifier, adoption worker, or private agency adoption worker must inform:

(a) The other person in household whose record was reviewed of the right to inspect and challenge the subject individual's Oregon criminal offender information through OSP procedures as adopted per ORS 181.555(3) and OAR 257-010-0035 and the person's rights under ORS 181.557(2)(b);

(b) The other person in household whose record was reviewed of the right to challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, D.C., 20537-9700; and

(c) The relative caregiver, foster parent, or adoption applicant whose approval is affected by the other person in household's criminal offender information or false statement about criminal offender information, via certified mail, that:

(A) Based on the other person in household's criminal offender information or false statement about criminal offender information, DHS may not certify or approve the relative caregiver, foster parent, or adoption applicant as long as the other person in household remains in the home or provides care to a child in the home; and

(B) The relative caregiver, foster parent, or adoption applicant may appeal in a contested case hearing the DHS determination of unfitness based on the criminal offender information or false statement of criminal offender information concerning an other person in household, provided that DHS receives the applicant's request for a contested case hearing in writing within 30 days from the date of mailing the notice to the applicant.

(14) The DHS relative care or foster care certifier, adoption worker, or private adoption agency worker must, after 30 days have elapsed from the date of mailing the notice, either:

(a) Notify the relative caregiver, foster parent, or adoption applicant that he or she is not fit for certification or approval for placement of a child in the custody of DHS under Child Welfare rules based on criminal offender information of an other person in household or false statement in the application of the other person in household, and that DHS may not certify or approve the applicant because the applicant has waived or declined to exercise his or her right to a contested case hearing regarding his or her fitness; or

(b) Notify the relative caregiver, foster parent, or adoption applicant that since he or she has requested a contested case hearing, the field office will be notified of the determination of the applicant's fitness for certification or approval upon issuance of the final order.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 - 181.560 & 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 1-2000(T), f. & cert. ef. 1-14-00 thru 7-12-00; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09

ADMINISTRATIVE RULES

413-120-0470

Rights for Review and Contested Case Hearings

(1) Contested case hearings are conducted by the Office of Administrative Hearings (OAH) under ORS Chapter 183 and OAR 137-003-0501 to 137-003-0700. Relative care, foster care, or adoption applicants have the right to appeal a decision made by DHS under its rules that the applicant is not fit for approval for placement of a child in the custody of DHS based on an authorized criminal offender information records check, or a false statement concerning a criminal offender information records check of the applicant or other person in household. An applicant must notify DHS in writing of the request for a contested case hearing within 30 calendar days after the notice is mailed by DHS to the applicant.

(2) DHS and OAH have no jurisdiction in a contested case hearing over allegations that the criminal offender information received from OSP or the FBI is inaccurate, incomplete, or maintained in violation of any federal or state law.

(3) DHS is entitled to rely on the criminal offender information supplied by OSP and the FBI until OSP or the FBI notifies DHS that the information has been changed or corrected. If an applicant has timely requested a contested case hearing, DHS will refer the matter to OAH for a hearing after the subject individual has been afforded a reasonable time to correct or complete the record, or has declined to do so.

(4) Prior to a contested case hearing being referred to OAH, DHS will convene an informal conference between DHS, the subject individual and his or her legal representative, if any, to review all available information and determine the need for a contested case hearing. At this informal conference, the subject individual must verify whether he or she has exercised his or her right to inspect or challenge the criminal offender information record or records or has declined to do so.

(5) To preserve the confidentiality of the records and the privacy of the subject individual, any contested case hearing under this rule will not be open to the public.

(6) The issues at a contested case hearing under this rule must be limited to the following matters:

(a) Whether the subject individual made a false statement in the application about a conviction or an arrest, has refused to consent to the criminal records check, or refused to be fingerprinted.

(b) Whether the subject individual has been convicted of a crime described in OAR 413-120-0450(4).

(c) If the subject individual has been convicted of any crime, other than those described in OAR 413-120-0450(4):

(A) The DHS determination that the behavior which resulted in the conviction is relevant to qualification to provide care as a relative caregiver, foster or adoptive parent, or fitness to be an other person in household; and

(B) The relationship between the facts supporting the conviction and the intervening circumstances as affecting the qualification to provide care as a relative caregiver, foster or adoptive parent, or fitness to be an other person in household.

(d) The relationship between the behavior that led to an arrest or arrests as affecting the qualification to provide care as a relative caregiver, foster or adoptive parent, or fitness to be an other person in household.

(7) A fingerprint card required for evidence in a contested case hearing must be destroyed by DHS when the contested case hearing procedure and any judicial review are concluded and final.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537, 181.010 - 181.560 & 409.015

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 14-2000, f. & cert. ef. 7-13-00; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 31-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 3-2008, f. & cert. ef. 5-15-08; CWP 22-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 1-2009, f. & cert. ef. 2-2-09

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 2-2009

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Rules Amended: 413-200-0270, 413-200-0272, 413-200-0274, 413-200-0276, 413-200-0278, 413-200-0281, 413-200-0283, 413-200-0287, 413-200-0292, 413-200-0296

Rules Repealed: 413-200-0272(T), 413-200-0274(T), 413-200-0278(T), 413-200-0281(T), 413-200-0283(T), 413-200-0287(T), 413-200-0292(T)

Subject: OAR 413-200-0270 through 413-200-0296 about responsibilities for certification and supervision of relative caregivers, foster parents, and pre-adoptive parents are being amended to comply with new federal requirements effective October 1, 2008. These rules are being amended to comply with the new federal law requiring that effective October 1, 2008 all applicants for a certificate of approval to provide foster care or relative care complete a fingerprint-based check of criminal history through the Federal Bureau of Investigation. These rules also are being amended to make the changes in the temporary rules permanent.

OAR 413-200-0272 about the definitions used in OAR 413-200-0270 through 413-200-0296 is being amended to state that a "criminal records check" may include a fingerprint-based check of national crime information databases.

OAR 413-200-0274 about responsibilities and procedures for certification of relative caregivers, foster parents, and pre-adoptive parents is being amended to state that effective October 1, 2008 the criminal records check done on each member of the applicant household will include a fingerprint-based check of Federal Bureau of Investigation databases. This rule also is being amended to state that during an expedited child-specific certification process a criminal history check per OAR 413-120-0400 to 413-120-0470 must be completed within 90 days of the date a certificate of approval was issued. Also, OAR 413-200-0274 is being amended to state that effective October 1, 2008 for all other applicants for certification the criminal records check done on each adult member of the household, and at the Department's discretion on any child under 18 in the household, will include a fingerprint-based check of Federal Bureau of Investigation databases.

OAR 413-200-0278 about the responsibilities for issuing a certificate of approval is being amended to correct a typographical error in the cross-reference to OAR 413-200-0274(6)(j)(D).

OAR 413-200-0281 about certifying alternate caregivers is being amended to state that effective October 1, 2008 any individual the certified family has identified as a relief or respite care provider for the certified family will be subject to a fingerprint-based check of Federal Bureau of Investigation databases.

OAR 413-200-0283 about the responsibilities in monitoring certification compliance is being amended to state that effective October 1, 2008 a certifier must assure completion of a fingerprint-based check of Federal Bureau of Investigation databases and a child abuse history background check whenever it becomes known that another adult is living in the household or a certified family identifies another relief or respite care provider.

OAR 413-200-0287 about the responsibilities regarding the two-year renewal of certificates of approval is being amended to state that a fingerprint-based check of national crime information databases is not required for an application for renewal of a certificate of approval unless an applicant or member of the household has lived outside of Oregon for more than 60 consecutive days within the two-year certification period.

OAR 413-200-0292 about the responsibilities regarding recertification of a previously certified home is being amended to state that the criminal records check done on any adult living in the applicant household will include a fingerprint-based check of national crime information databases only when the adult member of the certified family has lived outside of Oregon for more than 60 consecutive days or has been arrested or convicted during the certification process.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-200-0270

Purpose

(1) The purpose of these rules (OAR 413-200-0270 to 413-200-0296) is to describe the activities of the Department related to:

(a) The certification of a relative caregiver or foster parent, and the assessment of a pre-adoptive applicant;

(b) Monitoring a certified family's compliance to the Certification Standards; and

(c) Recertification of a family.

ADMINISTRATIVE RULES

(2) A certified relative caregiver, foster parent, and pre-adoptive parent will be referred to as a certified family throughout these rules.

(3) Regardless of the nature of the relationship between a family and a child or young adult, a family must be assessed and certified prior to placement of the child or young adult in the home. No child or young adult in the care or custody of the Department may be placed in an uncertified home.

(4) In these rules, unless otherwise indicated, a child or young adult refers to a child or young adult in the care or custody of the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 17-1999, f. & cert. ef. 8-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 18-2007, f. & cert. ef. 11-1-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 2-2009, f. & cert. ef. 2-2-09

413-200-0272

Definitions

The following definitions apply to OAR 413-200-0270 to 413-200-0296:

(1) "Applicant" means an individual or individuals who apply for a Certificate of Approval to become a certified family.

(2) "Certificate of Approval" means a document that the Department issues to approve the operation of a child-specific relative caregiver home, child-specific foster home, pre-adoptive home, or a regular foster home.

(3) "Certified family" means an individual or individuals who hold a Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(4) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(5) "Child" means a person under 18 years of age.

(6) "Child-Specific Certificate of Approval" means a document authorizing an individual or individuals to operate a home to provide care for a specific child or young adult in the care or custody of the Department.

(7) "Criminal records check" means the process for obtaining and reviewing an individual's criminal offender information and may include a fingerprint-based criminal offender records check of national crime information databases.

(8) "Department" means the Department of Human Services, Child Welfare.

(9) "Denial" means the refusal of the Department to issue an initial or renew a Certificate of Approval to operate a certified home to provide care for a child or young adult in the care or custody of the Department.

(10) "Designee" means an individual whom the designator directly and immediately supervises, or an individual with equal or greater management responsibility than the designator.

(11) "Discipline" means a training process a certified family uses to help a child or young adult develop the self control and self direction necessary to assume responsibilities, make daily living decisions, and learn to conform to accepted levels of social behavior.

(12) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(13) "Home study" means a document containing an analysis of the ability of the applicant to provide safe and appropriate care of a child or young adult in the care or custody of the Department.

(14) "Inactive Referral Status" means a period of time, not to exceed 12 months, during which neither the Department nor any other agency will place an additional child or young adult with a certified family. The certified family or the Department may initiate the Inactive Referral Status.

(15) "Member of the household" means any adult or child living in the home, including any caregiving employee or volunteer who may reside in the home.

(16) "Placement support plan" means a documented set of actions or resources that is developed to assist a relative caregiver or foster parent to maintain conditions that provide safety and well-being for a child or young adult in the home.

(17) "Pre-adoptive parent" means an individual with a current Certificate of Approval to operate a home to provide care for a child placed by the Department for purposes of adoption.

(18) "Psychotropic medication" means medication, the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including, but not limited to antipsychotic, antidepressant, and anxiolytic

medication and behavior medications. The classification of a medication depends upon its stated intended effect when prescribed because it may have many different effects.

(19) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(20) "Relief or respite care" means:

(a) A formal planned arrangement to relieve a certified family's responsibilities by an individual temporarily assuming responsibility for the care and supervision of a child or young adult; or

(b) Assistance provided by an individual who comes into the home of the certified family to care for a child or young adult in the care or custody of the Department.

(21) "Revocation" means an administrative act by the Department that rescinds an existing Certificate of Approval.

(22) "Young adult" means an individual aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 17-1999, f. & cert. ef. 8-12-99; Renumbered from 413-200-0280, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 11-2007(Temp), f. & cert. ef. 6-1-07 thru 11-27-07; Suspended by CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09

413-200-0274

Responsibilities for Certification

(1) Sections (2) to (5) of this rule cover Department responsibilities for an expedited process for certification of an applicant for a Child-Specific Certificate of Approval. Sections (6) and (7) cover Department responsibilities for certification of all other applicants.

(2) To complete the expedited process for assessment of an applicant for a Child-Specific Certificate of Approval, the certifier must:

(a) Review the completed application.

(b) Have face-to-face contact with the applicant and all members of the household. If a member of the household is unavailable when conducting face-to-face contact for a child-specific certificate of approval, the certifier must:

(A) Obtain the approval of the supervisor to delay face-to-face contact with that member of the household; and

(B) Determine a date and time for the face-to-face contact within one week of the date the member of the household becomes available.

(c) Verify applicant identity by viewing photo identification of each applicant.

(d) Explain the certification process.

(e) Discuss with the applicant the role and responsibilities of the Department.

(f) Assess the applicant's motivation for and interest in caring for the child or young adult.

(g) Complete a home visit. Observe and assess the safety of the physical environment and complete a Safety Assessment of the home.

(h) Gather and analyze information, through interview and observation, as it relates to each applicant's personal qualifications and assess the conditions that appear to exist in the home that affect safety and well-being for a child or young adult.

(i) Assure completion of a criminal offender information records check on each adult member of the household which, effective October 1, 2008, includes initiation of a criminal offender information records check, including information compiled and maintained by OSP Bureau of Criminal Identification and a fingerprint-based criminal offender records check of national crime information databases and, at the Department's discretion, on any child under 18 as outlined in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470.

(A) Assess any safety concerns regarding the applicant or member of the household; and

(B) If appropriate, obtain an exception pursuant to OAR 413-120-0450(7) for any criminal offender information of an applicant or member of the household.

(j) Assure initiation of Child Abuse History Background Checks for each adult member of the household.

(A) A child abuse history background check must be completed in the state of Oregon and requested from any other state where the individual has resided in the last five years;

(B) Assess any safety concerns regarding the applicant or member of the household; and

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(C) If appropriate, obtain approval from the District Manager, Assistant District Manager, or designee on a form approved by the Department to continue certification when Child Protective Services has concluded that a member of the household is the perpetrator of a Founded Disposition or has on his or her record an Unable to Determine Child Abuse or Neglect Disposition in Oregon or has a similar disposition from another state.

(k) Obtain at least two personal references for the applicant.

(l) Assure the applicant possesses a valid driver license and auto insurance if the applicant will transport a child or young adult in the care or custody of the Department.

(m) Determine, with input from the applicant, the gender, ages, and maximum number of children and young adults that may be placed in the home by the Department.

(n) If appropriate, obtain approval from the Child Welfare program manager or designee on a form approved by the Department when:

(A) The applicant or a member of the household is an in-home day care provider or foster care provider licensed by another child-caring agency, unless placement is authorized under an Interagency Agreement;

(B) The applicant or a member of the household is an adult foster care or in-home adult day care provider; or

(C) The applicant applying to become a relative caregiver is 18, 19, or 20 years of age.

(o) If appropriate, obtain approval from the District Manager on a form approved by the Department, when the applicant applies for a child specific Certificate of Approval through an office other than the office in the county in which the family resides.

(p) If appropriate, obtain the approval of the Child Welfare program manager when the number of children or young adults placed in the home will exceed the maximum number of children or young adults as described in OAR 413-200-0276.

(q) After completing the activities in section (2)(a) to (p) of this rule, the Department may issue a child-specific Certificate of Approval for up to 90 days.

(3) Within 90 days of the date the Child-Specific Certificate of Approval is issued, the certifier must:

(a) Obtain at least two additional references. No more than two of the four required references may be provided by the applicant's relatives.

(b) Contact the caseworker of the child or young adult placed in the home regarding the child or young adult's adjustment in placement and the certified family's ability to meet the child or young adult's needs.

(c) Conduct another home visit to gather social history information regarding personal qualifications of the certified family and assess the conditions that appear to exist in the home that affect safety and well-being for a child or young adult.

(d) Complete the criminal offender information background records check as described in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470.

(e) Complete the Child Abuse History Background Checks for each adult member of the household as required in paragraph (2)(j)(A) of this rule and request a Child Abuse History Background Check for each adult member of the household who has lived in another country in the five years preceding the applicant's dated application for a Certificate of Approval from the Department.

(f) Verify that the certified family:

(A) Has completed Orientation within 30 days after the Child-Specific Certificate of Approval was issued; and

(B) Has a plan to complete Foundations of Relative Care, Foster Care, and Pre-Adoptive Care (Foundations) training before or within 12 months after the date on which the Certificate of Approval was issued, or have written documentation of completion of equivalent training content from another licensed child-caring agency within two years of an applicant's dated application for a Certificate of Approval from the Department.

(g) Discuss and develop a training plan for each certified adult in the family.

(h) Document the assessment of the certified family's ability to provide safety and well-being for the child or young adult in a home study.

(4) After completing the activities in section (3) of this rule, the Department may approve the certified family for the two-year certification period and issue a Child-Specific Certificate of Approval with an effective date on the day which the activities in section (3) of this rule were completed and an end date two years from the effective date on the initial Child-Specific Certificate of Approval.

(5) When the activities described in subsections (3)(a) to (3)(h) of this rule have not been completed within 90 days, the District Manager,

Assistant District Manager, or designee may extend the Child-Specific Certificate of Approval for:

(a) No longer than 60 days; or

(b) Longer than 60 days if an activity has not been completed due to circumstances beyond the control of the Department.

(6) To complete the assessment for the certification of all other applicants, the certifier must:

(a) Review the completed application.

(b) Have face-to-face contact with the applicant and each member of the household.

(c) Verify applicant identity by viewing the photo identification of each applicant.

(d) Explain the certification process.

(e) Discuss with the applicant the role and responsibilities of the Department.

(f) Assess the applicant's motivation for and interest in caring for the child or young adult.

(g) Complete a minimum of two home visits. Observe and assess the safety of the physical environment and complete a safety assessment of the home.

(h) Gather social history information through interview and observation. Analyze information as it relates to each applicant's personal qualifications and assess the conditions that appear to exist in the home that affect safety and well-being for a child or young adult.

(i) Assure completion of a criminal records check which, effective October 1, 2008, includes a criminal offender records check, including information compiled and maintained by the OSP Bureau of Criminal Identification and a fingerprint-based criminal offender records check of national crime information databases on each adult member of the household and, at the Department's discretion, on any child under 18, as outlined in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470.

(A) Assess any safety concerns regarding the applicant or member of the household; and

(B) If appropriate, obtain an exception pursuant to OAR 413-120-0450(7) for any criminal offender information of an applicant or member of the household.

(j) Assure completion of Child Abuse History Background Checks for each adult member of the household.

(A) If the applicant or an adult member of the household has lived outside the state of Oregon and within the United States in the previous five years, a child abuse history background check must be obtained from each state where the individual resided in the five years preceding the applicant's dated application for a Certificate of Approval from the Department;

(B) If the applicant or an adult member of the household has lived outside of the United States in the previous five years, a child abuse history background check must be requested from each country where the individual lived within the five years preceding the applicant's dated application for a Certificate of Approval from the Department;

(C) Assess any safety concerns regarding the applicant or member of the household; and

(D) If appropriate, obtain approval from the District Manager, Assistant District Manager, or designee on a form approved by the Department when Child Protective Services has concluded that a member of the household is the perpetrator of a Founded Disposition, has on his or her record an Unable to Determine Child Abuse or Neglect Disposition in Oregon, or has a similar disposition from another state to continue certification.

(k) Obtain at least four personal references for the applicant, no more than two of which may be provided by the applicant's relatives.

(l) Assure the applicant possesses a valid driver license and auto insurance if the applicant will transport a child or young adult in the care or custody of the Department.

(m) Determine, with input from the applicant, the gender, ages, and maximum number of children and young adults that may be placed in the home by the Department.

(n) If appropriate, obtain approval from the Child Welfare program manager or designee on a form approved by the Department when:

(A) The applicant or a member of the household is an in-home day care provider or foster care provider licensed by another child-caring agency, unless placement is authorized under an Interagency Agreement;

(B) The applicant or a member of the household is an adult foster care or in-home adult day care provider; or

(C) The applicant applying to become a relative caregiver is 18, 19, or 20 years of age.

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(o) If appropriate, obtain approval from the District Manager on a form approved by the Department when the applicant applies for a Certificate of Approval through an office other than the office in the county in which the family resides.

(p) If appropriate, obtain the approval of the Child Welfare program manager when the number of children or young adults placed in the home will exceed the maximum number of children or young adults as described in OAR 413-200-0276.

(q) Verify that the applicant has completed Orientation and Foundations of Relative Care, Foster Care, and Pre-Adoptive Care (Foundations) before or within 12 months after the date on which the Certificate of Approval was issued, or has written documentation of completion of equivalent training content from another licensed child-caring agency within two years of an applicant's dated application for a Certificate of Approval from the Department.

(r) Discuss and develop a training plan with each applicant.

(s) Document the assessment of the applicant's ability to provide safety and well-being for the child or young adult in a home study.

(7) After completing the activities in section (6) of this rule, the Department may issue a Certificate of Approval for a two-year period.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09

413-200-0276

Responsibility to Determine the Maximum Number of Children or Young Adults in a Certified Family Home

(1) Unless extraordinary circumstances exist, a supervisor may not issue a Certificate of Approval that, when the home is fully occupied, exceeds the following maximum number of children or young adults living in the home:

(a) A total of four children or young adults to one certified adult living in the home;

(b) A total of seven children or young adults to two certified adults living in the home; or

(c) A total of two children under the age of three.

(2) When making the determination of the maximum number of children or young adults in the home as described in section (1) of this rule, the supervisor includes all children and young adults residing in the home.

(3) The Child Welfare program manager may approve placing additional children or young adults in the home in extraordinary circumstances.

(a) Extraordinary circumstances include, but are not limited to:

(A) Placing siblings together; or

(B) Placing a special needs child or young adult with a family that has demonstrated extraordinary ability in meeting the special needs of a child or young adult.

(b) In these extraordinary circumstances, the certifier must assess:

(A) The skills, abilities, and training of the certified family related to the quantity of services that are required by the child or young adult;

(B) The skills, abilities, and special needs of the child or young adult;

(C) The amount of Departmental supervision the certified family requires and the certified family's network of support to the child or young adult related to the child or young adult's needs;

(D) The maximum safe physical capacity of the home, including sleeping arrangements; and

(E) The plan for each individual to escape from the home in case of fire or other emergency.

(4) The certifier must document the assessment described in subsection (3)(b) of this rule on a form approved by the Department and obtain Child Welfare program manager approval prior to permitting the home to exceed the maximum number of children or young adults specified in section (1) of this rule.

(5) When a Child Welfare program manager approves placing additional children or young adults in a certified home, the certifier must:

(a) Visit the home every 90 days;

(b) Assess the certified family's compliance with certification standards; and

(c) Document the family's compliance with certification standards after each visit.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 2-2009, f. & cert. ef. 2-2-09

413-200-0278

Responsibilities for Issuing a Certificate of Approval

(1) The Department must complete the assessment activities described in OAR 413-200-0274, and issue a Certificate of Approval or provide notice of intent to deny a Certificate of Approval within 180 days of receipt of an application to become a foster parent or relative caregiver, unless the application is withdrawn or the assessment period is extended by the District Manager, Assistant District Manager, or designee. Approval and notice of adoptive homes is described in Child Welfare Policy I-G.1.3, "Adoption Applications", OAR 413-120-0230 and 413-120-0240.

(2) The supervisor reviews all assessment activities, ensures all safety components of the certification standards are met, ensures any required exception approval has been obtained for OAR 413-200-0274(2)(i)(B) or 413-200-0274(6)(i)(B), and required approvals have been obtained for 413-200-0274(2)(j)(C), 413-200-0274(2)(n) to (p), 413-200-0274(6)(j)(D), 413-200-0274(6)(n)(A) to (C), or 413-200-0274(6)(o) or (p) prior to the Department issuing a Certificate of Approval.

(a) The Department may issue a Child-Specific Certificate of Approval for up to 90 days when all activities required in OAR 413-200-0274(2) have been completed; or

(b) When all assessment activities are completed and written documentation has been submitted, the Department may issue a two-year Certificate of Approval to provide relative or foster care.

(3) A Certificate of Approval must include the following information:

(a) The name of each primary adult, including married couples and domestic partners, approved as the certified family;

(b) The address to which the certificate applies;

(c) The age range (birth to 20) and gender of the children or young adults for whom the certified family is approved to provide care;

(d) The maximum number of children or young adults that can be placed in the home;

(e) The provider number that the Department has given the home;

(f) The beginning and expiration dates of the certificate; and

(g) The signature of the Child Welfare program manager or designee.

(4) A Child-Specific Certificate of Approval must state the number, age range, and gender of the specific children or young adults placed in the home.

(5) The Department may at its discretion modify the Certificate of Approval to increase or decrease the maximum number of children or young adults, within the limits prescribed in section (1) of this rule, the age range, or the gender of the children or young adults for whom the family is certified.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09

413-200-0281

Alternate Caregivers

The certifier must:

(1) Discuss with the certified family the plan for providing care to a child or young adult, when the certified family will be unavailable to provide care.

(2) Effective October 1, 2008, assure completion of criminal offender information records check, including information compiled and maintained by OSP Bureau of Criminal Identification and a fingerprint-based criminal offender records check of national crime information databases as outlined in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0460 on any individual the certified family has identified to provide relief or respite care for the certified family; review the information, and, if needed and appropriate, obtain an exception approval as described in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-120-0400 to 413-120-0470 and in OAR 413-200-0274(6)(j)(A) to (D) prior to the individual providing relief or respite care.

(3) Conduct Child Abuse history background checks on any individual the certified family has identified to provide relief or respite care as described in OAR 413-200-0274(6)(j)(A) to (D) and review the information to assure the individual presents no safety concerns.

(4) Analyze information under sections (2) and (3) of this rule prior to determining the individual is safe and appropriate to provide relief or respite care and authorizing the individual to provide relief and respite care.

(5) Document the analysis under section (4) of this rule in the certification record.

(6) Notify the certified family of the authorization for the individual identified to provide relief or respite care.

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(7) Verify that any certified family identified to provide relief or respite care for another certified family has a current Certificate of Approval.

(8) When the analysis under section (4) of this rule results in a determination that the individual is either not a safe or appropriate individual to provide relief or respite care, notify the certified family that the individual is not authorized to provide relief or respite care.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09

413-200-0283

Responsibilities to Monitor Certification Compliance

(1) The certifier must monitor each certified family's compliance with Child Welfare Policy II B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396. To monitor compliance, a certifier must:

(a) Conduct a minimum of one home visit every 180 days to assure compliance with Certification Standards.

(b) When a certified family has been approved to exceed the maximum number of children or young adults as prescribed in OAR 413-200-0276(1), conduct a minimum of one home visit every 90 days as long as the approval is applicable.

(c) Whenever it becomes known that the certified family wishes to become an in-home child care, an adult foster care, or in-home adult day care provider, assess the certified family's ability to maintain conditions in the home that provide safety and well-being for the child or young adult placed in the home by the Department and, when appropriate, obtain approval from the Child Welfare program manager or designee on a form approved by the Department, as described in OAR 413-200-0274(2)(n)(A) and (B) and (4)(n)(A) and (B) when appropriate.

(d) Whenever it becomes known that another agency wishes to place a child or young adult in a certified home, obtain approval from the Child Welfare program manager or designee on a form approved by the Department prior to placement of the child or young adult.

(e) Effective October 1, 2008, whenever it becomes known that another adult is living in the household or the certified family identifies another relief or respite care provider, assure completion of a criminal offender information records check, including information compiled and maintained by the OSP Bureau of Criminal Identification and a fingerprint-based criminal offender information records check of national crime information databases as outlined in Child Welfare Policy I-G.1.4, "Criminal History", OAR 413-200-0460 and child abuse history background checks.

(2) To complete the monitoring responsibilities, the certifier must:

(a) Seek input from the caseworkers of children placed or living in the home during the past 180 days and assess the conditions that appear to exist in the home that affect safety and well-being for the child or young adult;

(b) Assess the information that the certifier learns from these contacts to determine whether conditions appear to exist in the home that affect safety and well-being for the child or young adult placed in the home by the Department;

(c) Review and assess the conditions that appear to exist in the home that affect safety and well-being for the child or young adult when any extraordinary circumstances described in OAR 413-200-0276(3)(a) exist; and

(d) Document the contacts with the certified family and the assessment information obtained under this rule in the certification record.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09

413-200-0287

Responsibilities Regarding Two-Year Renewal of the Certificate of Approval

(1) A certified family must be assessed every two years. The Department must complete the assessment and provide written notice of the decision to renew a certificate approval or intent to deny the renewal of the certified family's certificate of approval, prior to expiration of the existing certificate. To renew a Certificate of Approval, the certifier must complete all of the following:

(a) Complete a home visit and have face-to-face contact with each member of the household.

(b) Review the completed Certified Family Certificate Renewal or Change of Status Application.

(c) Confirm completion of required hours of training, and develop a training plan for the new certification period.

(d) Assure completion of criminal records checks on each adult member of the household; and, at the Department's discretion, any child under 18, as described in Child Welfare Policy I G.1.4, "Criminal History", OAR 413-200-0400 to 413-200-0470. A fingerprint-based criminal offender records check of national crime information databases is not required for an application for renewal of a Certificate of Approval, unless an applicant or member of the household has lived outside of Oregon for more than 60 consecutive days within the two-year certification period or has been arrested or convicted during the two-year certification period.

(A) Assess any safety concerns regarding the applicant or member of the household; and

(B) Obtain an exception approval per OAR 413-200-0450(7) Criminal History Checks for any new criminal offender information conviction for an applicant or member of the household, if appropriate.

(e) Assure completion of Child Abuse History Background Checks for each adult member of the household.

(A) If the applicant or an adult member of the household has lived outside the state of Oregon in the previous five years, and an out-of-state child abuse history background check has not been completed, a child abuse history background check must be requested from each state or country where the individual resided in the five years preceding the applicant's dated application for renewal of a Certificate of Approval from the Department.

(B) Assess any safety concerns regarding the applicant or adult member of the applicant's household.

(C) If appropriate, obtain approval from the District Manager or designee, on a form approved by the Department, when Child Protective Services has concluded that a member of the applicant's household is the perpetrator of a Founded Disposition or has on his or her record an Unable to Determine Child Abuse or Neglect Disposition or similar disposition from another state to continue certification.

(f) Review and assess whether conditions appear to exist in the home that affect safety and well-being for the child or young adult.

(g) Review and analyze the certified family's skills and abilities in maintaining conditions in the home that provide safety and well-being for the child or young adult, maintaining relationships with the community and the Department, and supporting the child or young adult's case plan.

(h) Update the home study including results of the assessment completed in subsections (a) to (g) of this section and submit to the supervisor for approval.

(2) The supervisor reviews and may approve or deny the home study and, if he or she approves, the Department issues a two-year certificate of approval.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005 - 418.640
Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09

413-200-0292

Responsibilities Regarding Recertification of a Previously Certified Home

(1) When a certified family has been closed less than six months, the previous Certificate of Approval would not have expired during the months the home was closed (if the Certificate of Approval was not revoked), the certified family continues to live in the same residence, and the certified family requests that the Department reopen the Certificate of Approval, the certifier must:

(a) Provide the family with a Certified Family Certificate Renewal or Change of Status Application;

(b) Complete criminal records checks, including a fingerprint-based criminal offender records check of both state and national crime information databases and child abuse history background checks on any new adult living in the household as described in OAR 413-200-274(2)(i) and (j) and when any adult member of the certified family has lived outside of Oregon for more than 60 consecutive days or has been arrested or convicted during the certification period.

(c) Conduct a home visit to identify and assess any changes in the environment or family;

(d) Observe and assess the safety of the physical environment and complete a safety assessment of the home; and

(e) Document in the certification file the circumstances under which the Department reopened the Certificate of Approval.

(2) When a certified family has been closed for six months or more or the previous Certificate of Approval would have expired during the months

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the home was closed, and the previously certified family contacts the Department to become certified again, the certifier must:

- (a) Provide to the certified family for completion the necessary documents for an initial application for a Certificate of Approval to provide care;
- (b) Complete the assessment process as described in OAR 413-200-0274;

(c) Update the family's home study and document any changes in the family's circumstances since the most recent closure of the Certificate of Approval; and

- (d) Submit the updated home study to the supervisor for approval.

(3) The supervisor reviews and may approve or deny the home study and, if he or she approves, issue a two-year Certificate of Approval.

(4) Foundations training is required if a family previously certified by the Department has not been certified within the last two years unless the supervisor waives the training requirement based on the family's documented knowledge and skills in caring for a child or young adult placed in the home by the Department.

(5) When the certified family moves to another residence in the State of Oregon, the Certificate of Approval automatically terminates. The Department may issue a new Certificate of Approval for the new residence after the activities described in this section have been completed. Within 14 working days, the certifier must:

(a) Provide the certified family a Certified Family Certificate Renewal or Change of Status Application;

(b) Review the completed Certified Family Certificate Renewal or Change of Status Application;

(c) Conduct a home visit and Safety Assessment prior to recommending a Certificate of Approval for the family to the supervisor; and

(d) Document in the certification file the circumstances of the family's relocation.

(6) When a certified family has been initially certified by the local Child Welfare office in the county in which the family resides and the family moves to another county, all of the following actions are required:

(a) The issuing Child Welfare office's certification supervisor must notify the certification supervisor in a Child Welfare office in the county to which the certified family is moving;

(b) The certification file and ongoing Department responsibilities are transferred to a Child Welfare office in the county to which the certified family is moving, unless the District Manager in the county to which the certified family is moving has approved that Department certification responsibilities remain in the Child Welfare office in the county from which the certified family is moving.

- (c) Complete the actions described in section (5) of this rule.

(7) When a certified family wishes to move outside the State of Oregon with a child or young adult, refer to Child Welfare Policy I-B.3.4.2, "Interstate Compact on the Placement of Children", OAR 413-040-0200 to 413-040-0330.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 24-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 2-2009, f. & cert. ef. 2-2-09

413-200-0296

Responsibilities Regarding Denial or Revocation of a Certificate of Approval

(1) The Department may deny an application for a Certificate of Approval or revoke a Certificate of Approval when the applicant or certified family does not meet one or more of the certification rules in Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396.

(2) The certifier must provide the applicant a written notice of the intent to deny a Certificate of Approval, which must state the reason or reasons for the denial.

(3) The Department must revoke a Certificate of Approval when a certified family violates one or more of the rules in Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents", OAR 413-200-0301 to 413-200-0396, and at the conclusion of a CPS assessment, the Department determines that a child is unsafe and the certified family cannot or will not protect the child.

(4) The Department may deny an application or revoke a Certificate of Approval if the Department discovers an Applicant or certified family has falsified information (by act of commission or omission) before or after the Certificate of Approval has been issued or if a certified family fails to provide information or inform the Department of any disqualifying condition that arises after the Certificate of Approval has been issued.

(5) The certifier must provide the certified family a written notice of intent to revoke, which must state each reason for the revocation.

(6) The Department must remove from the home all the children and young adults in the care or custody of the Department upon making the decision to revoke the certified family's Certificate of Approval.

(7) When the Department has revoked a family's Certificate of Approval or denied an application for a Certificate of Approval, the Department may require a waiting period of up to five years from the date of revocation of the family's Certificate of Approval before the Department accepts a new application from the family.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 2-2009, f. & cert. ef. 2-2-09

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Rules Amended: 413-200-0301, 413-200-0305, 413-200-0306, 413-200-0308, 413-200-0314, 413-200-0335, 413-200-0354, 413-200-0358, 413-200-0362, 413-200-0371, 413-200-0379, 413-200-0383, 413-200-0386, 413-200-0388, 413-200-0390, 413-200-0393, 413-200-0395, 413-200-0396

Rules Repealed: 413-200-0306(T), 413-200-0314(T), 413-200-0371(T), 413-200-0383(T)

Subject: OAR 413-200-0301 through 413-200-0396 about the certification standards for foster parents, relative caregivers, and pre-adoptive parents are being amended to comply with new federal requirements effective October 1, 2008 governing the criminal background check process for prospective relative caregivers and foster and adoptive homes. These rules are being amended to comply with the new federal law requiring that effective October 1, 2008 all applicants for a certificate of approval to provide an adoptive home, foster care, or relative care complete a fingerprint-based check of criminal history through the Federal Bureau of Investigation. These rules also are being amended to make the changes in the temporary rules permanent.

OAR 413-200-0306 about the definitions used in this rule division is being amended to restate the definition of "criminal records check" to include a fingerprint-based check of criminal history through the Federal Bureau of Investigation.

OAR 413-200-0314 about the process to apply for a certificate of approval to become a certified family is being amended to restate that the applicant and all adult members of the applicant's household must consent to a fingerprint-based check of criminal history through the Federal Bureau of Investigation. This rule is also being amended to restate that Department's policy that the applicant and all adult members of the applicant's household must provide information on prior allegations of child abuse and neglect and consent to a child abuse and neglect background check.

OAR 413-200-0371 about the responsibilities and notification requirements for selection and use of alternate caregivers is being amended to state that a certified family must consent to a fingerprint-based check of criminal history through the Federal Bureau of Investigation.

OAR 413-200-0383 about other required notifications is being amended to require a certified family to notify the certifier or the certifier's supervisor of any new relief or respite care provider.

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413-200-0301

Purpose of Certification Standards

(1) The purpose of these rules (OAR 413-200-0301 to 413-200-0396) is to describe the criteria for becoming a certified relative caregiver, foster parent, or pre-adoptive parent. A certified relative caregiver, foster parent, or pre-adoptive parent is referred to as a certified family throughout these rules.

(2) These rules apply to any individual requesting a Certificate of Approval, any individual who has a current Certificate of Approval, or any

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individual who is requesting re-certification to provide immediate, temporary, or permanent care for a child or young adult in the care or custody of the Department. The individual may be an adult related to the child, an unrelated adult with an existing relationship to the child, or an adult unrelated and unknown to the child.

(3) In these rules, unless otherwise indicated, a child or young adult refers to a child or young adult in the care or custody of the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0305

Authorization

(1) Title IV-E, section 471 (a)(10) of the Social Security Act, requires the State of Oregon to establish a state authority responsible for establishing and maintaining standards for foster family homes and child care institutions.

(2) ORS 418.005 to 418.640 give the Department the authority and responsibility to approve homes for children and young adults in the care or custody of the Department. ORS 418.005 to 418.640 further authorize the Department to develop rules to approve these homes.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0306

Definitions

The following definitions apply to these rules (OAR 413-200-0301 to 413-200-0396):

(1) "Applicant" means an individual or individuals who apply for a Certificate of Approval to become a certified family.

(2) "Certificate of Approval" means a document that the Department issues to approve the operation of a child-specific relative caregiver home, child-specific foster home, pre-adoptive home, or a regular foster home.

(3) "Certified family" means an individual or individuals who hold a Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(4) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(5) "Child" means an individual under 18 years of age.

(6) "Child-Specific Certificate of Approval" means a document authorizing an individual or individuals to operate a home to provide care for a specific child or young adult in the care or custody of the Department.

(7) "Criminal records check" means the process for obtaining and reviewing an individual's criminal history information and may include a fingerprint-based criminal offender records check of national crime information databases.

(8) "Department" means the Department of Human Services, Child Welfare.

(9) "Denial" means the refusal of the Department to issue or renew a Certificate of Approval to operate a home to provide care for a child or young adult in the care or custody of the Department.

(10) "Designee" means an individual who the designator directly and immediately supervises, or an individual with equal or greater management responsibility than the designator.

(11) "Discipline" means a training process a certified family uses to help a child or young adult develop the self control and self direction necessary to assume responsibilities, make daily living decisions, and learn to conform to accepted levels of social behavior.

(12) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(13) "Inactive Referral Status" means a period of time, not to exceed 12 months, during which neither the Department nor any other agency will place an additional child or young adult with a certified family. The certified family or the Department may initiate the Inactive Referral Status.

(14) "Member of the household" means any adult or child living in the home, including any caregiving employees and volunteers who may reside in the home.

(15) "Physical restraint" means the act of restricting a child or young adult's voluntary movement as an emergency measure in order to manage and protect the child or young adult or others from injury when no alternate actions are sufficient to manage the child or young adult's behavior. "Physical restraint" does not include temporarily holding a child or young adult to assist him or her or assure his or her safety, such as preventing a child from running onto a busy street.

(16) "Pre-adoptive parent" means an individual with a current Certificate of Approval to operate a home to provide care for a child placed by the Department for purposes of adoption.

(17) "Psychotropic medication" means medication, the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including but not limited to, antipsychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated intended effect when prescribed because it may have many different effects.

(18) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(19) "Relief or Respite Care" means:

(a) A formal planned arrangement to relieve a certified family's responsibilities by an individual temporarily assuming responsibility for the care and supervision of the child or young adult; or

(b) Assistance provided by an individual who comes into the home of the certified family to care for the child or young adult in the care or custody of the Department.

(20) "Revocation" means an administrative act by the Department that rescinds an existing Certificate of Approval.

(21) "Surrogate" means an individual who has been appointed to safeguard a child's rights in the special education decision-making process. The individual may be appointed pursuant to OAR 581-015-2320 for school-age children, 581-015-2760 for preschool children, or by the juvenile court under ORS 419B.220.

(22) "Young adult" means an individual aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 11-2007(Temp), f. & cert. ef. 6-1-07 thru 11-27-07; Suspended by CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 25-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0308

Personal Qualifications of Applicants and Certified Families

(1) An applicant has the burden of proving that he or she possesses the required qualifications to become a certified family.

(2) To provide care for a child or young adult, an applicant must be at least 21 years of age unless:

(a) Otherwise specified in Child Welfare Policy I-E.2.1, "Placement of Indian Children", OAR 413-070-0100 to 413-070-0260; or

(b) A Child Welfare program manager or designee has approved an applicant, between the ages of 18 through 20 years, to become a relative caregiver.

(3) An applicant must:

(a) Possess the ability to exercise sound judgment and demonstrate responsible, stable, emotionally mature behavior;

(b) Possess the ability to manage the applicant's home and personal life;

(c) Maintain conditions in the home that provide safety and well-being for the child or young adult;

(d) Have supportive relationships with adults and children living in the household and with others in the community;

(e) Have a lifestyle and personal habits free of criminal activity, and abuse or misuse of alcohol or drugs;

(f) Have adequate financial resources to support the household independent of the monthly foster care payments; and

(g) Have the physical and mental capacity to care for a child or young adult. Upon request, an applicant must provide copies of medical reports from a health care professional, or may be required to complete an expert evaluation with a report provided to the Department.

(4) To maintain a Certificate of Approval, in addition to continuing to meet the personal qualifications in sections (1) to (3) of this rule, a certified family must:

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(a) Learn and apply effective childrearing and behavior intervention practices focused on helping a child or young adult grow, develop, and build positive personal relationships and self-esteem;

(b) Incorporate into the family's care-giving practices positive non-punitive discipline and ways of helping a child or young adult build positive personal relationships, self-control, and self-esteem;

(c) Respect and support the child or young adult's relationships with the birth family and any other significant individual in the child or young adult's life;

(d) Respect each child or young adult's spiritual beliefs, lifestyles, sexual orientation, disabilities, national origin, cultural identities, and provide opportunities to enhance the child or young adult's heritage;

(e) Work in partnership with the Department to identify the strengths and needs of each child or young adult;

(f) Follow through and comply with prescribed services, activities, and restrictions of each child or young adult in the care or custody of the Department placed in the certified home; and

(g) Use reasonable efforts to prevent anyone from influencing the child or young adult regarding allegations in a judicial or administrative proceeding in which the child or young adult's family or legal guardian, the child or young adult, or another individual may be involved.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0314

Process to Apply for a Certificate of Approval

(1) To become a certified family, the applicant must:

(a) Apply for certification in the county of the applicant's residence, except as provided in OAR 413-200-0274(2)(o)(A) and 413-200-0274(4)(o)(A);

(b) Complete a Department application;

(c) Provide the names and contact information of four references, two of whom may be relatives of the applicant, who can attest to the applicant's character and ability to provide safe and protective care for a child or young adult, and the names and contact information of at least two individuals with whom the certified family is likely to remain in contact if displaced due to a natural disaster;

(d) Complete all required paperwork requested by the Department;

(e) Allow Department staff to conduct an in home safety assessment of conditions that appear to exist in the home that affect safety and well-being for the child or young adult;

(f) Allow Department staff to have face-to-face contact with all members of the applicant's household;

(g) Provide social and family history information to the Department; and

(h) Provide information about any current or previous licenses, certifications, or applications for relative care, foster care, day care, adoption, or any other types of services for vulnerable individuals including adult care giving. Information must include the organization's name and any denials, suspensions, revocations, or terminations.

(2) The applicant and each adult member of the applicant's household must have face-to-face contact with a Department certifier and must provide:

(a) Information regarding criminal involvement, including arrests and convictions regarding any member of the household; and

(b) Effective October 1, 2008, consent to a criminal offender information records check, including information compiled and maintained by OSP Bureau of Criminal Identification and a fingerprint-based criminal offender records check of national crime information databases as outlined in Child Welfare Policy, I-G.1.4, "Criminal History", OAR 413-120-0460.

(3) The applicant must allow the Department, at its discretion, to gather information regarding the criminal offender information records of any child under 18 who lives in the household.

(4) The applicant and each adult member of the applicant's household must provide:

(a) Information regarding any previous allegations of child abuse and neglect; and

(b) Consent to a child abuse and neglect background check.

(5) Withdrawal of Application. An applicant who has applied or is applying for a Certificate of Approval may voluntarily withdraw the application to provide care for a child or young adult. The applicant must provide the voluntary withdrawal notice:

(a) On a form provided by the Department;

(b) In a written format of his or her choice; or

(c) Verbally to a certifier or certifier's supervisor.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; Renumbered from 413-200-0381, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 25-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0335

Certification Standards Regarding the Home Environment

(1) The home and surrounding environment of a certified family must comply with all of the following requirements:

(a) Be the primary residence of the certified family and the residence where the child or young adult resides with the certified family.

(b) Have adequate space for each member of the household, including space for safe and appropriate sleeping arrangements.

(A) A certified family and Department staff must consider a child or young adult's age, gender, special needs, behavior, and history of abuse or neglect in determining appropriate sleeping arrangements.

(B) Unrelated foster children may not share a bed.

(c) Have safe and adequate drinking water and an adequate source of safe water to be used for personal hygiene.

(d) Have access to a working telephone to make and receive phone calls.

(e) Have the necessary equipment for the safe preparation, storage, serving, and clean-up of food.

(f) Provide safe storage of all medications in the household, and store psychotropic medications for any member of the household in locked storage.

(g) Have easily accessible first aid supplies, and a reasonable understanding of how to use such supplies.

(h) Have a safe, properly maintained, and operational heating system. Space heaters must be plugged directly into a wall outlet and must be equipped with tip-over protection.

(2) To maintain a safe environment for a child or young adult, a certified family must:

(a) Comply with state and local ordinances and consider a child or young adult's age, special needs and capabilities, to establish the necessary safeguards around potential water hazards, outdoor play equipment, outdoor tools, chemicals, or potentially dangerous hazards.

(b) Assure that:

(A) Swimming pools, wading pools, ponds, hot tubs, and other water hazards are inaccessible to a child or young adult unless responsibly supervised;

(B) Outdoor tools and equipment, machinery, chemicals, flammables, and combustibles are stored in a safe manner;

(C) Animals are properly cared for and kept in compliance with local ordinances; and

(D) A child or young adult's access to potentially dangerous animals is restricted.

(c) Consider the child or young adult's age, special needs, and capabilities when determining if an animal is a safe and appropriate pet.

(d) Notify and receive authorization from a child or young adult's caseworker or the caseworker's supervisor prior to a child or young adult's beginning hunting or target practice.

(3) To protect the safety of a child or young adult in care, a certified family must store hunting and sporting equipment, such as knives, spears, arrows, hunting sling shots, bows, and martial art weapons in a safe and secure manner inaccessible to a child or young adult.

(4) The certified family must comply with all of the following fire safety requirements.

(a) The home of a certified family must:

(A) Have at least one working smoke alarm on each floor and one in each bedroom where a child or young adult sleeps;

(B) Have at least one operable fire extinguisher rated 2-A:10-B-C or higher;

(C) Have at least one means of emergency exit and one means of rescue from the home;

(D) Have a barrier around fireplaces, wood stoves, or other heating systems which may cause burns to a child or young adult developmentally unable to reasonably follow safety rules regarding such devices; and

(E) Have operable, quick-release mechanisms on barred windows. No bedroom occupied by a child or young adult, who is unable to use the quick-release mechanism, may have a barred window.

(b) Provide to the Department and display in the home a written comprehensive home evacuation plan, share the plan with each child or young adult at the time of placement, and practice the evacuation plan at least

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every six months. A certified family must include in the written comprehensive home evacuation plan a provision for the safe exit of a child or young adult who is not capable of understanding or participating in the evacuation plan.

(c) Assure that a bedroom used by a child or young adult has:

- (A) One unrestricted exit;
- (B) At least one secondary means of exit or rescue;
- (C) A working smoke alarm; and

(D) Unrestricted, direct access, at all times, to hallways, corridors, living rooms or other such common areas.

(5) Any door that locks on the inside must be operable from the outside of the room, and any door that locks on the outside must be operable from the inside of the room.

(6) Transportation requirements.

(a) A certified family must have available, and be willing to use, a safe and reliable method of transportation.

(b) Any member of the household transporting a child or young adult must provide proof of a valid driver's license and current insurance, as required by law, on any family-owned motorized vehicle by which a child or young adult might be transported when a family has applied for certification and at each re-certification.

(c) As required by current state law, a certified family must assure that:

(A) Only a licensed and insured driver transports a child or young adult in motorized vehicles; and

(B) A child or young adult uses a seat belt or age and size appropriate safety seat when transported in motorized vehicles.

(d) A certified family must obtain written authorization from the Department prior to transporting a child or young adult out of the State of Oregon.

(7) Smoking limitations. A certified family must assure that:

(a) A child or young adult is not exposed to any type of second-hand smoke in the certified family's home or vehicle; and

(b) No member of the household provides any form of tobacco products to a child or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 11-2007(Temp), f. & cert. ef. 6-1-07 thru 11-27-07; Suspended by CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0354

Requirements Regarding a Child or Young Adult's Education

(1) The certified family must comply with all of the following requirements:

(a) Enroll the child or young adult in his or her school or educational placement, after the school or educational placement has been determined by the Department.

(b) Support the child or young adult in his or her school or educational placement.

(c) Assure the child or young adult regularly attends the school or educational placement and monitor the child or young adult's educational progress, including keeping records of:

(A) The child or young adult's report cards;

(B) Any reports received from the teacher or the school or educational placement;

(C) Any evaluations received as a result of educational testing or assessment; and

(D) Disciplinary reports regarding the child or young adult.

(d) Monitor the child or young adult's educational successes, learning style, and potential learning difficulties.

(e) Work with the child or young adult's caseworker when referring the child or young adult for assessment of a possible disability.

(f) Notify the child or young adult's caseworker of the certified family's interest in or intent to be appointed as the child or young adult's educational surrogate (see OAR 413-100-0506) parent.

(g) Work with the Department to regularly share information regarding the child or young adult's educational progress.

(2) The certified family may be appointed to safeguard a child's rights in the special education decision-making process. This appointment may occur pursuant to OAR 581-015-2320 for school-age children, 581-015-2760 for preschool children, or by the juvenile court under ORS 419B.220.

(3) The certified family may provide consent for a child or young adult placed in the home to participate in routine school-related activities, such as school enrollment, field trips within the state of Oregon, routine social events, sporting events, and cultural events.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0358

Requirements Regarding a Child or Young Adult's Discipline

(1) When disciplining a child or young adult, the certified family must not use corporal punishment, verbal abuse, or withholding food or other items essential to a child or young adult's protection, safety, or well-being. Examples of prohibited discipline include, but are not limited to, the following:

(a) Use of or threatened use of any form of physical force.

(b) Verbal abuse including derogatory remarks about the child or young adult, the child or young adult's family characteristics, physical traits, culture, ethnicity, language, sexual orientation, or traditions.

(c) Denying a child or young adult visits, telephone, or other types of contact with an individual authorized in a visit and contact plan.

(d) Assigning extremely strenuous exercise or work.

(e) Use of or threatened use of restraining devices.

(f) Punishment for bed-wetting or punishment related to toilet training.

(g) Directing a child or young adult or permitting a child or young adult to punish another child or young adult.

(h) Threat of removal from the certified family home as punishment.

(i) Use of the shower as punishment.

(j) Group punishment for the misbehavior of one child or young adult.

(k) Extreme isolation as a means of punishment that restricts a child or young adult's ability to talk with or associate with others.

(l) Locking a child or young adult in a room.

(2) The certified family must demonstrate a willingness to understand the meaning of the child or young adult's behaviors and the ability to develop and use appropriate strategies to address challenging behaviors. Appropriate strategies may include:

(a) Concentrating on changing only the behavior that is causing the most difficulty for the child or young adult and others;

(b) Emphasizing ways to help the child or young adult develop self-control;

(c) Taking a positive approach to changing challenging behavior;

(d) Selecting and implementing strategies that respect and involve the child or young adult in the change process; and

(e) Being mindful of the child or young adult's age, developmental level, and past experiences with abuse and neglect.

(3) The certified family may use a time-out only for the purpose of giving the child or young adult a short break to allow the child or young adult to calm himself or herself and regain control, and not as a punishment. The certified family must take into consideration the child or young adult's age and developmental level in determining the length of a time-out.

(4) Only an adult in a certified family or Department staff, who has been trained to use a physical restraint, may do so, except in circumstances described in Child Welfare Policy I-B.1.6, "Behavior Intervention", OAR 413-020-0200 to 413-020-0245 when a child, young adult, or others are at imminent risk of danger. Physical restraint (see OAR 413-200-0306) must be a safety measure of last resort.

(5) The certified family must notify and request assistance of the Department when the child or young adult's challenging behavior may be beyond the certified family's ability to discipline in a positive manner.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01, Renumbered from 413-200-0347, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0362

Requirements Regarding a Child or Young Adult's Medical Care and Notification Requirements

(1) In addressing the health care for a child or young adult, the certified family must:

(a) Work collaboratively with the Department in managing the child or young adult's health care needs;

(b) Regularly exchange the child or young adult's medical information with the Department;

(c) Work collaboratively with medical providers in managing the child or young adult's health care needs; and

(d) Maintain documentation of each child or young adult's:

(A) Medical appointments;

(B) Medical information regarding the child or young adult;

(C) Medical appointment follow-up reports; and

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(D) Immunization records.

(2) A certified family must comply with the Department's direction on obtaining medical care for a child or young adult.

(3) A certified family may consent to routine medical care for a child or young adult in the Department's custody, including vaccinations, immunizations, routine examinations, and laboratory tests.

(4) Except as provided in section (5) of this rule, the certified family must contact the child or young adult's caseworker to obtain appropriate prior consent from the Department before a child or young adult receives any medical care or undergoes a procedure, other than routine medical care.

(5) In an emergency, a certified family must notify the child or young adult's caseworker as soon as possible and no later than 24 hours after an injury requiring medical treatment.

(6) Medication management requirements.

(a) The certified family must comply with all of the following requirements:

(A) Administer prescription medications to a child or young adult only in accordance with the written prescription or authorization.

(B) Record the dosage, date, and time that all medications are administered to a child or young adult on a form approved by the Department. If medication is given in a location other than the certified home, such as at school or in daycare, the institution or program's medication log must be attached to the Department form. The medication form, with any attachments, must be submitted to the child or young adult's caseworker monthly.

(C) Take the medication form to each medical appointment and share with the medical provider.

(D) Inform the child or young adult's caseworker or his or her supervisor within one working day when a child or young adult is prescribed a psychotropic medication or the dosage of any existing prescription is changed.

(E) Maintain the documentation received from the caseworker when a child is prescribed a psychotropic medication or when the dosage of any existing prescription for a psychotropic medication is changed.

(b) The certified family must store all medications in such a way that the medications are inaccessible to a child or young adult and must store all psychotropic medications in locked storage.

(c) When a child or young adult is learning to manage his or her own medications, the certified family, the child or young adult, and the caseworker may collaborate on an individualized, written plan for the child or young adult to access the medication. The child or young adult must not have access to medication that is not his or her own. The plan must state how the medication will be inaccessible to other children or young adults in the home. The certified family, the child, and the caseworker keep a copy of the plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; Renumbered from 413-200-0346, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0371

Responsibilities and Notification Requirements for Selection and Use of Alternate Caregivers

(1) Except as provided in section (2) of this rule, the certified family is responsible for identifying and selecting a safe and responsible alternate caregiver for a child or young adult placed in the family's home, and take into consideration:

(a) Each child or young adult's age, special needs, attachment, and individual behaviors; and

(b) The length of time that the child or young adult will be with the alternate caregiver described in this rule.

(2) The Department may determine that a particular alternate caregiver is inappropriate based upon the needs of the child or young adult.

(3) Responsibilities when using a babysitter.

(a) The certified family must use a responsible person 14 years of age or older for short-term intermittent child care, and must:

(A) Have an available method through which the certified family may be contacted in an emergency;

(B) Assure the babysitter is capable of assuming child care responsibilities required to meet the needs of each child in the certified family's home, and will be present at all times; and

(C) Assure the babysitter does not provide overnight care.

(b) A babysitter does not need to complete a criminal history background check.

(4) Responsibilities and notification requirements when using relief or respite care.

(a) The certified family must select a relief or respite caregiver who is:

(A) At least 18 years of age;

(B) Capable of assuming child care responsibilities, including meeting any special needs of each child or young adult in the certified family's care; and

(C) Present at all times.

(b) The certified family must:

(A) Have an available method through which the certified family may be contacted in an emergency; and

(B) Provide to the Department the name, address, and telephone number of the relief or respite caregiver for the purpose of the Department's conducting a criminal offender information records check, including information compiled and maintained by OSP Bureau of Criminal Identification and a fingerprint-based criminal offender records check of national crime information databases as outlined in Child Welfare Policy, I-G.1.4, "Criminal History", OAR 413-120-0460 and child abuse and neglect history check, prior to the person providing relief or respite care.

(c) The certified family must receive Department approval prior to using a relief or respite caregiver.

(5) A certified family may use a licensed, registered, or approved childcare center or day care provider for a child or young adult and must notify the Department in advance of using the licensed childcare center or day care provider.

(6) Family and childhood activities.

(a) The certified family may give consent for a child or young adult in the Department's care or custody to participate in ordinary childhood activities, such as sleepovers with friends and organized activities provided by schools, churches, civic organizations, scouts, or similar groups.

(b) The certified family must verify that the event is safe, adequately supervised, and appropriate for the child or young adult based upon his or her needs.

(c) When the certified family has any questions regarding the child or young adult participating in the activity, the family must consult with the child or young adult's caseworker.

(7) The certified family must notify the child or young adult's caseworker prior to the child or young adult being absent from the certified family for more than 24 hours.

(8) The certified family is responsible for notifying the certifier or the certifier's supervisor in advance when the certified family plans to provide relief or respite care for another certified family and the number of children or young adults in the home will exceed the maximum number of children or young adults on the certified family's Certificate of Approval.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; SOSCF 15-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 29-2003, f. 7-31-03 cert. ef. 8-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 25-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0379

Education and Training for Applicants and Certified Families

(1) An applicant must participate in the Department's Orientation prior to receiving a Certificate of Approval, or within 30 days after the placement of a child or young adult in a home that has been issued a Child-Specific Certificate of Approval.

(2) Each applicant and certified family must complete the Foundations of Relative Care, Foster Care, and Pre-Adoptive Care (Foundations) training before or within 12 months after the date on which the Certificate of Approval was issued, or have written documentation of completion of equivalent training content from another licensed child-caring agency within two years of an applicant's dated application for a Certificate of Approval from the Department.

(3) Foundations training is required if an applicant previously certified by the Department has not been certified within the preceding two years unless the supervisor waives the training requirement based on the family's documented knowledge and skills in caring for a child or young adult placed in the home by the Department.

(4) The certified family and the Department certifier must develop a training plan for each individual certified in the family to complete at least 30 hours of training during each two-year certification period.

(5) Each applicant and certified family with limited English proficiency or a hearing or visual impairment, and unable to meet the training requirements outlined in sections (1) to (3) of this rule may be provided an individualized training plan prepared by the certifier and approved by the Children, Adults and Families Division, Foster Care Program Office.

ADMINISTRATIVE RULES

(6) The Department may require a certified family to obtain more than the 30 hours of training for a two-year certification period depending on the needs of the child or young adult placed in the home or the knowledge, skills, and abilities of the certified family.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 – 418.640

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; Renumbered from 413-200-0349, CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0383

Other Required Notifications

A certified family must notify the certifier or certifier's supervisor of all of the following:

- (1) Any individual joining or leaving the household.
- (2) Any new relief or respite care provider.
- (3) Any anticipated change in address.
- (4) Any physical or structural change in the home in which they live.
- (5) Any arrest or court conviction for any member of the household.

This notification must occur within one working day.

(6) Any known allegation of child abuse or neglect perpetrated by any member of the household, or an individual who regularly visits the home. Such notification must occur on the day that the certified family learns of the allegation.

(7) The suspension of a driver's license of any adult on the Certificate of Approval or any member of the household.

(8) Any change in the physical or mental health of a member of the household that reasonably could affect the member's or the family's ability to meet the needs of safety, health, and well-being of a child or young adult.

(9) Any time any member of the household applies to become an in-home child care provider, an adult foster care, or in-home adult day care provider, to obtain the approval of the Department prior to providing such care.

(10) Any time another agency wishes to place a child or young adult in the certified home, to obtain the approval of the Department prior to providing such care.

(11) Any time the certified family agrees to provide relief or respite care for another certified family.

(12) Any other circumstance that reasonably could affect the safety or well-being of a child or young adult in the certified family's home.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 – 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 25-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0386

Requirements Regarding Mandatory Reporting

Any member of the household and any certified family's employee, independent contractor, or volunteer who works in the certified family's home, must report the pertinent information to the Department upon reasonable cause to believe that any child with whom the individual comes in contact has suffered abuse or neglect or that any adult with whom the individual comes in contact has abused or neglected a child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 – 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0388

Requirements Regarding Visits in the Certified Family's Home

For purposes of assessing the conditions in the home that affect safety and well-being for the child or young adult, a certified family must:

(1) Allow on-going in-home visits, both scheduled and unscheduled, by Department staff; and

(2) Allow Department staff unsupervised contact with a child or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 – 418.640

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0390

Requirements Regarding the Certificate of Approval

(1) An applicant may receive a Child-Specific Certificate of Approval for up to 90 days when assessment activities described in Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-Adoptive Parents", OAR 413-200-0274(2)(a) to (p) have been completed; and, when all assessment activities have been completed, may receive a Certificate of Approval for up to two years.

(2) A certified family must apply every two years to be re-certified as a foster parent or relative caregiver.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.630 - 418.640

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0393

Requirements Regarding Inactive Referral Status

(1) A certified family may request that the Department place the home on Inactive Referral Status for any reason for up to 12 months. The inactive referral status begins immediately and while it is in effect:

(a) The Department will place no additional child or young adult in the home; and

(b) The certified family may not accept placement of any child or young adult from another agency.

(2) Inactive Referral Status, when requested by the certified family, ends:

(a) At the request of the certified family; or

(b) When the certificate expires; and

(A) The family has not timely applied for renewal of the certificate; or

(B) The Department has not renewed the certificate.

(3) The Department may initiate a certified family's inactive referral status under the conditions described in Child Welfare Policy II-B.1.1, "Department Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents and Pre-Adoptive Parents", OAR 413-200-0294(5) or (6). When the Department initiates inactive referral status, the Department must:

(a) Provide written notification to the certified family of the inactive referral status within fourteen working days; and

(b) Provide written notification to the certified family when inactive referral status ends.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09

413-200-0395

Requirements Regarding Denial and Revocation of a Certificate of Approval

(1) The Department may deny an application for a Certificate of Approval if an applicant fails to provide requested information within 90 days of a written request from the Department.

(2) The Department may deny an application or revoke a Certificate of Approval when:

(a) The applicant or certified family does not meet one or more of these rules (OAR 413-200-0301 to 413-200-0396);

(b) The Department discovers an applicant or a certified family has falsified information (by act of commission or omission) before or after the Certificate of Approval has been issued; or

(c) An applicant or certified family fails to provide information to or inform the Department of any disqualifying condition that arises after the Certificate of Approval has been issued.

(3) The Department must provide the certified family a written notice of revocation or denial, which must state the reason or reasons for the revocation or the denial.

(4) The Department must revoke a Certificate of Approval when a certified family violates one or more of these rules (OAR 413-200-0301 to 413-200-0396) and, at the conclusion of a Child Protective Services assessment, the Department determines that a child or young adult is unsafe and the certified family cannot or will not protect the child or young adult.

(5) Upon deciding to revoke a certified family's Certificate of Approval, the Department must remove from the home any child or young adult in the Department's care or custody.

(6) When the Department revokes a certified family's Certificate of Approval or denies an application, the Department has the discretion to require up to a five-year waiting period before the individual or family can reapply as a relative caregiver or foster parent.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 29-2000(Temp), f. & cert. ef. 9-27-00 thru 3-23-01; SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09

ADMINISTRATIVE RULES

413-200-0396

Requirements Regarding Contested Case Hearings

(1) Except as provided in section (4) of this rule, an applicant may request a contested case hearing to contest the Department's decision to deny the approval of the application for a Certificate of Approval.

(2) A certified family may request a contested case hearing to contest the Department's decision to revoke the Certificate of Approval.

(3) The applicant or family requests a contested case hearing, as provided in ORS Chapter 183, by providing a Child Welfare program manager a written request for a hearing within 30 days of the date that the Department mailed the notice of denial or revocation.

(4) ORS Chapter 183 does not provide a contested case process for adoptive applicants who are denied approval as an adoptive resource.

(5) If the Department does not receive a request for a contested case hearing within 30 days of the date that the Department mailed the notice of denial or revocation, the certified family or applicant has waived the right to a hearing, except as provided in OAR 137-003-0003(1).

(6) When a contested case hearing is timely requested but such request is subsequently withdrawn, the Department documents in the certification file the circumstance of the withdrawal.

(7) Child Welfare Policy I-A.5.2.1, "Contested Case Hearings", outlines the procedures for handling a request for a contested case hearing due to the denial or revocation of a Certificate of Approval.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 - 418.640

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 3-2009, f. & cert. ef. 2-2-09

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 1-2009

Filed with Sec. of State: 1-27-2009

Certified to be Effective: 1-27-09

Notice Publication Date: 11-1-2008

Rules Amended: 461-155-0180, 461-155-0235

Subject: OAR 461-155-0180 about the poverty related income standards in the Department's public assistance, medical, and food stamp programs, and OAR 461-155-0235 about the premium standards for the Oregon Health Plan standard (OHP-OPU) are being amended to reflect the annual change in the federal poverty guidelines.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-155-0180

Poverty Related Income Standards; Not OSIP, OSIPM, QMB, TANF

(1) A Department program may cite this rule if the program uses a monthly income standard based on the federal poverty level.

(2) A monthly income standard set at 100 percent of the 2009 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(3) A monthly income standard set at 133 percent of the 2009 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(4) A monthly income standard set at 150 percent of the 2009 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(5) A monthly income standard set at 185 percent of the 2009 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(6) A monthly income standard set at 200 percent of the 2009 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 412.049

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 1-2009, f. & cert. ef. 1-27-09

461-155-0235

OHP Premium Standards

In the OHP program, the following steps are followed to determine the amount of the monthly premium for the filing group (see OAR 461-110-0400):

(1) The number of persons in the OHP need group is determined in accordance with OAR 461-110-0630.

(2) The countable income of the financial group (see OAR 461-110-0530) is determined in accordance with OAR 461-150-0055 and 461-160-0700.

(3) Based on the number in the need group and the countable income, the monthly premium for each non exempt OHP-OPU client in the benefit group (see OAR 461-110-0750) is determined from the following table: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060, 411.598, 411.600

Stats. Implemented: ORS 411.060, 411.070, 411.598, 411.600

Hist.: AFS 35-1995, f. 11-28-95, cert. ef. 12-1-95; AFS 22-1996, f. 5-30-96, cert. ef. 6-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 6-2003(Temp), f. 2-26-03, cert. ef. 3-1-03 thru 6-30-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 5-2004(Temp), f. & cert. ef. 3-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 2-2005, f. & cert. ef. 2-18-05; SSP 1-2006, f. & cert. ef. 1-24-06; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 1-2009, f. & cert. ef. 1-27-09

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

Rule Caption: Suspend CRP Standards; amend Standards for Services, Rates of Payment, and Vendor Selection.

Adm. Order No.: VRS 1-2009(Temp)

Filed with Sec. of State: 2-11-2009

Certified to be Effective: 2-11-09 thru 8-9-09

Notice Publication Date:

Rules Amended: 582-070-0010, 582-070-0020, 582-080-0010, 582-080-0020, 582-080-0030, 582-080-0040, 582-080-0050

Rules Suspended: 582-010-0005, 582-010-0010, 582-010-0015, 582-010-0020, 582-010-0021, 582-010-0022, 582-010-0025, 582-010-0030, 582-085-0004

Subject: OVRS is revising its process for selecting and contracting with qualified providers of vocational rehabilitation services. These revisions will maximize existing DHS resources that assist OVRS in the vendor selection process, implement a system of performance-based contracting in order to improve employment outcomes and promote vendor efficiency in service delivery, and provide consumers and counselors greater flexibility in selecting vendors based on client need and choice.

Rules Coordinator: Sherri L. Rita—(503) 945-6695

582-010-0005

Statement of Policy

(1) Clients of OVRS should receive community rehabilitation services from a broad range of providers of varied sizes and types, offering a wide scope of services. Availability of all types of community rehabilitation services is essential to establishing and maintaining a statewide network of vocational rehabilitation services.

(2) OVRS promotes the quality of community rehabilitation services by providing standards for its direct client service providers who have no other state mandated licensing and monitoring requirements.

(3) OVRS promotes the availability, relevance and quality of community rehabilitation services through a flexible yet thorough process of approval tailored to utilization needs identified locally and reflected in the State Plan.

(4) The inclusion of a provider of community rehabilitation services on the OVRS list of approved vendors does not commit OVRS to utilize the available services.

(5) OVRS does not provide any provider of community rehabilitation services with a guarantee of a total dollar commitment or number of total client referrals during any specific time frame except if determined as a condition of a cooperative agreement for implementing a federal grant or service contract.

ADMINISTRATIVE RULES

(6) Providers of community rehabilitation services are expected to fully inform OVRs clients of the purpose and results of all service delivery efforts made on their behalf.

(7) Providers of community rehabilitation services performing job development or placement tasks should only refer OVRs clients to appropriate previously-agreed on employment opportunities.

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

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 24, f. & ef. 9-29-76; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93; VRS 2-2003, f. & cert. ef. 12-31-03; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-010-0010

Definitions

For the purposes of chapter 582, division 10 of the Oregon Administrative Rules, the following definitions apply:

(1) "Accreditation" is the term signifying that a community rehabilitation program meets standards of performance set by an organization or methodology listed in these rules.

(2) "Approval" is a term signifying that OVRs standards for vendor selection are met, and the vendor may be utilized by a local OVRs office to provide OVRs purchased services for individuals with disabilities.

(3) "Certification" refers to the acknowledgment by OVRs that the CRP has completed required application procedures and, if applicable, met specific accreditation standards.

(4) "Department of Administrative Services" (DAS) refers to the administrative unit of the State of Oregon that is responsible for setting certain standards that apply to all state vendors and whose standards may apply to OVRs vendors.

(5) "Interim Approval" refers to the authority of OVRs to approve a CRP and purchase its services within a limited time period while an application for CRP vendor "Approval" or "Certification" is being processed.

(6) "Rehabilitation Facility" refers to a CRP or unit of a larger organization that meets the definition for a CRP and that is operated for the primary purpose of providing vocational rehabilitation services to individuals with disabilities and that provides singularly or in combination, one or more of the services listed in OAR 582-001-0010(10).

(7) "State Standards for Vendor Approval" refers to a set of criteria, applied as appropriate to the type of program and used by OVRs to evaluate a provider's operation and to determine whether the provider may be listed as an approved vendor. State Standards are in addition to any federal requirements in the Rehabilitation Act or regulations and shall for CRPs, at a minimum and as appropriate, relate to physical plant, health and safety, production, insurance, physical accessibility, organization, fiscal management, personnel, program management, client issues, program evaluation, human rights (including the safeguarding of confidential information about clients), and community relations.

(8) "Statement of Assurances and Conditions" means a document executed and signed by a provider of community rehabilitation services attesting to an understanding of and intent to comply with applicable criteria in these rules and any attending policy for implementing these rules.

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

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93; VRS 2-2003, f. & cert. ef. 12-31-03; VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-010-0015

Recognized Accreditation Methodologies for Providers of Community Rehabilitation Services

When viewed in combination with applicable State Standards in these rules, OVRs recognizes the following accreditation options:

(1) Accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF).

(2) Accreditation by the Rehabilitation Services Accreditation System (RSAS).

(3) Certification by Department of Human Services, Seniors and People with Disabilities for employment services under OAR 309-047-0000 through 309-047-0140, or as Support Service Brokerages or Provider Organizations under OAR 411-340-0010 through 411-340-0180 for adults with developmental disabilities.

(4) As appropriate, for an individual providing community rehabilitation services, certification by the Commission on Rehabilitation Counselor Certification (CRCC) or by the Workers' Compensation Division of the Oregon Department of Consumer and Business Services.

(5) Accreditation by the Northwest Association of Schools and Colleges (NASC) if clear evidence of relationship to OAR 582-010-0025 is provided.

(6) Registration or certification by the Child Care Division of the Oregon Department of Employment.

(7) Accreditation by other organizations approved by OVRs demonstrating an ability to evaluate based upon State Standards in OAR 582-010-0025.

(8) For providers of vocational rehabilitation services other than vocational, personal and/or work adjustment, skill training, work readiness retention, job development, or extended employment, accreditation may be by a recognized accrediting organization or methodology within the field of expertise of the provider.

(9) An out-of-state CRP may be accredited by an approved organization or by current placement on the approved CRP vendor list of that state's vocational rehabilitation agency.

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 24, f. & ef. 9-29-76; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93; VRS 2-2003, f. & cert. ef. 12-31-03; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-010-0020

Approval Policy for All Providers of Community Rehabilitation Services

(1) Approval Required: No person or public or private organization shall, on behalf of OVRs, provide vocational rehabilitation services and receive vocational rehabilitation fees without first submitting all required application materials and being placed on the Approved Vendor List of OVRs.

(2) At the discretion of OVRs, separate approvals may be required for separate sites and/or for different programs operated under the same management.

(3) Approvals under OAR 582-010-0020 are valid for a period of two years, with the exception of Interim Approvals, which are valid for the term or condition stated. Prior to the expiration of a two-year approval, a provider of community rehabilitation services must reapply for approval.

(4) OVRs may require full or partial reapplication when a CRP undergoes significant changes in its management or operation.

(5) Providers of community rehabilitation services that are individuals or sole proprietors without employees/contractors who provide direct services to OVRs clients must qualify under state law as independent contractors but do not have to provide verification of accreditation.

(6) A notice of approval or denial for "Approved" or "Interim Approval" status will be provided in writing to the CRP within 30 days of OVRs receipt of requirements stated in this rule.

(7) It is the responsibility of the provider of community rehabilitation services to assure that the requirements of OAR 582-010-0020 are fully met at all times.

(8) A provider of community rehabilitation services and any other vendor required under chapter 582 of the Oregon Administrative Rules to complete a Criminal History Check may be placed temporarily on the Approved Vendor List by the CRP Coordinator if the circumstances justify a temporary approval. The temporary approval may be terminated by OVRs at any time and shall expire automatically once DHS completes the criminal history check process.

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

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93; VRS 2-2003, f. & cert. ef. 12-31-03; VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-010-0021

Approval Policy for Category A Providers

(1) Category A providers of community rehabilitation services are those providers exclusively paid by OVRs to provide the following listed services:

(a) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(b) Evaluation or control of specific disabilities;

(c) Physical and occupational therapy;

(d) Recreational therapy;

(e) Speech, language and hearing therapy;

(f) Psychiatric, psychological and social services, including positive behavior management;

(g) Psychosocial rehabilitation services

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- (h) Rehabilitation technology;
- (i) Testing, fitting, or training in the use of prosthetic and orthotic devices;
- (j) Personal assistance services;
- (k) Child care: or
- (l) Professionals or entities licensed by a state or federal agency (excluding OVRS), acting within the scope of their license, and providing any services covered by OAR 582-010-0022(1).

(2) In addition to compliance with any other applicable requirements in chapters 407 and 582 of the Oregon Administrative Rules, these providers are eligible for the approved vendor list if they maintain compliance with the relevant licensing or certifying body.

(3) Providers of child care who are not eligible to apply for registration with the Child Care Division of the Employment Department under OAR 414-205-0000 may be placed on the Approved Vendor List if they successfully complete a Criminal History Check from either DHS or the Child Care Division of the Employment Department.

(4) Providers of personal assistance services who are not qualified or certified providers for this service under Chapter 411 of the Oregon Administrative Rules may be placed on the Approved Vendor List if they successfully complete a DHS Criminal History Check.

(5) OVRS requires that providers of child care and providers of personal assistance services who are required by this rule to satisfy criminal history check requirements shall also comply with DHS criminal history check requirements with respect to each new employee or volunteer who will provide "care" (as defined at OAR 407-007-0210(4)) to OVRS clients prior to the start of care for an OVRS client. Prior to reapplication for the Approved Vendor List, these providers may be required by OVRS to repeat a criminal history check as a result of information received about vendor qualifications, behavior or performance.

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.530 & 344.550

Hist.: VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-010-0022

Approval Policy for Category B Providers

(1) Except as provided at OAR 582-010-0022(2), Category B providers of community rehabilitation services are those providers paid by OVRS to provide the following listed services:

- (a) Assessment for determining eligibility and vocational needs, including technicians for assessment tests;
- (b) Job development, placement, and retention services;
- (c) Orientation and mobility services;
- (d) Extended employment;
- (e) Supported employment services and extended services;
- (f) Services to family members (except child care) when necessary to the vocational rehabilitation of the individual; and
- (g) Services similar to the services described in OAR 582-010-0022(1)(a)-(g), including vendors who provide training, write resumes, consult on self-employment plans, assist with a self-employed business, or write PASS plans.

(2) Professionals licensed by a state or federal agency (excluding OVRS), acting within the scope of their license, and providing any services listed in OAR 582-010-0022(1) shall be regulated as Category A providers and not subject to OAR 582-010-0022. The CRP Coordinator may exempt an employer from the rules in division 582-010 for services provided to a specific client that are not services for which the employer would be reimbursed on a routine basis.

(3) Except as provided in OAR 582-010-0022(8), Category B providers are eligible for the approved vendor list if they meet all of the following criteria prior to providing any services to OVRS or its clients in addition to compliance with any other applicable requirements in chapters 407 and 582 of the Oregon Administrative Rules:

- (a) Submit materials required as part of the OVRS application process;
- (b) Submit proof of insurance at the level established under Department of Administrative Services guidelines;
- (c) Submit a signed Statement of Assurances and Conditions;
- (d) Successfully complete the criminal history check requirements.

(A) OVRS requires that Category B providers complete criminal history checks at the time of application for placement on the Approved Vendor List and re-application for placement on the Approved Vendor List; and to complete a DHS criminal history check if required by OVRS as a result of information received about vendor qualifications, behavior or performance.

(B) At the time of application or re-application for placement on the Approved Vendor List, OVRS also requires that Category B providers complete criminal history checks with respect to all employees and volunteers who provide "care" (as defined at OAR 407-007-0210(4)) to OVRS clients.

(C) OVRS further requires that Category B providers complete criminal history checks with respect to each new employee or volunteer who will provide "care" (as defined at OAR 407-007-0210(4)) to OVRS clients prior to the start of care for an OVRS client.

(4) Providers of Category B community rehabilitation services that are non-profit or for-profit organizations, or sole proprietorships with employees/contractors who provide direct services to OVRS clients must provide verification of accreditation or proof of a pending application for accreditation.

(5) A Statement of Assurances and Conditions must be provided and signed by the designated representative of the provider, and reviewed mutually by OVRS and the provider for compliance and continued applicability, and must include:

(a) A description of the scope and nature of service(s), conditions, criteria and procedure under which each service is provided, and rates of payment for each approved service or group of services;

(b) A statement that prior authorization must be secured in writing from the referring counselor or other appropriate representative of OVRS before client services are provided at a cost to the local OVRS office;

(c) Assurances of compliance with State Standards and federal requirements as appropriate for the specific provider;

(d) Assurances that the provider will compile and submit, as required by OVRS, pertinent process and outcome data concerning the service(s) or groups of services provided; and

(e) Assurances that pertinent program and fiscal records shall be accessible for necessary review and/or audit by or for OVRS.

(6) Interim Approval may be granted to a CRP that has filed the necessary forms to obtain accreditation and is waiting for final "Approval." If "Approval" has been delayed due to reasons of the accreditation body, an extended period of "Interim Approval" may be granted upon receipt of verification from the accreditation body that the delay is not the result of the CRPs failure to address deficiencies in a timely manner.

(7) If OVRS funds are available, grants may be awarded to CRPs who qualify under OAR 582-010-0022(4), unless prohibited by another rule, to assist with meeting CRP "Approval" requirements or to expand resources and services that will be made available to OVRS clients. Application for a grant must be made in writing and contain at a minimum:

(a) A description of the deficiency which prevents the CRP from gaining "Approval" status and how the funds will be used to address the deficiency, or a description of the desired resource or service expansion that the funds will provide along with a demonstration of need by OVRS for such resources or services;

(b) A detailed budget for the use of the grant funds; and

(c) Assurance that the CRP is prepared to assume all costs associated with maintaining a non-deficient status, and ongoing costs to maintain the new resources or services.

(8) Vendors that only provide training, write resumes, consult on self-employment plans, assist with a self-employed business, or write PASS Plans and who have no in-person contact with any OVRS clients are exempt from the criminal records check and insurance requirements of this rule.

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.530 & 344.550

Hist.: VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-010-0025

State Standards for Vendor Approval for Providers of Community Rehabilitation Services

In addition to the vendor approval requirements of OAR 582-080, OVRS adopts the following State Standards as required assurances that services to individuals with disabilities are provided in a safe environment and in compliance with applicable state, federal and local laws, rules or regulations. Approval methods will evaluate each applicant's ability to assure compliance with each of the following standards that, for the purposes of these rules, apply to the type of provider being evaluated:

(1) Physical Plant Standards. Provides services in an environment that meets accessibility requirements, is free of known health or safety hazards and in a site(s) which serves to support the accomplishment of its defined purpose(s).

(2) Health and Safety Standards. Meets all applicable governmental requirements, including OSHA standards for the Department of Labor; secures regular inspections and consultations (if applicable) from persons

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with expertise; and, has an organized internal health and safety program (if applicable).

(3) Production Standards. When work opportunities are directly provided to individuals with disabilities: Establishes production and payment practices which maximize earning potential; assures fair and equitable wages; meets minimum expectations for working hours and conditions; and maintains all applicable certification and documentation for the Wage and Hour Division, U.S. Department of Labor.

(4) Insurance Standard. Maintain required workers' compensation insurance and applicable levels of vehicle, general and (if required) professional liability insurance protection, adequate to compensate staff and workers with disabilities for injuries and damages for which the organization may be liable.

(5) Physical Accessibility Standard. Complies with Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968, the Uniform Accessibility Standards and their implementing standards in 41 CFR Part 101-19.6, the American National Standards Institute No. A117-1-1986, and applicable sections of the Americans with Disabilities Act (ADA).

(6) Organizational Standard. The CRP is structured to achieve its stated mission, secure all licenses or permits to do business within its jurisdiction(s) and scope of operation, plan and monitor the efficiency and effectiveness of services, and maintain records and reports that reflect the operation and provision of services and the organization's status.

(7) Fiscal Management Standard. Fiscal affairs relative to provision of rehabilitation services are managed in a manner consistent with its stated purposes and in accordance with a standard of sound business practices and legal requirements, including assurances that any state or federal audit and reporting requirements are met.

(8) Personnel Standard. As applicable, maintains competent qualified staff and written agency personnel policies which support the provision of services essential to the achievement of defined individual and program goals. The provider, when providing client transportation, ensures use of qualified, licensed vehicle operators and appropriate, safe vehicles. Criminal background check has been conducted on required staff/employees and has such on record according to DHS, state, federal and local laws, rules or regulations. When providing medical and related health services, ensures such services are prescribed by or under the formal supervision of persons licensed by the state to prescribe or supervise the provision of these services. Maintains pertinent professional and business licensure or certification as appropriate to the type of program or service(s) provided to clients.

(9) Program Management Standard. Ensures that services provided are individually tailored and coordinated in order to enhance each client's employment independence, integration, and/or productivity as identified within each Individualized Plan for Employment and through client participation in service planning, implementation and evaluation, using language or mode of communication most compatible with the individual client's abilities and culture.

(10) Program Evaluation Standard. Utilizes an approved method to enable it to identify the results of services to individuals with disabilities against established goals. Provides timely reports to OVRS of such information, and by such means, as OVRS may require for evaluation of ongoing program effectiveness, costs, and appropriateness of services provided by the provider.

(11) Human Rights Standard. Ensures, in its policies and practices, compliance with all laws and regulations dealing with non-discrimination, human and civil rights (including ADA), personal dignity and choice, and confidentiality.

(12) Community Relations Standard. The provider bases its program on documented evidence of the needs of prospective and current clients and maintains effective communications to assure that the programs and services are responsive and appropriately utilized.

(13) Code of Conduct Standard. Fully informs OVRS clients of the purpose and results of all service delivery efforts made on their behalf. The provider is respectful, inclusive, and accommodating of OVRS clients regardless of disability.

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

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 17, f. 8-28-74, ef. 9-25-74; VRD 24, f. & ef. 9-29-76; VRD 26, f. & ef. 7-1-77; VRD 5-1978, f. 4-20-78, ef. 5-1-78; VRD 2-1980, f. & ef. 7-2-80; VRD 1-1992, f. & cert. ef. 1-30-92; VRD 3-1993, f. & cert. ef. 10-15-93; VRS 2-2003, f. & cert. ef. 12-31-03; VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-010-0030

Termination or Denial of Approval or Interim Approval

(1) The decision to deny or terminate "Approval" or "Interim Approval" shall be made in writing by OVRS. This notice shall contain the reason, the effective date, any requirements for reinstatement if applicable, and the appeals process.

(2) OVRS will provide compensation for verifiable, authorized services provided by the provider of community rehabilitation services prior to the effective date of termination.

(3) No OVRS funds will be provided for services or grant activities after the effective date as stated in the OVRS notice.

(4) OVRS may provide a 30-day notice of termination or denial where any of the following reasons apply:

(a) Mutual agreement;

(b) Failure to provide or complete the required application;

(c) Termination of accreditation by the certifying body; or

(d) Failure to meet a service commitment.

(5) OVRS may terminate or suspend an approval without 30-days notice for any of the following reasons:

(a) Engagement in or toleration of sexual harassment of any kind toward a client, i.e., deliberate or repeated comments, gestures or physical contact of sexual nature;

(b) Violation of any applicable federal, state or civil rights law;

(c) Commitment of fraud, misrepresentation, or serious error of authorization on billing statement;

(d) Acting alone or engaging in collusion to withhold information, or submit false or misleading documentation in order to generate payment;

(e) Acting alone or engaging in collusion to violate any OVRS Administrative Rule (chapter 582);

(f) Instructing any individual to engage in behavior contrary to the requirements of OVRS Administrative Rules (chapter 582); or

(g) Engagement in any behavior or comments likely to cause public embarrassment to OVRS clients.

(6) An informal appeal of a decision to deny or terminate approval may be made to the OVRS Administrator within 30 days of the date of the written decision.

Stat. Auth. ORS 344.530

Stats. Implemented: ORS 344.530 & 344.550

Hist.: VRS 2-2003, f. & cert. ef. 12-31-03; VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-070-0010

General Policy

NOTE: For medical or related services refer also to OAR 582-075 and 582-080.

(1) Vendors shall be paid in accordance with the lesser of:

(a) The vendor's usual charge for such service, i.e., that fee for service which the vendor under ordinary circumstances charges to the general public for such services; or

(b) A pre-determined charge that has been negotiated between the vendor and an agency person authorized to consummate agreements between this agency and the vendor.

(2) In addition to any such general contracts or agreements, actual services to individuals must be specifically prior authorized and are not considered approved or billable until the vendor receives a completed Agency Authorization for Purchase (AFP) form or its equivalent, listing specific prior authorized services and estimated billable amounts, signed by the appropriate agency representative(s):

(a) Only in extreme emergencies may services be prior authorized verbally and any such verbal authorization must be documented promptly and followed with a written AFP within 72 hours;

(b) Apparent fraud, misrepresentation or substantial discrepancies between services rendered and billed amounts shall be investigated and, as appropriate, legal steps taken to prevent or recover overpayments.

(3) Except as specified in OAR 582-070-0010(4), Rehabilitation Services funds will not be expended before OVRS determines that "comparable benefits and services" are not available to meet, in whole or in part, the cost of such services, unless such a determination would interrupt or delay:

(a) The progress of the individual toward achieving the employment outcome identified in the Individualized Plan for Employment;

(b) An immediate job placement; or

(c) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by appropriate qualified medical personnel.

(4) Exemption from Comparable Services and Benefit Determination:

(a) The following vocational rehabilitation services are exempt from a determination of the availability of comparable services and benefits:

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(A) Assessment for determining eligibility and vocational rehabilitation needs;

(B) Counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(C) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce investment system, if those services are not available from OVRS;

(D) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(E) Rehabilitation Technology, including telecommunications, sensory, and other technological aids and devices;

(F) Post-employment services consisting of any of the services in OAR 580-070-0010.

(b) If any of the services described in (A) through (F), above, are readily available from an alternative source at the time the service is needed to accomplish a rehabilitation objective, OVRS reserves the right to conserve its funds by accessing the alternative resource.

(5) OVRS reserves the right to establish upper limits on the cost or use of services, subject to an exception process.

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 1-1978, f. 3-14-78, ef. 3-15-78; VRD 2-1992, f. & cert. ef. 4-20-92; VRD 4-1993, f. & cert. ef. 11-1-93; VRS 2-2004, f. & cert. ef. 3-9-04; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-070-0020

Specific Policies

Specific rules pertain to the provision of the following services:

(1) On-the-Job Training:

(a) Payment to on-the-job trainers or employers for training services will be negotiated at the lowest reasonable level and only for actual expenses and trainer time;

(b) OVRS will negotiate with the employer or trainer to ensure clients are adequately paid for work performed during the training process.

(2) Other training: Educational and training services, except on-the-job and vocational training, must be purchased from public educational organizations in Oregon. Exceptions are authorized only when:

(a) No publicly-supported school provides the courses necessary for the client's needs in order to reach the vocational objective; or

(b) A client cannot utilize publicly-supported schools because of his or her disability; or

(c) OVRS's financial participation in the plan is no greater than if the client had enrolled at the nearest appropriate publicly-supported school; or

(d) The net cost to Oregon governmental agencies is significantly less; or

(e) The training services for the client will be significantly delayed.

(3) Vocational training: Referrals for vocational training may be made only to the following schools or programs:

(a) A school that has accreditation recognized by the United States Department of Education;

(b) A school has been approved by the Oregon Student Assistance Commission through the Office of Degree Authorization to offer and confer degrees in Oregon;

(c) A community college;

(d) A state institution of higher education within the Oregon University System;

(e) The Oregon Health and Science University;

(f) A career school licensed under ORS 345.010 to 345.450; or

(g) An apprenticeship program that is registered with the State Apprenticeship and Training Council.

(4) Client Maintenance: OVRS will only pay for maintenance expenses in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs, or the receipt of vocational rehabilitation services under an individualized plan for employment, consistent with OAR 582-001-0010(25) and 34 CFR 361.5(b)(35).

(5) Clothing Purchases: Clothing purchases may be authorized if the need is a result of participation by the client in a rehabilitation program and the client does not possess sufficient financial resources to provide for these expenses.

(6) Client/Applicant Transportation: OVRS will only pay for travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a required vocational rehabilitation service and according to the following guidelines:

(a) Where local public transportation is available and can be used by the client, any reimbursement will not exceed the public transportation rate unless an exception is granted;

(b) Where public transportation is not available or cannot be used by the client due to his or her disability, reimbursement may be authorized by the counselor for use of a private vehicle or other appropriate form of transportation;

(c) Any vehicle modification must be prior approved and the field counselor will inform the client that costs associated with insurance, repair and replacement are to be managed by the client after a modification is complete.

(d) It is the policy of OVRS to not purchase vehicles; however, the Administrator of the Office of Vocational Rehabilitation Services, or the Administrator's designee, may grant an exception and furnish payment of all or part of the purchase of a motor vehicle where the conditions in OAR 582-070-0025(2) are applicable.

(e) Whenever an exception is made by OVRS allowing payment toward the cost of a motor vehicle, OVRS will require that OVRS be shown as the primary lien holder until successful case closure has been achieved.

(A) Ownership is transferred to the client only if the vehicle is needed to participate in employment, and there is a successful case closure.

(B) When client ownership is not justified based on these two criteria, the vehicle shall be repossessed and reassigned or otherwise disposed of by OVRS.

(f) When an applicant's or client's travel requires lodging and meals, payment for lodging and meals will be based on the definition of maintenance under 582-001-0010(25) and will not exceed the current federal GSA domestic per diem rates for the state in which the lodging occurred.

(A) The per diem rate used will be based on the rate for the city in which the client or applicant lodges, or the rate for the city closest to where the client or applicant lodges.

(B) Unless the client or applicant uses a personal vehicle for the needed transportation, reservations will be made through the state travel agency.

(C) If the applicant or client utilizes a service animal, OVRS may provide payment for the lodging of the service animal.

(D) In those instances in which the federal per diem rate is insufficient to cover the cost of lodging, or the applicant or client has a legitimate need for more costly lodging, payment may exceed the federal per diem rate.

(7) Community Rehabilitation Programs:

(a) For Community Rehabilitation Programs operated under private auspices, fees may be negotiated taking into consideration costs such as buildings, staffing and equipment.

(b) For publicly owned and operated Community Rehabilitation Programs (e.g., state or county owned or operated) fees, if any, must be based upon and not exceed actual costs.

(8) Extended Evaluation: OVRS will provide only those services authorized under OAR 582-050-0005.

(9) Personal Care Assistance (PCA): Is provided only when necessary to allow client to benefit from other rehabilitation services, including evaluation, and when the client is not entitled to PCA services from another source:

(a) Client as Employer: The client, in most cases, as the employer of the PCA may be reimbursed for necessary PCA services required to participate in rehabilitation services;

(b) Third Party Vendor: Direct payment to the PCA vendor by OVRS requires prior approval by the Field Services;

(10) Interpreter Service: Is provided only when necessary to assist the client to derive full benefit from other rehabilitation services and only when comparable services and benefits are not available.

(a) For the Deaf and Hearing Impaired: OVRS gives preference to using interpreters certified by the National Registry of Interpreters for the Deaf or on the approved vendor list of the State Association of the Deaf.

(b) Regional Resources: The Deaf and Hearing Impaired Access Program may be used as a resource to both clients and staff for securing interpreters.

(11) Other Support Services Providers: May be selected for specific skills needed to assist a client in achieving his or her employment goal, consistent with the requirements for Vendor Selection as set forth in OAR 582-080-0010.

(12) Insurance: Providers shall obtain and maintain insurance as required by law for that provider, including appropriate levels of personal, automobile, professional and general liability insurance, depending on the type of service.

(13) Criminal Records Check: Providers are subject to Agency criminal records check requirements as set forth in Division 7 of Chapter 407 of the Oregon Administrative Rules.

(14) Occupational Licenses, Tools and Equipment for Training and/or Employment:

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- (a) May only be provided by OVRS if prior authorized;
- (b) Repossessed items will be used whenever appropriate and available;

(c) Except for personally prescribed items, title/ownership of an OVRS purchased (or jointly purchased) item is held by OVRS (or jointly with OVRS) until case closure when ownership may be transferred to the client for non-expendable items that the client continues to require to maintain the employment outcome.

(15) Land or Stationary Buildings: Are never purchased by OVRS as a service to an individual client but reasonable modifications may be paid for when necessary to enable an eligible client to attain a vocational plan goal. No permanent additions or weight bearing partitions are to be erected as services to individuals.

(16) Moving Expenses: May be provided for training or employment only when it has been determined by OVRS that it is less costly or more beneficial than having the client commute. OVRS retains the right to deny reimbursement for client opted commuting/moving costs in excess of the least costly alternative.

(17) Rehabilitation Technology Services (RTS): May be provided when required to address disability-related barriers to an individual's participation in evaluation, training, or employment.

Stat. Auth.: ORS 344.530
Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730
Hist.: VRD 1-1978, f. 3-14-78, ef. 3-15-78; VRD 2-1992, f. & cert. ef. 4-20-92; VRD 4-1993, f. & cert. ef. 11-1-93; VRD 1-1996(Temp), f. 2-26-96, cert. ef. 3-1-96; VRS 1-2003, f. & cert. ef. 9-23-03; VRS 2-2003, f. & cert. ef. 12-31-03; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2008, f. & cert. ef. 2-4-08; VRS 2-2008, f. & cert. ef. 3-3-08; VRS 3-2008, f. & cert. ef. 4-10-08; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-080-0010 General Policy

(1) It is the policy of OVRS to purchase goods and services only from qualified vendors, in accordance with state licensure laws, state purchasing regulations and applicable federal and state regulations and standards governing the service or discipline practiced.

(2) It is policy not to discriminate against a vendor based upon sex, race, creed, ethnic origin or disability.

(3) OVRS will select vendors on the basis of informed client choice and will consider cost, quality, location, language needs, compliance with insurance and criminal history check requirements, accessibility, possession of relevant licenses or certifications, and the vendor's history of timely and successful performance.

Stat. Auth.: ORS 344.530
Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730
Hist.: VRD 6-1978, f. 5-18-78, ef. 6-1-78; VRD 3-1992, f. & cert. ef. 4-20-92; VRD 4-1993, f. & cert. ef. 11-1-93; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-080-0020 Vendor Requirements

Vendors must satisfy the following requirements to receive funds allocated under Section 110 of the federal Rehabilitation Act:

(1) All vendors are required to comply with the licensure, certification, and accreditation standards that may be applicable to the service being provided. Proof of possession of appropriate licensure, certification or accreditation may be required prior to OVRS authorizing payment.

(2) All vendors are required to possess insurance appropriate to the service being provided. Proof of possession of appropriate insurance may be required prior to OVRS authorizing payment.

(3) Vendors may be subject to additional service and performance standards as a condition for payment, based on the nature of the services provided. Additional standards will be set forth in contract.

(4) All vendors who will be working directly with individuals being served by OVRS are subject to the Agency's criminal background check rules.

Stat. Auth.: ORS 344.530
Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730
Hist.: VRD 6-1978, f. 5-18-78, ef. 6-1-78; VRD 3-1992, f. & cert. ef. 4-20-92; VRD 4-1993, f. & cert. ef. 11-1-93; VRS 2-2003, f. & cert. ef. 12-31-03; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2008, f. & cert. ef. 3-3-08; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-080-0030 Selection Policy for Out-of-State Vendors

The vendor selection policies of Division 80 will be used for all out-of-state vendors.

Stat. Auth.: ORS 344.530
Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730
Hist.: VRD 6-1978, f. 5-18-78, ef. 6-1-78; VRD 3-1992, f. & cert. ef. 4-20-92; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-080-0040 Conflict of Interest Regarding Vendor Selection

(1) No employee or representative of OVRS may take any action that would result in the employee or representative's financial benefit, nor shall the action benefit any member or any business with which he or she or any member of the employee's or representative's household is associated.

(2) All OVRS employees must give notice to their immediate supervisor of all potential conflicts of interest. If the supervisor agrees that there is a conflict of interest, the supervisor shall refer the matter to Central Administration for resolution.

Stat. Auth.: ORS 344.530
Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730
Hist.: VRD 6-1978, f. 5-18-78, ef. 6-1-78; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-080-0050 Civil Rights

(1) All vendors must provide all of their services in compliance with Titles VI and VII of the Civil Rights Act of 1964 as amended; Sections 503 and 504 of the Rehabilitation Act of 1973 as amended; and all other applicable state and federal civil rights laws.

(2) OVRS may set forth additional requirements regarding compliance with federal and state civil rights laws as a condition for payment in the vendor's specific service contract, including but not limited to physical access requirements and the allocation of costs between OVRS and the vendor for provision of auxiliary aids and services and materials in alternative formats.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 344.530
Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730
Hist.: VRD 6-1978, f. 5-18-78, ef. 6-1-78; VRD 3-1992, f. & cert. ef. 4-20-92; VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

582-085-0004 Independent Living Service Providers Receiving Vocational Rehabilitation Funds

An independent living service provider who receives funds for vocational rehabilitation services must comply with the same standards applicable in chapter 582 of the Oregon Administrative Rules to other providers of the specific vocational rehabilitation services funded.

Stat. Auth.: ORS 344.530
Stats. Implemented: ORS 344.530 & 344.550
Hist.: VRS 5-2004, f. & cert. ef. 8-5-04; Suspended by VRS 1-2009(Temp), f. & cert. ef. 2-11-09 thru 8-9-09

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

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Notice Publication Date:

Rules Amended: 410-120-0027

Rules Suspended: 410-120-0027(T)

Subject: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. DMAP temporarily adopted 410-120-0027 to reference in rule the document, MMIS Alternative Process and Procedures dated, January 12, 2009 with Release #1, Pharmacy Payments During MMIS Enrollment Data Correction, dated January 12, 2009 and Release #2, MMIS transitional issues/temporary protocols, date January 16, 2009 included in rule by reference and found on the DHS web page: http://www.oregon.gov/DHS/healthplan/notices_providers/main.shtml

This rule and the information found in the referenced documents take precedence over existing rules in chapter 410.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0027 MMIS Alternative Process and Procedure

(1) Consistent and in accordance with OAR 407-120-0040 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 and Release #2, MMIS transitional

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issues/temporary protocols, dated January 16, 2009 included in rule by reference and found on the DHS Web page: http://www.oregon.gov/DHS/healthplan/notices_providers/main.shtml.

(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, f. & cert. ef. 12-12-09 thru 7-1-09; DMAP 3-2009(Temp), f. & cert. ef. 1-16-09 thru 7-1-09

Rule Caption: January 1, 2009–December 31, 2010 Health Services Commission’s Prioritized List of Health Services.

Adm. Order No.: DMAP 4-2009(Temp)

Filed with Sec. of State: 1-30-2009

Certified to be Effective: 1-30-09 thru 6-25-09

Notice Publication Date:

Rules Amended: 410-141-0520

Subject: DMAP temporarily amended 410-141-0520 to reference the Oregon health Services Commission’s Prioritized List of Health Services. The January 1, 2009 through December 31, 2010 Prioritized List is adopted by reference retroactively to January 1, 2009.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0520

Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission’s (HSC) listing of physical health services with “expanded definitions” of Preventive Services and the HSC’s practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The HSC maintains the most current list on the HSC website: www.oregon.gov/DHS/healthplan/priorlist/main, or, for a hardcopy contact the Office of Oregon Health Policy and Research. Effective retroactively to January 1, 2009, this rule incorporates by reference the CMS approved Biennial January 1, 2009–December 31, 2010 Prioritized List, available on the HSC website which includes expanded definitions, practice guidelines and condition treatment pairs funded through line 503.

(2) Certain Mental Health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). These codes are identified on their own Mental Health (MH) section of the appropriate lines on the Prioritized List of Health Services.

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Office of Mental Health and Addiction Services and approval to bill Medicaid for CD services.

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, 192.518 - 192.526

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. & cert. ef. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-0; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08; DMAP 8-2008, f. & cert. ef. 3-27-08; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 23-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 4-2009(Temp), f. & cert. ef. 1-30-09 thru 6-25-09

Department of Human Services, Public Health Division Chapter 333

Rule Caption: WISEWOMAN Program.

Adm. Order No.: PH 1-2009

Filed with Sec. of State: 2-13-2009

Certified to be Effective: 2-13-09

Notice Publication Date: 1-1-2009

Rules Adopted: 333-010-0200, 333-010-0205, 333-010-0210, 333-010-0215, 333-010-0220, 333-010-0225, 333-010-0230, 333-010-0235, 333-010-0240, 333-010-0245, 333-010-0250, 333-010-0255, 333-010-0260, 333-010-0265, 333-010-0270, 333-010-0275, 333-010-0280, 333-010-0285, 333-010-0290

Subject: The Department of Human Services, Public Health Division is permanently adopting Oregon Administrative Rules in chapter 333, division 10 in order to facilitate the administration of the WISEWOMAN Program.

Rules Coordinator: Sally Peters—(971) 673-0561

333-010-0200

Description of the WISEWOMAN Program

The WISEWOMAN (WW) Program is a federal program, administered by the Department of Human Services, that provides heart disease, stroke and diabetes screening, a lifestyle intervention to develop and maintain healthy behaviors, and referral services in an effort to prevent cardiovascular disease to eligible women statewide. The WW Program provides these services to women with family incomes up to 250 percent of the Federal Poverty Level through a contract network of qualified providers. These rules (OAR 333-010-0200 through 333-010-0290) apply only to providers who have an approved medical services agreement to provide screening and services through this program. The program is limited to a finite source of funds, which may restrict availability of services on an annual basis.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010, 431.250

Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0205

Definitions

(1) “Agency number” means the administrative number assigned to the service provider by the Office of Family Health (OFH) for identification as a BCCP/WW provider.

(2) “Ancillary provider” means an individual or entity that has met the eligibility requirements for enrollment in the WW Program, has executed a medical services agreement with the OFH, has been assigned a BCCP/WW Program agency number, and performs services beyond the scope of an enrolled provider, such as laboratory, imaging, or surgical services.

(3) “Approved medical services agreement” means the completed WW Program agreement, submitted to and approved by the Office of Family Health.

(4) “BCCP” means the Oregon Breast and Cervical Cancer Program.

(5) “Care coordination” or “case management” means that a client is provided with services, results, follow-up recommendations, and active tracking of progress towards follow-up recommendations.

(6) “CLIA” means the federal Clinical Laboratory Improvement Amendments of 1988 (P.L. 100-578, 42 U.S.C. 201 and 263a)

(7) “Client” means a woman 40 to 64 years of age who is enrolled in and receives screening or services from the WW Program.

(8) “DHS” means the Department of Human Services.

(9) “Enrolled provider” means an individual or entity that has met the eligibility requirements for enrollment in the WW Program, has executed a medical services agreement with the OFH, has been assigned a BCCP/WW Program agency number, and provides screening, services, or care coordination for WW Program clients.

(10) “FPL” means the federal poverty level guidelines established each year by the United States Department of Health and Human Services, used to determine eligibility for the WW Program and other federally funded programs.

(11) “HIPAA” means the Health Insurance Portability and Accountability Act.

(12) “OFH” means the Office of Family Health, within DHS, Public Health Division.

(13) “Site number” means the administrative number assigned to the family planning service provider by OFH for identification of the geographic location of each WW provider.

(14) “Underinsured” means that a client’s insurance does not pay for heart disease, stroke and diabetes screenings or services, such as cholesterol, triglyceride, A1C, and glucose testing and consultations.

(15) “WISEWOMAN (WW) Program” or “WW Program” means the program that provides statewide heart disease, stroke and diabetes screening and services to eligible clients, that is administered by the OFH.

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(16) "WW Program provider network" means the combination of all contracted WW Program providers, including enrolling and ancillary providers.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0210

Client Eligibility

A person must meet the following WW Program eligibility criteria in order to be enrolled in the WW Program:

- (1) Have an income based on family size that is at or below 250 percent of the FPL at the time of enrollment;
- (2) Reside or declare an intent to reside in Oregon;
- (3) Have no health insurance or is underinsured;
- (4) Is a woman 40 to 64 years of age; and
- (5) Is enrolled in the BCCP program.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0215

Client Enrollment

(1) A person is determined eligible for the WW Program after submitting a completed and signed BCCP/WW Program enrollment form.

(2) Eligibility is effective for one year.

(3) A person who enrolled in the WW Program but who is later found to be ineligible shall be notified by the OFH or her enrolled provider in writing of such disenrollment and may be responsible for the payment of services received from her provider.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0220

Provider Enrollment

(1) An individual or organization that wishes to be an enrolled provider or an ancillary provider with the WW Program shall apply to the OFH on a form prescribed by the OFH.

(2) In order to be eligible for enrollment, an individual or organization shall:

(a) 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; and

(b) Meet applicable licensing or regulatory requirements set forth by federal and state statutes, regulations, and rules to be enrolled and to bill as a health care provider.

(3) A laboratory or any other entity that does laboratory tests must provide evidence that it is CLIA certified in order to be a provider or an ancillary provider.

(4) An individual or organization that is currently subject to sanctions by DHS or the federal government is not eligible for enrollment.

(5) Upon receipt of an application the OFH shall verify the information and determine if the individual or organization is eligible to be an enrolled or ancillary provider.

(6) If OFH approves an application, an individual or organization shall:

(a) Sign a medical services agreement that requires the provider to comply with these rules; and

(b) Be issued a BCCP/WW Program agency number.

(7) An enrolled or ancillary provider may not offer services to a client prior to receiving information from an OFH WW Program representative about administering the WW Program.

(8) An enrolled provider or ancillary provider shall notify OFH in writing within 30 days of the change if it changes its address, business affiliation, licensure, ownership, certification, billing agents, registered name, or Federal Tax Identification Number (TIN). Changes in business affiliation, ownership, registered name, and TIN may require the submission of a new application. Payments made to an enrolled provider or an ancillary provider who has not furnished such notification may be recovered by OFH.

(9) An enrolled provider or an ancillary provider shall notify OFH in writing of a bankruptcy proceedings within 15 days.

(10) An individual or organization outside the state of Oregon may be eligible for enrollment if the individual or organization:

(a) Is appropriately licensed or certified in its state; and

(b) Is located in a state contiguous to Oregon, and is within 75 miles of the Oregon border.

(11) An enrolled provider or an ancillary provider may terminate enrollment at any time by sending a written termination notice to OFH, via certified mail, return receipt requested. The notice shall specify the agency number to be terminated and the effective date of termination. Termination of a provider enrollment does not terminate any obligations of the provider for services provided to a client prior to the effective date of the termination.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0225

Standards of Care for WISEWOMAN Program Screening and Services

An enrolled provider shall:

(1) Inform each client, verbally and with supplementary written materials in a language the client understands, without bias or coercion, that the client's decision to participate in the WW Program screening and services is voluntary;

(2) Inform clients of the scope of services available through the program;

(3) Obtain informed consent from each client receiving WW screening and services;

(4) Provide services covered by the WW Program without cost to eligible clients;

(5) Refer clients with abnormal or ALERT (please see values listed in section (20) of this rule) level results for additional treatment including to an approved lifestyle intervention program, even though the additional treatment is not covered by the WW Program;

(6) Provide information to clients in need of additional medical services beyond the scope of the WW Program provider network with information about available local resources;

(7) Provide all services to eligible clients without regard to marital status, race, parity, disability, or sexual orientation;

(8) Take a health history for all clients, including health risk facts and personal and family medical history as it pertains to heart disease, stroke and diabetes screening;

(9) Provide follow-up recommendations for each client;

(10) Provide care coordination to ensure that appropriate follow-up screening, diagnostic testing and care is provided, including:

(a) An explanation of the results of the screening and laboratory tests; and

(b) The opportunity for questions concerning procedures, methods and results.

(11) Submit enrollment and eligibility information immediately or within five calendar days from the date of enrollment to the OFH;

(12) Submit all client data to the WW Program, including required information about client history and screening results;

(13) Provide services to each client in a manner that respects the privacy and dignity of the individual;

(14) Inform clients that services and medical records will be kept confidential and that records cannot be released without written client consent, except as required by law, or otherwise permitted by HIPAA;

(15) Provide all services, support and other assistance in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language, and behaviors of the clients receiving services, and in a manner that has the greatest likelihood of ensuring a client's maximum participation in the program;

(16) Notify clients of the availability of interpretation services in accordance with the Civil Rights Act of 1964, and make interpretation services available to all clients needing or requesting such assistance at no cost to the client;

(a) A provider shall ensure that all persons providing interpretation services adhere to confidentiality guidelines;

(b) A provider must assure the competency of language assistance provided to clients by interpreters and bilingual staff. Family and friends should not be used to provide interpretation services, unless requested by the client;

(17) Make available easily understood client related materials and post signage in the languages of groups commonly encountered in the service area;

(18) Ensure that all print, electronic, and audiovisual materials are appropriate according to the client's language and literacy level, including accommodating a client's request for alternate formats; and

(19) Use only CLIA certified laboratories for all tests, whether done at the clinic site or by an outside clinic.

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(20) The ALERT and abnormal values are as follows:

ALERT: **BMI** \geq 40
Systolic blood pressure $>$ 180 mmHg
Diastolic blood pressure $>$ 110 mmHg
Fasting or non-fasting total blood cholesterol $>$ 400 mg/dL
Fasting or non-fasting blood glucose $>$ 375 mg/dL

Abnormal: **BMI: Overweight** 25–29.9, **Obesity (Class 1)** 30–34.9, **Obesity (Class 2)** 35–39.9
Blood pressure: Prehypertension 120–139 Systolic or 80–90 Diastolic; **Stage 1 Hypertension** 140–159 Systolic or 90–99 Diastolic; **Stage 2 Hypertension** $>$ 160 Systolic or $>$ 100 Diastolic
Total Cholesterol: Borderline-high 200–239, **High** $>$ 240
HDL Cholesterol: Low $<$ 40
LDL (Fasting): 100 or higher
Triglycerides (Fasting): 150 or higher
Glucose (Non Fasting): \geq 200 plus symptoms
Glucose (Fasting): FPG 100 to 375
Glucose (Fasting): OPTT 140 to 375

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0230

Submission of Information by Ancillary Providers

Ancillary providers shall provide results of services to enrolled providers within 14 calendar days from the date of service.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.150
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0235

Covered Services

(1) The WW Program covers screening and services specific to heart disease, stroke and diabetes. Contracted providers will only be reimbursed for services related to heart disease, stroke and diabetes screening and services.

(2) Covered screening and services include, but are not limited to:

- (a) Cholesterol tests;
- (b) Glucose or A1C tests;
- (c) Triglycerides; and
- (d) Consultation related to living a healthy lifestyle.

(3) The WW Program Manual, January 2009, incorporated by reference, includes a complete list of covered services.

[Publications referenced are available from the Oregon WW Program].
Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0240

Excluded Services

(1) Services and laboratory tests not directly related to heart disease, stroke and diabetes, or not included in the ICD-9 and CPT code lists provided in the WW Program Manual are not covered by the WW Program.

(2) No payment will be made for any expense incurred for any other medical service or laboratory tests whose primary purpose is for a reason other than heart disease, stroke, or diabetes screening and prevention.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0245

Claims and Billing

(1) Only an enrolled or ancillary provider providing WW Program covered services pursuant to a fully executed medical services agreement, and who has been assigned an agency number may submit claims for payment to the OFH for providing WW Program covered services.

(2) An enrolled or ancillary provider shall, as applicable:

(a) Submit claim information in the manner specified by the WW Program;

(b) Include a primary diagnosis code on all claims;

(c) Code all claims with the most current and appropriate International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) diagnosis codes and the most appropriate Current Procedural Terminology (CPT) codes as noted in the WW Program Manual;

(d) Submit to the OFH all claims for services within 12 months of the date of service;

(e) Submit a billing error edit correction, or refund the amount of the overpayment, on any claim where a provider identifies an overpayment made by OFH;

(f) Make all reasonable efforts to ensure that the WW Program is the payor of last resort with the exception of clinics or offices operated by the Indian Health Service (IHS) or individual American Indian tribes. For the purposes of this rule "reasonable efforts" include:

(A) Determining the existence of insurance coverage or other resource by asking the client; and

(B) Except in the case of the underinsured, billing any known insurer in compliance with that insurer's billing and authorization requirements.

(g) Submit to OFH a billing error edit correction if it receives a third party payment and refund to OFH the amount received from the other source within 30 days of the date the payment is received.

(3) OFH may not pay a claim older than 12 months, except as provided for in section (4) of this rule. An enrolled or ancillary provider that has a claim rejected because of an error must resolve the error within 12 months of the date of service.

(4) If OFH makes an error that makes it impossible for an enrolled or ancillary provider to bill within 12 months of the date of service, the enrolled or ancillary provider shall notify OFH of the alleged error and submit the claim to OFH. OFH shall confirm that it made an error prior to payment being made

(5) OFH may not pay a claim that includes a primary diagnosis code that is not in the WW Program Manual.

(6) An enrolled or ancillary provider with the WW Program may not seek payment from a client, or from a financially responsible relative or representative of that client for any services covered by the WW Program.

(7) An enrolled or ancillary provider may bill a client for services that are not covered by the WW Program. However, the provider must inform the client in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the client or client's representative is financially responsible for payment for the specific service. Providers must document in writing that the client was provided this information and the client knowingly and voluntarily agreed to be responsible for payment. The client or client's representative must sign the documentation.

(8) Except for services performed by a CLIA certified laboratory outside of the clinic, all billings by an enrolled provider must be for services provided within the provider's licensure or certification.

(9) A provider who has been suspended or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, may not submit claims for payment, either personally or through claims submitted by any billing provider or other provider, for any services or supplies provided under the WW Program, except those services provided prior to the date of suspension or termination.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0250

Payment

(1) OFH shall only pay claims submitted by an enrolled or ancillary provider for a client.

(2) OFH shall reimburse an enrolled or ancillary provider an amount up to the Medicare reimbursement rate for the Portland metropolitan area for WW Program approved CPT codes, on a fee-for-service basis.

(3) A federally qualified health center or rural health center shall not be paid at their Prospective Payment System (PPS) rate, but will be paid at the reimbursement rate described in section (2) of this rule.

(4) OFH payments for WW Program provider services, unless in error, constitute payment in full.

(5) OFH may not make payment on claims that have been assigned, sold, or otherwise transferred, or on which a provider of billing services receives a percentage of the amount billed or payment authorized, including claims that have been transferred to a collection agency or individual who advances money to a provider for accounts receivable.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0255

Denial or Recovery of Reimbursement Resulting from Review or Audit

(1) OFH's staff, contractor or auditor may review a claim for assurance that the specific medical service was provided in accordance with the

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WW Program's rules or the generally accepted standards of a provider's scope of practice or specialty.

(2) Payment may be denied or subject to recovery if a review or audit determines the service was not provided in accordance with the WW Program's rules or the generally accepted standards of a provider's scope of practice or specialty.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0260

Recovery of Overpayments to Providers Resulting from Review or Audit

(1) If OFH determines that an overpayment has been made to an enrolled or ancillary provider, OFH shall seek to recover the amount of overpayment. OFH may use a statistically valid random sampling, with sufficient sample size allowing a confidence interval of 95 percent to determine if an overpayment has been made.

(2) The amount of the review or audit overpayment to be recovered:

(a) Will be the entire amount determined by OFH;
(b) Is not limited to amounts determined by criminal or civil proceedings; and

(c) Will include interest to be charged at allowable state rates.

(3) OFH shall provide an enrolled provider in writing, by registered or certified mail or in person, notice of an overpayment and a request for repayment of the overpayment, along with documentation to support the amount owed.

(4) An enrolled or ancillary provider shall pay the overpayment amount within 30 calendar days from the date OFH mails the notice of overpayment. A request for a hearing does not change the date the repayment of the overpayment is due.

(5) OFH may extend the 30-day repayment period or accept an offer of repayment terms. Any change in reimbursement period or terms must be documented in writing by OFH.

(6) If the provider disagrees with OFH's determination or the amount of overpayment the provider may:

(a) Appeal the decision by requesting a contested case hearing; or

(b) Request a 100 percent audit of all billings submitted to OFH for heart disease, stroke, and diabetes screenings and services provided during the period in question.

(7) A written request for hearing must be submitted to OFH by the provider within 30 calendar days of the date of the decision affecting the provider. The request must specify the areas of disagreement. Failure to request a hearing or administrative review in a timely manner constitutes acceptance by the provider of the amount of the overpayment.

(8) If a 100 percent audit is requested:

(a) An enrolled or ancillary provider is responsible for arranging and paying for the audit; and

(b) The audit must be conducted by a certified public accountant that is knowledgeable about the Oregon Administrative Rules covering the payments in question, and must be conducted within 120 calendar days of the request to use such an audit in lieu of OFH's random sample.

(9) If the provider refuses to reimburse the overpayment or does not adhere to an agreed upon payment schedule, OFH may:

(a) Recoup future provider payments up to the amount of the overpayment; or

(b) Pursue civil action to recover the overpayment.

(10) OFH may, at any time, change the amount of the overpayment upon receipt of additional information from an enrolled provider. If the OFH changes an overpayment amount it will provide written notice to the enrolled provider. Any monies paid to OFH that exceed an overpayment will be refunded to the provider.

(11) OFH may pursue civil action to recover any amounts due and payable to the WW Program.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0265

Client Data Submission

(1) In addition to submitting the claim information required in OAR 333-010-0225, in order to receive payment an enrolled provider shall submit client data to OFH. The data shall be used by the WW Program to monitor the delivery of services and clinical outcomes of the program.

(2) An enrolled provider shall submit client data to OFH, in a manner specified by OFH, on the Enrollment Form, Assessment Form and the Screening Form, included in the WW Program Manual within 90 days from

the date of enrollment. In the event that a client requires additional diagnostic procedures and the information is not available within 90 days from the date of enrollment, the data shall be submitted to OFH immediately once it is received by the provider.

(3) An ancillary provider shall report data to an enrolled provider and is not required to provide data to the OFH directly.

(4) An enrolled provider may update or correct client data not related to payment of the claim at any time after the date of service.

(5) If an enrolled provider or OFH terminates the medical services agreement, data are still required to be submitted for each client that was provided services while the agreement was in effect.

[Publications: Publications referenced are available from the agency]

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0270

Requirements for Financial, Clinical and Other Records

(1) An enrolled provider shall:

(a) Develop and maintain adequate financial and clinical records and other documentation that supports the services for which payment has been requested;

(b) Ensure that all medical records document the service provided, primary diagnosis code for the services, the date on which the service was provided, and the individual who provided the services;

(c) Ensure that patient account and financial records include documentation of charges, identify other payment resources pursued, indicate the date and amount of all debit or credit billing actions, and support the appropriateness of the amount billed and paid in accurate and sufficient detail to substantiate the data reported;

(d) Ensure that clinical records sufficiently document that the client's services were primarily for heart disease, stroke and diabetes;

(e) Ensure that each time a service is provided to a client, the client's record is signed or initialed by the individual who provided the service or otherwise clearly indicates who provided the service;

(f) Ensure that the information contained in the record reflects that the standard of care for heart disease, stroke and diabetes screening and services were met;

(g) Have policies and procedures to ensure the confidentiality of medical records and that address the circumstances under which information may be released in accordance with federal and state law; and

(h) Retain client enrollment forms, clinical, financial and other records described in this rule for at least four years from the date of last activity.

(2) The OFH, DHS, the Oregon Department of Justice Medicaid Fraud Unit, the Oregon Secretary of State, or their authorized representatives (requestor) may request, in writing, any records related to an enrolled or ancillary provider's participation in the WW Program, including client medical records. An enrolled or ancillary provider shall furnish requested records, without charge, immediately or within the time frame specified in the written request. Copies of the documents may be furnished unless the originals are requested. At the requestor's discretion, representatives of the requestor may review and copy the original documentation in the provider's place of business. Upon the written request of the provider, the requestor may, at its sole discretion, modify or extend the time for provision of such records for good cause shown.

(3) Failure to comply with requests for documents within the specified time frames means that the records subject to the request may be deemed by DHS not to exist for purposes of verifying appropriateness of payment, medical appropriateness, the quality of care, and the access to care in an audit or overpayment determination, and accordingly subjects the provider to possible denial or recovery of payments made by DHS, or to sanctions.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0275

Compliance with Federal and State Statutes

(1) Submission of a claim for medical services or supplies provided to a client shall be deemed a representation by the enrolled or ancillary provider to OFH of the provider's compliance with the applicable sections of the following federal and state statutes:

(a) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;

(b) Title II and Title III of the Americans with Disabilities Act of 1991;

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(c) Title VI of the Civil Rights Act of 1964; and
(d) 42 CFR Part 493 Laboratory Requirements and ORS chapter 438 (Clinical Laboratories).

(2) Enrolled and ancillary providers are required to comply with HIPAA regarding the confidentiality of client records.

(3) A provider that performs even one laboratory test, including waived tests on “materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of human beings” is considered a laboratory under CLIA and therefore CLIA certification may be required.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0280

Provider Sanctions

(1) The OFH may sanction an enrolled provider if the provider:

(a) Is convicted of a felony or misdemeanor related to a crime or violation of Title XVIII, XIX, or XX of the Social Security Act or related state laws (or entered a plea of nolo contendere);

(b) Is convicted of fraud related to any federal, state, or locally financed health care program;

(c) Is convicted of interference with the investigation of health care fraud;

(d) Is convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(e) Fails to comply with the state and federal statutory requirements set forth in OAR 333-010-0275;

(f) By actions of any state licensing authority for reasons relating to the provider’s professional competence, professional conduct, or financial integrity:

(A) Has a health care license suspended or revoked, or has otherwise lost such license; or

(B) Surrenders a health care license during a pending formal disciplinary proceeding;

(g) Is suspended or excluded from participation in a federal or state health care program for reasons related to professional competence, professional performance, or other reason;

(h) Engages in improper billing practices, including:

(A) Billing for excessive charges or visits;

(B) Submitting a false claim for payment;

(C) Altering a claim in such a way as to result in a payment for a service that has already been paid; or

(D) Making a claim upon which payment has been made by another source unless the amount paid is clearly entered on the claim form;

(i) Fails to furnish services as required by law or contract with the OFH, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) the client;

(j) Fails to supply requested information on subcontractors and suppliers of goods or services;

(k) Fails to supply requested payment information;

(l) Fails to grant access to facilities or provide records upon request of OFH or a designated requestor;

(m) Receives payments for services provided to persons who were not eligible;

(n) Establishes multiple claims using procedure codes that overstate or misrepresent the level, amount or type of health care provided;

(o) Fails to develop, maintain, and retain, in accordance with relevant rules and standards adequate clinical or other records that document the medical appropriateness, nature, and extent of the health care provided;

(p) Fails to develop, maintain, and retain, in accordance with relevant rules and standards, adequate financial records that document charges incurred by a client and payments received from any source;

(q) Fails to follow generally accepted accounting principles or accounting standards or cost principles required by federal or state laws, rules, or regulation;

(r) Submits claims for services provided that were contrary to generally accepted standards of medical practice;

(s) Submits claims for services that exceed that requested or agreed to by the client or the responsible relative or guardian or requested by another medical practitioner;

(t) Breaches the terms of the medical services agreement;

(u) Fails to correct deficiencies in operations after receiving written notice of the deficiencies from OFH;

(v) Fails to submit a billing error edit correction within 30 days of receipt of the third party payment or to refund the appropriate amount within this time frame;

(w) Provides or bills for services provided by ineligible or unsupervised staff;

(x) Submits claims for payment, either personally or through claims submitted by any billing provider or other provider, for any services or supplies provided under the WW Program for services provided after being suspended or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or after his or her license to practice has been suspended or revoked by a state licensing board;

(y) Fails to notify OFH of a change of TIN within 30 days; or

(z) Fails to respond to a request for records under OAR 333-010-0270.

(2) Sanctions may include:

(a) Termination from participation in the WW Program;

(b) Suspension from participation in the WW Program for a specified length of time, or until specified conditions for reinstatement are met and approved by OFH;

(c) Withholding payments to an enrolled or ancillary provider;

(d) A requirement to attend provider education sessions at the expense of the sanctioned enrolled or ancillary provider;

(e) A requirement that payment for certain services are made only after OFH has reviewed documentation supporting the services;

(f) The recovery of investigative and legal costs;

(g) Reduction of any amount otherwise due the enrolled or ancillary provider; and the reduction may be up to three times the amount a provider sought to collect from a client;

(h) Any other sanction reasonably designed to remedy or compel future compliances with federal, state or OFH regulations.

(3) An enrolled or ancillary provider who has been the subject of repeat sanctions regarding improper billing practices may be liable to OFH for up to triple the amount of the established overpayment received as a result of such violation.

(4) When an enrolled or ancillary provider fails to meet one or more of the requirements identified in this rule OFH, at its sole discretion, may immediately suspend the provider’s BCCP/WW Program assigned billing number to prevent public harm or inappropriate expenditure of public funds.

(a) An enrolled or ancillary provider subject to immediate suspension is entitled to a contested case hearing as outlined in OAR 333-010-0290 to determine whether the provider’s BCCP/WW Program assigned number will be revoked.

(b) The notice requirements described in section (5) of this rule does not preclude immediate suspension at OFH’s sole discretion to prevent public harm or inappropriate expenditure of public funds. Suspension may be invoked immediately while the notice and contested case hearing rights are exercised.

(5) If OFH decides to sanction an enrolled or ancillary provider, OFH shall notify the provider by certified mail or personal delivery service of the intent to sanction. The notice of immediate or proposed sanction will identify:

(a) The factual basis used to determine the alleged deficiencies;

(b) Explanation of actions expected of the provider;

(c) Explanation of subsequent actions OFH intends to take;

(d) The provider’s right to dispute OFH’s allegations, and submit evidence to support the provider’s position; and

(e) The provider’s right to appeal OFH’s proposed actions pursuant to OAR 333-010-0285 through 333-010-0290.

(6) If OFH makes a final decision to sanction an enrolled or ancillary provider, OFH shall notify the provider in writing at least 15 days before the effective date of action, except in the case of immediate suspension to avoid public harm or inappropriate expenditure of funds.

(7) An enrolled or ancillary provider must appeal an immediate or proposed sanction separately from any appeal of audit findings and overpayments.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010, 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0285

Provider Appeals (Level 1) — Claims Reconsideration

An enrolled or ancillary provider disputing a claim or sanction decision by OFH may request reconsideration. The provider must submit the request for reconsideration in writing to OFH. The request must include the reason for the dispute, and any information pertinent to the outcome of the

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dispute. OFH will complete an additional review and respond back to the provider in writing. If the provider is not satisfied with the review, the provider may request a contested case hearing.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010 & 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

333-010-0290

Provider Appeals (Level 2) — Contested Case Hearing

An enrolled or ancillary provider may request a contested case hearing within 30 calendar days of the date of a decision affecting the provider. Contested case hearings will be held in accordance with ORS Chapter 183 and the Attorney General's model rules, OAR 137-003-0501 through 137-003-0700.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.010 & 431.250
Hist.: PH 1-2009, f. & cert. ef. 2-13-09

Department of Public Safety Standards and Training
Chapter 259

Rule Caption: Amend Minimum Standards for Polygraph Trainees and Polygraph Examiners and Amend Fingerprint Submittal Requirements.

Adm. Order No.: DPSST 1-2009

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

Certified to be Effective: 2-2-09

Notice Publication Date: 1-1-2009

Rules Amended: 259-020-0010, 259-020-0015, 259-020-0020, 259-020-0025

Rules Repealed: 259-020-0010(T)

Subject: Requires the submittal of one fingerprint card, rather than two fingerprint cards, when processing through the Oregon State Police;

Requires and individual who has conducted polygraphs in another state to meet the minimum standards in effect in Oregon prior to obtaining a polygraph license;

Provides for reapplication process when a license has lapsed and outlines renewal requirements;

Allows provision for additional time, beyond the current two year time limitation, for a polygraph trainee to obtain a total of 200 examinations; and

Additional housekeeping changes were made for clarity and readability.

Rules Coordinator: Bonnie Salle-Narvaez—(503) 378-2431

259-020-0010

Minimum Standards for a Polygraph Examiner Trainee License

(1) Any applicant for a license as a polygraph examiner trainee must:

(a) Have graduated from a polygraph examiner's course approved by the Department;

(b) Be at least 18 years of age;

(c) Be a citizen of the United States;

(d) Not have demonstrated a course of behavior in the preceding 10 years that would indicate the applicant is unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public. When the Department refuses to issue a license based upon an applicant's failure to meet this requirement, the Department must follow the procedures set forth in OAR 259-020-0030.

(e) Provide any information required by the Department relating to the circumstances of a conviction, if the applicant has previously been convicted of a criminal offense. ORS 670.280 is applicable when the Department considers information provided under this paragraph.

(f) Be fingerprinted and submit one (1) completed fingerprint cards to the Department for subsequent submission to the Oregon State Police, Identification Services Section.

(A) Appropriate fees must accompany the applicant's fingerprints to pay the costs of the state and federal fingerprint background checks.

(B) Currently employed corrections officers, parole and probation officers, or police officers as defined in ORS 181.610, whose fingerprints are on file in accordance with OAR 259-008-0010, are exempt from this fingerprinting requirement.

(g) Submit a completed Application for Polygraph Examiner's License (DPSST Form F-203) as prescribed by OAR 259-020-0060,

accompanied by documentation of qualifications as may be required by the Department.

(h) Submit appropriate fees to the Department as prescribed by OAR 259-020-0035.

(2) The internship requirements of any person who is licensed as a trainee under this rule include:

(a) Periodic consultation with licensed general polygraph examiners of the trainee's own choice;

(b) A total review of 20 examinations from the first 200 examinations conducted must be reviewed by a licensed general polygraph examiner. The following review format is mandatory:

(A) 1st series — 5 examinations reviewed of the first 20 conducted;

(B) 2nd series — 5 examinations reviewed of the next 30 conducted;

(C) 3rd series — 5 examinations reviewed of the next 50 conducted;

(D) 4th series — 5 examinations reviewed of the last 100 conducted.

(E) During each review series, the trainee must have a general polygraph examiner complete a Polygraph Review Critique (DPSST Form F-203a) on each set of examinations reviewed. The trainee must forward the original critiques to the Department. One copy of the form must be retained by the reviewer, and one copy must be retained by the trainee. These reviews must be completed and forwarded to the Department within 30 days of the completion date of each of the four (4) series of examinations shown above. The Department will not renew a trainee license unless the trainee has complied with the examination requirements in this subsection.

(F) At least two (2) review series must be completed with a general polygraph examiner during personal interviews. However, if time and distance are a distinct problem, up to two of the review series may be completed by mail. These review procedures cannot be interpreted as detracting from the trainee examiner's ability or expertise, but will be considered as legitimate, professional consultation.

(c) When participating in this prescribed course of study, trainees may administer specific issue examinations. If the trainee conducts a test which is to be offered as evidence in a court of law, the trainee must seek and utilize the assistance of a general polygraph examiner during the administration of the case and must have that general polygraph examiner available for continued consultation, including joint court appearances, if necessary. Each trainee should obtain legal advice concerning all questions relating to admissibility of polygraph examination evidence.

(d) Every trainee must maintain basic records of examinations conducted. A numerical log or ledger (beginning with #1) must provide a brief record of the name of the person examined, date, time, type of examination, and results, as well as other information the trainee examiner considers pertinent. Folder or envelope "case" files containing all available test information, including notes, questions, charts, reports, and correspondence, must be maintained for a minimum of five years unless State Archivist rules require longer maintenance.

(e) A person may not hold a license as a trainee for more than two years. An extension of the two-year period may be granted for good cause.

(A) If the applicant requests an extension of time to hold the trainee license beyond the initial two year limitation, the Department may grant an extension to the date of the next regularly scheduled Polygraph Licensing Advisory Committee meeting. The applicant will be scheduled to appear at the next committee meeting. The applicant must provide his/her request/justification for the extension, polygraph log, and ten of the last polygraph reports and charts performed by the trainee. If just cause is presented, the Polygraph Licensing Advisory Committee may recommend an extension to the Department.

(B) The Polygraph Licensing Advisory Committee may recommend additional requirements that must be met during the extension period. Failure to complete any additional requirements imposed by the Department during an extension period may be grounds to deny any additional extension requests.

(f) Trainees must clearly indicate their trainee status on all letterhead, business cards, advertising, signage, and any other type of written material that describes a polygraph examination or review of a polygraph examination.

(3) A trainee must not conduct more than five (5) completed examinations, of any type, in any one calendar day. A completed examination is an examination as defined in OAR 259-020-0005(2).

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

Stat. Auth.: ORS 703.230

Stats. Implemented: ORS 703.230

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 3-1987, f. & ef. 10-26-87; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-1999, f. & cert. ef. 7-29-99; BPSST 10-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 9-2001, f. & cert. ef. 9-19-

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01; BPSST 14-2002, f. & cert. ef. 7-1-02; DPSST 1-2003, f. & cert. ef. 1-21-03; DPSST 23-2008(Temp), f. & cert. ef. 12-29-08 thru 5-30-09; DPSST 1-2009, f. & cert. ef. 2-2-09

259-020-0015

Minimum Standards for a Polygraph Examiner

(1) Any applicant for a license as a general polygraph examiner must:

- (a) Be at least 18 years of age;
- (b) Be a citizen of the United States;

(c) Not have demonstrated a course of behavior in the preceding 10 years that would indicate the applicant is unable to perform the duties of a polygraph examiner in a manner that would serve the interests of the public. When the Department refuses to issue a license based upon an applicant's failure to meet this requirement, the Department must follow the procedures set forth in OAR 259-020-0030;

(d) If previously convicted for a criminal offense, provide information, as required by the Department, relating to the circumstances of the conviction. ORS 670.280 is applicable when the Department considers information provided under this paragraph;

(e) Be fingerprinted and submit one (1) completed fingerprint cards to the Department for subsequent submission to the Oregon State Police, Identification Services Section.

(A) Appropriate fees must accompany the applicant's fingerprints to pay costs of the state and federal fingerprint background checks. No General License shall be issued until the Department has received fingerprint clearance from the Oregon State Police Identification Services Section.

(B) Currently employed corrections officers, parole and probation officers, or police officers, as defined in ORS 181.610, whose fingerprints are on file in accordance with OAR 259-008-0010, are exempt from this fingerprinting requirement.

(f) Have received a baccalaureate degree from an accredited college or university; or be a graduate of an accredited high school and have at least five years of active investigative experience before the date of the application.

(A) Active investigative experience is acquired through full-time employment as an investigator. An investigator is a person whose primary assigned duty is the investigation of actual or suspected violations of law, either criminal or civil.

(B) Administering polygraph examinations will satisfy the investigative experience requirement of this section.

(C) The Department may, upon application of an individual polygraph examiner, accept the examiner's professional experience as being equal in professional value to the five years of active investigative experience required by this section.

(g) Have graduated from a polygraph examiner's course approved by the Department and have completed at least 200 examinations, or have worked as a polygraph examiner for a period of five years for a governmental agency within the State of Oregon and have completed 200 examinations.

(h) Have successfully completed an examination conducted by the Department in consultation with the Advisory Committee as defined in OAR 259-020-0055, to determine competency to act as a polygraph examiner. The Department in consultation with the Advisory Committee shall prescribe the manner and contents of any examination conducted by the Department under provisions of the Act.

(i) Submit a fully-completed Application for Polygraph Examiner's License (DPSST Form F-203) as prescribed by OAR 259-020-0060, accompanied by documentation of qualifications as may be required by the Department.

(j) Submit to the Department appropriate fees as prescribed by OAR 259-020-0035.

(2) Any person who has held a trainee license for longer than 12 months and who has completed the 200 exams required under OAR 259-020-0015 must take the general license examination within 12 months of completing the required exams.

(3) The following govern applicants who fail to pass the oral or written part of the examination described in OAR 259-020-0015(1)(h):

(a) The Department in consultation with the advisory committee may prescribe requirements for the internship of an applicant who fails the first or second examination.

(c) The Department will immediately suspend an applicant's trainee license if the applicant fails the third examination. The applicant may submit a new application for a general license only after retaking and successfully completing a polygraph examiner's course approved by the Department and meeting any additional requirements.

(d) The Department in consultation with the advisory committee may prescribe additional requirements for:

(A) The internship of an applicant who fails the first or second examination;

(B) An applicant who resides in a state other than Oregon. The minimum requirements for an out-of-state examiner who does not qualify under ORS 703.130 must include:

(i) Substantial compliance with the applicable requirements for in-state examiners;

(ii) A log meeting Oregon guidelines;

(iii) Passing the Oregon licensing examination;

(iv) Submitting at least 20 of the last 100 polygraph examinations conducted to a licensed Oregon general polygraph examiner for review. A Polygraph Review Critique (DPSST Form F-203a) must be completed on the examinations and provided to the Department for review by the Polygraph Licensing Advisory Committee; and

(v) Demonstrating proficiency in the field of polygraphy by an oral interview with the Polygraph Licensing Advisory Committee.

(C) Any individual whose license has expired for a period of more than two years and who reapplies for licensure. These requirements may include, but are not limited to:

(i) Documentation indicating any necessary training requirements have been met; and

(ii) Verification that the individual has the current knowledge, skills and ability to perform the duties of a polygraph examiner or polygraph examiner trainee.

(4) The Director, acting on the written recommendation of the Polygraph Examiners Licensing Advisory Committee, may require a licensed general polygraph examiner to appear for reexamination as directed. Failure of the licensee to comply with the directive to appear for reexamination will result in the suspension of the license by the Department.

(5) Every examiner must maintain basic records of examinations conducted pursuant to OAR 259-020-0030(1)(f)(A)(vi). A numerical log or ledger (beginning with #1) shall provide a brief record of the name of the person examined, date, time, type of examination, and results, as well as other information the examiner considers pertinent. Folder or envelope "case" files containing all available test information, including notes, questions, charts, reports, and correspondence, shall be maintained for a minimum of five years unless State Archivist rules require longer maintenance.

(6)(a) An examiner must not conduct more than five (5) completed examinations, of any type, in any one calendar day.

(b) A completed examination shall be an examination as defined in OAR 259-020-0005(2).

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

Stat. Auth.: ORS 703.230

Stats. Implemented: ORS 703.230

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 3-1987, f. & ef. 10-26-87; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-1999, f. & cert. ef. 7-29-99; BPSST 10-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 9-2001, f. & cert. ef. 9-19-01; BPSST 14-2002, f. & cert. ef. 7-1-02; DPSST 1-2003, f. & cert. ef. 1-21-03; DPSST 1-2009, f. & cert. ef. 2-2-09

259-020-0020

Special Licenses

(1) The Department may license a person who is not a resident of this state as a polygraph examiner in accordance with the Act. However, any person receiving such a license must include an irrevocable written consent with the application for a license or renewal permitting the Director to act as an agent for the service of all legal process in this state. In any action in a court of competent jurisdiction in this state, service of process may be made upon a polygraph examiner who does not reside in this state by mailing two copies of the process to the Director. The Director must retain one copy of the process in the records and immediately send, by certified or registered mail, the other copy to the polygraph examiner at the most current address as indicated by the records of the Department.

(2) The Department may grant a license as a polygraph examiner in this State to a person who is licensed as a polygraph examiner by another state or territory of the United States, without examination, upon application by such person in the manner prescribed by the Department and upon payment to the Department of a fee of \$50, payable to the Department, if the Department finds that such person:

(a) Is at least 18 years of age;

(b) Is a citizen of the United States;

(c) Has been fingerprinted and has submitted one (1) completed fingerprint card to the Department for subsequent submission to the Oregon State Police, Identification Services Section. Appropriate fees must accom-

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Department of State Lands Chapter 141

pany the applicant's fingerprints to pay costs of the state and federal fingerprint background checks. No General License shall be issued until the Department has received fingerprint clearance from the Oregon State Police Identification Services Section;

(d) Was licensed pursuant to the requirements of such other state or territory that, at the date of the issuance of such license by such other state or territory, were substantially equivalent to the requirements of the Act for licensing and regulation of polygraph examiners in this state;

(e) Is licensed by another state or territory that grants reciprocity to polygraph examiners licensed in this state; and

(f) If a nonresident of this state has complied with the requirements of section (1) of this rule.

(3) The Director, acting on the written recommendation of the Polygraph Licensing Advisory Committee, may require a licensed general polygraph examiner, licensed under this section, to appear for reexamination as directed. Failure of the licensee to comply with the directive to appear for reexamination shall result in the suspension of the polygraph license by the Department.

(4) The Department may, upon application of an individual polygraph examiner, accept the examiner's professional experience as being equal in professional value to the five years of active investigative experience required by ORS 703.090(1)(e) and OAR 259-020-0015(1)(f).

Stat. Auth.: ORS 703.230

Stats. Implemented: ORS 703.230

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 3-1987, f. & ef. 10-26-87; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 9-2001, f. & cert. ef. 9-19-01; DPSST 1-2009, f. & cert. ef. 2-2-09

259-020-0025

Expiration and Renewal of Licenses

(1) Each polygraph examiner's license issued by the Department will be issued for a period of one year. The Department may renew the license of a polygraph examiner, unless such license has been suspended or revoked, upon compliance by the person with such conditions as the Department may prescribe.

(2) A person whose polygraph examiner's license has expired may obtain a renewal license without examination within two years after the date of the expiration of such license by:

(a) submitting an application for renewal;

(b) payment of the required fee; and

(c) documentation that the required total number of training hours for the period of time of the expiration of the license has been met, as mandated in OAR 259-020-0025(4).

(3) In addition to the renewal requirements of section (2), a person whose polygraph examiner's license has expired for a period of more than two years may obtain a renewal license by:

(a) Verifying that the individual has the current knowledge, skills and abilities to perform the duties of a polygraph examiner or polygraph examiner trainee; and

(b) Meeting any additional requirements recommended by the Polygraph Licensing Advisory Committee and approved by the Department. Additional requirements may include, but are not limited to:

(A) Attending additional training;

(B) Submitting examinations to other licensed general polygraph examiners for review; or

(c) Successfully completing a written polygraph examination test.

(4) Every two (2) years from the date of issue, all persons licensed under the Act must successfully complete a minimum of thirty (30) hours of Department approved training specifically related to the field of polygraphy. Department approved training in this field includes but is not limited to seminars sponsored by regional and national polygraph associations.

(a) All persons licensed under this Act must document satisfactory completion of this training to the Department. Documentation must include but is not limited to a certificate or letter of completion.

(b) Failure to comply with this section will result in the Department's refusal to reissue a license. This requirement becomes effective 01-01-97.

(c) A license may be reissued upon written application and receipt by the Department of evidence that the conditions which caused the denial have been corrected to the satisfaction of the Department.

Stat. Auth.: ORS 703.230

Stats. Implemented: ORS 703.230

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; DPSST 2-2003, f. & cert. ef. 1-21-03; DPSST 1-2009, f. & cert. ef. 2-2-09

Rule Caption: Removal-Fill Authorizations within Oregon Waters.

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Rules Repealed: 141-085-0005, 141-085-0006, 141-085-0010, 141-085-0015, 141-085-0018, 141-085-0020, 141-085-0022, 141-085-0023, 141-085-0024, 141-085-0025, 141-085-0027, 141-085-0028, 141-085-0029, 141-085-0031, 141-085-0034, 141-085-0036, 141-085-0064, 141-085-0066, 141-085-0068, 141-085-0070, 141-085-0075, 141-085-0079, 141-085-0080, 141-085-0085, 141-085-0090, 141-085-0095, 141-085-0096, 141-085-0115, 141-085-0121, 141-085-0126, 141-085-0131, 141-085-0136, 141-085-0146, 141-085-0151, 141-085-0156, 141-085-0161, 141-085-0166, 141-085-0171, 141-085-0176, 141-085-0240, 141-085-0244, 141-085-0246, 141-085-0248, 141-085-0250, 141-085-0252, 141-085-0254, 141-085-0256, 141-085-0257, 141-085-0262, 141-085-0263, 141-085-0264, 141-085-0266, 141-085-0400, 141-085-0406, 141-085-0410, 141-085-0421, 141-085-0425, 141-085-0430, 141-085-0436, 141-085-0440, 141-085-0445, 141-085-0450, 141-085-0610, 141-085-0620, 141-085-0630, 141-085-0640, 141-085-0650, 141-085-0660

Subject: The division 85 rules have been redrafted into plain language to the extent practicable in accordance with ORS 183.750. The agency edited the division 85 rules into a more succinct and user-friendly format that more closely integrates with actual program operation. The agency is proposing to repeal, in their entirety, the Estuarine Mitigation rules. Mitigation for removal-fill impacts in estuarine areas will be regulated under the general criteria for compensatory non-wetland mitigation remaining in the rule. The agency made major substantive revisions to the sections dealing with definitions, jurisdiction, exemptions, agency determinations and considerations for evaluating individual permit applications and in the sections concerning compensatory non-wetland and compensatory wetland mitigation.

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141-085-0500

General

Where headings, special fonts or double-spacing are used, they are for the convenience of the user only and have no substantive effect.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0506

Policy

(1) **General Policy on Removal-Fill.** No authorization to place fill or remove material from the waters of this state may:

(a) Interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation uses; or

(b) Be inconsistent with the protection, conservation and best use of the water resources of this state.

(2) **Department Will Use Fair, Predictable Approach.** To the extent possible, the Department will administer these rules to ensure persons receive timely, fair, consistent and predictable treatment including timely communication and consistent application and interpretation of these rules and the removal-fill law.

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(3) **Department Will Continually Improve the Program.** The Department will actively and continually pursue improvements to the authorization process in order to reduce paperwork, eliminate duplication, increase certainty and timeliness, and enhance protection of water resources.

(4) **Department Will Recognize Multiple Interests.** The Department will recognize the interests of adjacent landowners, tribal governments, public interest groups, watershed councils, state and federal agencies, and local government land use planning agencies.

(5) **Department's General Policies on Wetland Regulation.** In regard to the regulation of wetlands, the Department will administer these rules to ensure that:

(a) The protection, conservation and best use of this state's wetland resources, including their functions and values, are promoted through the integration and coordination of the local comprehensive plans and the Department permitting process; and

(b) A stable wetland resource base is maintained through avoidance of reasonably expected adverse impacts, and by compensating for unavoidable wetland impacts.

(6) **Department's General Policies on Restoration and Conservation Programs.** The restoration of waters of this state through voluntary restoration and conservation programs is encouraged and facilitated.

(7) **The Department Will Recognize Other Programs.** The Department will administer the removal-fill program in a manner consistent with and in support of the following:

- (a) The Oregon Plan as described in ORS 541.405;
 - (b) The applicable Oregon Wetlands Benchmark;
 - (c) The Oregon Coastal Management Program;
 - (d) The State Agency Coordination Program;
 - (e) The State Scenic Waterway Act; and
 - (f) The Oregon Land Use Program.
- Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
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141-085-0510

Definitions

The following definitions are used in addition to those in ORS 196.600 to 196.990.

(1) "Applicant" means a landowner or person authorized by a landowner to conduct a removal or fill activity and who has authority and responsibility to fully execute the terms and conditions of an authorization as evidenced by their signature on the application.

(2) "Aquatic Life and Habitats" means the aquatic environment including all fish, wildlife, amphibians, plants and other biota dependent upon environments created and supported by the waters of this state. Aquatic life includes communities and species populations that are adapted to aquatic habitats for at least a portion of their life.

(3) "Artificial Means" means the purposeful movement or placement of material by humans and/or their machines.

(4) "Authorization" means an individual permit, general authorization, general permit or emergency authorization.

(5) "Bank-full Stage" means the two-year recurrence interval flood elevation.

(6) "Baseline Conditions" means the ecological conditions, wetland functions and values and the soils and hydrological characteristics present at a site before any change by the applicant is made.

(7) "Basin" means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department as shown on maps published by that agency.

(8) "Beds" means:

(a) For the purpose of OAR 141-089-0245 to 141-089-0275, the land within the wet perimeter and any adjacent non-vegetated dry gravel bar; and

(b) For all other purposes, "beds" means that portion of a waterway that is always covered by water; or, on intermittent streams, the area that carries water when water is present.

(9) "Beds or Banks" means the physical container of the waters of this state, bounded on freshwater bodies by the ordinary high water line or bank-full stage, and in tidal bays and estuaries by the limits of the highest measured tide. The "bed" is typically the horizontal section and includes non-vegetated gravel bars. The "bank" is typically the vertical portion.

(10) "Buffer" means an upland or wetland area immediately adjacent to or surrounding a wetland or other water that is set aside to protect the wetland or other waters from conflicting adjacent land uses and to support ecological functions.

(11) "Channel" means a natural (perennial or intermittent stream) or human made (e.g., drainage ditch) waterway that periodically or continuously contains moving water and has a defined bed and bank that serve to confine the water.

(12) "Coastal Zone" means the area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of this state's jurisdiction as recognized by federal law, and the east by the crest of the coastal mountain range, excepting:

(a) The Umpqua River basin, where the coastal zone extends to Scottsburg;

(b) The Rogue River basin, where the coastal zone extends to Agness; and

(c) The Columbia River basin, where the coastal zone extends to the downstream end of Puget Island.

(13) "Coastal Zone Certification Statement" means a signed statement by the applicant or an authorized agent indicating that the proposed project will be undertaken in a manner consistent with the applicable enforceable policies of the Oregon Coastal Management Program.

(14) "Commercial Operator" means any person undertaking a project having financial profit as a goal.

(15) "Compensatory Mitigation" means compensation for adverse impacts to any waters of this state.

(16) "Compensatory Non-Wetland Mitigation (CNWM)" means activities conducted by a permittee or third party to replace non-wetland water functions and values through enhancement, creation, restoration or preservation to compensate for the adverse effects of project development or to resolve violations of ORS 196.800 to 196.905.

(17) "Compensatory Wetland Mitigation (CWM)" means activities conducted by a permittee or third party to create, restore or enhance wetland and tidal waters functions and values through enhancement, creation, restoration or preservation to compensate for the adverse effects of project development or to resolve violations of ORS 196.800 to 196.905.

(18) "Comprehensive Plan" means a generalized, coordinated land use map and associated regulations and ordinances of the governing body of a local government.

(19) "Condition" refers to the state of a water's naturalness or ecological integrity.

(20) "Cowardin" means Cowardin, L. M., V. Carter, F. C. Golet, E. T. LaRoe. 1979. Classification of wetlands and deepwater habitats of the United States. U. S. Department of the Interior, Fish and Wildlife Service, Washington, D.C.

(21) "Day of Violation" means the first day and each day thereafter on which there is a failure to comply with any provision of the removal-fill law ORS 196.800 to 196.990 or rules adopted by the Department, or any order or authorization issued by the Department.

(22) "Deep Ripping, Tiling and Moling" refer to certain specific mechanical methods used to promote subsurface drainage of agricultural wetlands.

(23) "Degraded Wetland" refers to a wetland in poor condition with diminished functions and values including those resulting from hydrologic manipulation (such as diking, draining and filling) that demonstrably interferes with the normal functioning of wetland processes.

(24) "Department" means the Oregon Department of State Lands and the Director or designee.

(25) "Ditch" means a manmade water conveyance channel. Channels that are manipulated streams are not considered ditches.

(26) "Dredging" means removal of bed material using other than hand held tools.

(27) "Ecologically or Environmentally Preferable" means compensatory mitigation that has a higher likelihood of replacing functions and values or improving water resources of this state.

(28) "Emergency" means natural or human-caused circumstances that pose an immediate threat to public health, safety or substantial property including crop or farmland.

(29) "Erosion-Flood Repair" means riprap or any other work necessary to protect existing facilities and land from flood and high stream flows, in accordance with these regulations.

(30) "Essential Indigenous Anadromous Salmonid Habitat (ESH)" means the habitat that is designated pursuant to ORS 196.810 and is necessary to prevent the depletion of indigenous anadromous salmonid species during their life history stages of spawning and rearing.

(31) "Estuary" means: (a) For waters other than the Columbia River, the body of water from the ocean to the head of tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh water from the land, including all associated estuarine waters, tidelands,

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tidal marshes, and submerged lands; and (b) For the Columbia River, all waters from the mouth of the river up to the western edge of Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged lands.

(32) "Extreme Low Tide" means the lowest estimated tide.

(33) "Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic yards or more of material at one location in any waters of this state. However, in designated ESH areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) "fill" means any deposit by artificial means.

(34) "Food and Game Fish" means those species identified under ORS 506.011, 506.036 or 496.009.

(35) "Forestland" means the same as used in the Forest Practices Act and rules (ORS 527.610 to 527.992) as land which is used for the commercial growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(36) "Functions and Values" are those ecological characteristics or processes associated with a water of the state and the societal benefits derived from those characteristics. The ecological characteristics are "functions," whereas the associated societal benefits are "values."

(37) "Highest Measured Tide" means the highest tide projected from actual observations within an estuary or tidal bay (see OAR 141-085-0515).

(38) "Hydrogeomorphic Method" or "HGM" is a method of wetland classification and functional assessment based on a wetland's location in the landscape and the sources and characteristics of water flow.

(39) "In-lieu Fee Mitigation" means the federally approved compensatory mitigation program used to compensate for reasonably expected adverse impacts of project development on waters of the United States and waters of this state with fees paid by the applicant to the Department

(40) "Interagency Review Team (IRT)" is an advisory committee to the Department on mitigation banks and other compensatory mitigation projects.

(41) "Intermittent Stream" means any stream which flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(42) "Legally Protected Interest" means a claim, right, share, or other entitlement that is protected under state or federal law. A legally protected interest includes, but is not limited to, an interest in property.

(43) "Listed Species" means any species listed as endangered or threatened under the federal Endangered Species Act (ESA) and/or any species listed as endangered or threatened by the State of Oregon.

(44) "Location" means the entire area where the project is located.

(45) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.

(46) "Maintenance" means the periodic repair or upkeep of a structure in order to maintain its original use. "Maintenance" includes a structure being widened by no more than twenty percent of its original footprint at any specific location in waters of this state if necessary to maintain its serviceability. "Maintenance" also includes removal of the minimum amount of sediment either within, on top or immediately adjacent to a structure that is necessary to restore its serviceability, provided that the spoil is placed on upland.

(47) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the effect altogether by not taking a certain action or parts of an action;

(b) Minimizing effects by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the effect by replacing or providing comparable substitute wetlands or other waters.

(48) "Mitigation Bank" or "Bank" means a site created, restored, enhanced or conserved in accordance with ORS 196.600 to 196.655 to compensate for unavoidable adverse impacts due to activities which otherwise comply with the requirements of ORS 196.600 to 196.905.

(49) "Mitigation Bank Instrument (MBI)" means the legally binding and enforceable agreement between the Department and a mitigation bank sponsor that formally establishes the mitigation bank and stipulates the

terms and conditions of the mitigation bank's construction, operation, and long-term management.

(50) "Mitigation Bank Prospectus" or "Prospectus" is a preliminary proposal prepared by a mitigation bank sponsor describing a proposed bank.

(51) "Mitigation Bank Sponsor" or "Sponsor" is a person who is proposing, or has established and/or is maintaining a mitigation bank. The sponsor is the entity that assumes all legal responsibilities for carrying out the terms of the MBI unless otherwise specified in the MBI.

(52) "Navigational Servitude" means activities of the federal government that directly result in the construction or maintenance of congressionally authorized navigation channels.

(53) "Non-Motorized Methods or Activities" are those removal-fill activities within ESH that are completed by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Hand-held tools such as wheelbarrows, shovels, rakes, hammers, pry bars and manually operated cable winches are examples of common non-motorized methods.

(54) "Non-Water Dependent Uses" means uses that do not require location on or near a waterway to fulfill their basic purpose.

(55) "Non-Wetland Waters" means waters of this state other than wetlands, including bays, intermittent streams, perennial streams, lakes and all other regulated waters.

(56) "Office of Administrative Hearings" means the state agency unit that provides Administrative Law Judges to conduct contested case proceedings.

(57) "Off-Site Compensatory Mitigation" means activities conducted away from the project site that restore, create or enhance functions and values in order to compensate for the adverse impacts to waters of this state from project development.

(58) "On-Site Compensatory Mitigation" means activities conducted at the project site to restore, create or enhance functions and values in order to compensate for the adverse impacts to waters of this state from project development.

(59) "Ordinary High Water Line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season. The OHWL excludes exceptionally high water levels caused by large flood events (e.g., 100 year events).

(60) "Payment In-Lieu Mitigation" means compensatory mitigation for waters of this state that is performed using funds paid to the Department. The payment in-lieu program is not approved to compensate for impacts to waters of the United States.

(62) "Perennial Stream" means a stream that has continuous flow in parts of its bed all year long during years of normal precipitation.

(63) "Permit Action" means activity conducted under a specific removal or fill permit or other authorization requested or issued under ORS 196.600 to 196.905.

(64) "Person" means a person or a public body, as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity.

(65) "Plowing" means all forms of tillage and similar physical means for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include deep ripping or redistribution of materials in a manner that changes any waters of this state to upland.

(66) "Practicable" means capable of being accomplished after taking into consideration cost, existing technology, and logistics with respect to the overall project purpose.

(67) "Private Operator" means any person undertaking a project for exclusively a non-income-producing and nonprofit purpose.

(68) "Project" means the primary development or use intended to be accomplished for which the fill or removal is proposed (e.g., retail shopping complex, residential development, stream bank stabilization or fish habitat enhancement). A project shall have independent utility. Projects may include more than one removal-fill site.

(69) "Project Site" means the geographic area upon which the project is being proposed.

(70) "Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using non-motorized methods, by filling, removing or moving by artificial means less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single ESH stream in a single year.

(71) "Public Body" as used in the statutes of this state means state government bodies, local government bodies and special government bodies (ORS 174.109).

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(72) "Public Use" means a publicly owned project or a privately owned project that is available for use by the public.

(73) "Push-Up Dam" is a berm of streambed material that is excavated or bulldozed (i.e., pushed-up) from within the streambed itself and positioned in the stream in such a way as to hold or divert water in an active flowing stream. The push-up dam may extend part way or all the way across the stream. Push-up dams are most frequently used to divert water for irrigation purposes associated with agricultural production including livestock watering. Push-up dams are re-constructed each water use season; high water usually flattens or breaches them or equipment is used to breach or flatten them at the close of the water use season.

(74) "Reasonably Expected Adverse Effect" and "Adverse Impact" mean the direct or indirect, reasonably expected or predictable results of project development upon waters of this state including water resources, navigation, fishing and public recreation uses.

(75) "Reconstruction" means to rebuild, or to replace the existing structure in-kind.

(76) "Recreational placer mining" means to remove, fill or move by artificial means, either through motorized or non-motorized methods, less than 25 cubic yards of material annually from or within the bed of a stream designated as ESH. Recreational placer mining using dredging is not permitted in State Scenic Waterways.

(77) "Reference Site" means a site or sites that represent the desired future characteristics and condition to be achieved by a compensatory mitigation plan.

(78) "Removal" means the taking of more than 50 cubic yards of material (or its equivalent weight in tons) in any waters of this state in any calendar year; or the movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation. However, in designated ESH areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) the 50-cubic-yard minimum threshold does not apply.

(79) "Removal-Fill Site" means the specific point where a person removes material from and/or fills any waters of this state. A project may include more than one removal-fill site.

(80) "Riprap" means facing a bank with rock or similar substance to control erosion.

(81) "Serviceable" means capable of being used for its intended purpose.

(82) "State Scenic Waterway" (SSW) means a river or segment of river or lake that has been designated as such in accordance with Oregon Scenic Waterway Law (ORS 390.805 to 390.995).

(83) "Temporary Impacts" means adverse impacts to waters of this state that are rectified within 24-months from the date the impact occurred.

(84) "Temporal Loss" means the loss of the functions and values of waters of this state that occurs between the time of the impact and the time of their replacement through compensatory mitigation.

(85) "Tidal Waters" are the areas in estuaries, tidal bays, and tidal rivers located between the highest measured tide and extreme low tide (or to the elevation of any eelgrass beds, whichever is lower), that is flooded with surface water at least annually during most years. Tidal waters include those areas of land such as tidal swamps, tidal marshes, mudflats, algal and eelgrass beds and are included in the Estuarine System and Riverine Tidal Subsystem as classified by Cowardin.

(86) "Violation" means removing material from or placing fill in any of the waters of this state in contravention to any provision of the removal-fill law (ORS 196.800 to 990), rules adopted by the Department, or any order or authorization issued by the Department.

(87) "Water Quality" means the measure of physical, chemical, and biological characteristics of water as compared to Oregon's water quality standards and criteria set out in rules of the Oregon Department of Environmental Quality and applicable state law.

(88) "Water Resources" includes not only water itself but also aquatic life and habitats therein and all other natural resources in and under the waters of this state.

(89) "Waters of This State" means all natural waterways, tidal and non-tidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and non-navigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.

(90) "Wet Perimeter," as used in OAR 141-089-0245 thru 0275, means the area of the stream that is under water, or is exposed as a non-veg-

etated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(91) "Wetland Creation" means to convert an area that has never been a wetland to a wetland.

(92) "Wetland Enhancement" means to improve the condition and increase the functions and/or values of an existing degraded wetland.

(93) "Wetland Hydrology" means the permanent or periodic inundation or prolonged saturation sufficient to create anaerobic conditions in the soil and support hydrophytes.

(94) "Wetland Restoration" means to reestablish a former wetland to a wetland.

(95) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

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Removal-Fill Jurisdiction by Type of Water

This section describes the types and jurisdictional limits of the waters of this state that are regulated by the Department of State Lands.

(1) Pacific Ocean. The Pacific Ocean is jurisdictional from the line of extreme low tide seaward to the limits of the territorial sea. As defined in ORS 390.605(2), the land lying between extreme low tide and the statutory vegetation line or the line of established upland shore vegetation, whichever is farther inland, is known as the "ocean shore." "Ocean shore" does not include an estuary as defined in ORS 196.800." The "ocean shore" is regulated by the Oregon Department of Parks and Recreation.

(2) Estuaries, Tidal Bays and Tidal Rivers. Estuaries, tidal bays and rivers below the head of tide are jurisdictional to the elevation of the highest measured tide (excluding storm surge), or to the upper edge of wetland, whichever is higher. The head of tide is the farthest point upstream where a river is affected by tidal fluctuations. The highest measured tide elevation on a parcel may be determined by a land survey referenced to the closest tidal benchmark based upon the most recent tidal epoch and reference to both the tidal datum (MLLW) and the fixed geodetic datum (NAVD88). In lieu of surveyed elevations, subject to approval by the Department, highest measured tide elevation may be based upon actual tide gauge measurements during a wintertime spring tide or observation of the highest of the field indicators listed in (a) through (f) below. These field indicators are often not observable within the upper riverine portion of an estuary, in which case a land survey is required:

(a) The uppermost drift or wrack (or debris) line containing small driftwood, mats of filamentous algae (algae that form long visible chains, threads, or filaments that intertwine forming a mat), seaweeds, seagrasses, pieces of bulrush or other emergent vascular plants, styrofoam or other buoyant plastic debris, bivalve shells, crab molts, or other aquatic invertebrate remains;

(b) The uppermost water mark line on an eroding bank;

(c) The uppermost water mark line (e.g., discoloration; sediment, barnacles, snails, or algae growth) visible on a hard shoreline or bank consisting of bedrock, boulders, cobbles, riprap or a seawall;

(d) The uppermost intertidal zone inhabited by a community of barnacles, limpets, and littorine snails along shorelines composed of bedrock, riprap, boulders, and/or cobble;

(e) The uppermost tidal marsh/upland boundary, as indicated by a dominant plant community characteristic of saltwater, brackish, or freshwater tidal plant communities changing to a dominant plant community typical of uplands; and/or

(f) The intertidal/upland boundary along sandy shores as indicated by the appearance of a distinct dune plant community.

(3) Waters, Including Rivers, Intermittent and Perennial Streams, Lakes and Ponds. These waters are jurisdictional to the ordinary high water line (OHWL) or, absent readily identifiable field indicators, to the bank-full stage. OHWL is indicated in the field by the following physical characteristics:

(a) Clear, natural line impressed on the shore;

(b) Change in vegetation from riparian (e.g., willows) to upland (e.g., oak, fir) dominated;

(c) Textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble and gravel to upland soils);

(d) Elevation below which no fine debris (needles, leaves, cones, and seeds) occurs;

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(e) Presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or

(f) Other appropriate means that consider the characteristics of the surrounding areas.

(4) Wetlands. Wetlands are jurisdictional within the wetland boundary.

(5) Reservoirs. The Department's jurisdiction over reservoirs extends to the higher of either the normal operating pool level or the upper edge of adjacent wetland.

(6) Artificially Created Wetlands and Ponds. These waters are jurisdictional when they are:

- (a) Equal to or greater than one acre in size;
- (b) Created, in part or in whole, in waters of this state; or
- (c) Identified in an authorization as a mitigation site.

(7) Exempt Artificially Created Wetlands and Ponds. Artificially created wetlands and ponds created entirely from upland, regardless of size, are not waters of this state if they are constructed for the purpose of:

- (a) Wastewater treatment;
- (b) Settling of sediment;
- (c) Stormwater detention and/or treatment;
- (d) Agricultural crop irrigation or stock watering;
- (e) Fire suppression;
- (f) Cooling water;
- (g) Surface mining, even if the site is managed for interim wetlands functions and values;
- (h) Log storage; or
- (i) Aesthetic purposes.

(8) Jurisdictional Ditches. Except as provided under section (9), ditches artificially created from upland are jurisdictional if they:

- (a) Contain food and game fish; and
- (b) Have a free and open connection to waters of this state. A "free and open connection" means a connection by any means, including but not limited to culverts, to or between natural waterways and other navigable and non-navigable bodies of water that allows the interchange of surface flow at bank-full stage or ordinary high water, or at or below mean higher high tide between tidal waterways.

(9) Non-Jurisdictional Irrigation Ditches. Existing irrigation ditches that meet the following tests are not jurisdictional:

- (a) Are operated and maintained for the primary purpose of conveying water for irrigation; and
- (b) Are dewatered during the non-irrigation season except for water incidentally retained in isolated low areas of the ditch or are used for stock water runs, provision of water for fire suppression, or to collect storm water runoff.

(10) Non-Jurisdictional Roadside and Railroad Ditches. Roadside and railroad ditches that meet the following tests are not jurisdictional:

- (a) Ten feet wide or less at the ordinary high water line;
- (b) Artificially created from upland or from wetlands;
- (c) Not adjacent and connected or contiguous with other wetlands;

and

- (d) Do not contain food or game fish.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0520

Removal-Fill Jurisdiction by Volume of Material

The following criteria are used to determine jurisdictional volume thresholds that trigger the requirement for an authorization.

(1) Oregon State Scenic Waterways (SSWs). The threshold volume is any amount greater than zero, except as follows:

(a) A permit is not required for prospecting resulting in less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single Scenic Waterway in a single year. Prospecting is prohibited from any site where fish eggs are present; and

(b) A permit is not required for recreational placer mining as defined in OAR 141-100-0000(17) involving less than one cubic yard of material at any one individual site and, cumulatively, less than five cubic yards from within the bed or wet perimeter of any single scenic waterway in a single year.

(2) Streams Designated as Essential Indigenous Anadromous Salmonid Habitat (ESH). The threshold volume is any amount greater than zero, except for:

(a) Prospecting or other non-motorized activities resulting in the removal from or fill of less than one cubic yard of material at any one indi-

vidual site and, cumulatively, not more than five cubic yards of material within an ESH segment in a single year. Prospecting or other non-motorized activities may be conducted only within the bed or wet perimeter of the waterway and may not occur at any site where fish eggs are present; and

(b) Activities customarily associated with agriculture, as defined in OAR 141-085-0535(5), are exempt in ESH streams that are not also a designated State Scenic Waterway.

(3) Compensatory Mitigation Sites. The threshold volume is any amount greater than zero for compensatory mitigation sites referenced in an authorization.

(4) All Other Waters of This State.

(a) For fill activities, any combination of either organic or inorganic material deposited by artificial means at any one location in waters of this state equal to or exceeding 50 cubic yards or the equivalent weight in tons; and

(b) For removal activities, the taking or movement by artificial means of more than 50 cubic yards of inorganic material or the equivalent weight in tons in any calendar year.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0525

Measuring and Calculating Volume of Removal and Fill

(1) Calculating Removal Volume. Removal volume for all waters includes the full extent of the excavation within the jurisdictional area.

(2) Calculating Fill Volume. For waters other than wetlands, fill volume is measured to the ordinary high water line (OHWL). For wetlands, fill volume is measured to the height of the fill, excluding buildings.

(3) Calculating Volume for Channel Relocation. When calculating the volume for channel relocation the threshold is met considering either the volume of material removed to construct the new channel or the volume needed to fill the old channel to the OHWL. (4) Projects that Involve Both Fill and Removal. For projects that involve both fill and removal, the combined volumes are used to determine whether a permit is required.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0530

Exemptions for Certain Activities and Structures

These exemptions apply in all waters of this state except State Scenic Waterways.

(1) **State Forest Management Practices.** Non-federal forest management practices subject to Oregon's Forest Practices Act conducted in any non-navigable water of the state are exempt. When these forestlands are being converted to other uses the exemption does not apply to the activities associated with the new use. Forest management practices shall be directly connected with a forest management practice conducted in accordance with ORS 527.610 to 527.770, 527.990 and 527.992, such as:

- (a) Reforestation;
- (b) Road construction and maintenance;
- (c) Harvesting of forest tree species; and/or
- (d) Disposal of slash.

(2) **Fills for Construction, Operation and Maintenance of Certain Dams and Water Diversion Structures.** Fill for dams or other water diversions for which valid authorizations or certificates have been or will be issued by the Oregon Water Resources Department (WRD) under ORS Chapters 537 or 539 (water appropriation) and for which preliminary authorizations or licenses have been or will be issued under ORS 543 or 543A (hydropower), are exempt. These rules do not apply to annual work required to activate, operate and maintain flashboard type dams within waters of this state as specifically permitted by WRD.

(3) **Navigational Servitude.** Activities conducted by or on the behalf of any agency of the federal government acting in the capacity of navigational servitude in connection with a federally authorized navigation channel are exempt. Disposal of dredged material within the ordinary high water line of the same waterway is also exempt.

(4) **Maintenance or Reconstruction of Water Control Structures.** Fill or removal for maintenance or reconstruction of water control structures such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches, and tile drain systems are exempt if:

- (a) The structure was serviceable within the past five years; and
- (b) The maintenance or reconstruction of the water control structure is designed according to applicable Oregon Department of Fish and Wildlife fish passage statutes (ORS 509.580 - 509.910).

ADMINISTRATIVE RULES

(5) Exempt Maintenance, Reconstruction or Removal of Culverts.

These rules do not apply to removal-fill activities within waters of this state for the maintenance, reconstruction, replacement or removal of culverts of any length or diameter if all of the following apply:

(a) The removal or fill expands the original footprint of the road prism by no more than 20 percent,

(b) The culvert was serviceable within the past five (5) years; and

(c) The culvert is maintained, reconstructed, replaced or removed in a manner consistent with applicable Oregon Department of Fish and Wildlife fish passage statutes (ORS 509.580 - 509.910).

(6) **Maintenance or Emergency Reconstruction of Roads and Transportation Structures.** Fill or removal for maintenance, including emergency reconstruction of recently damaged parts, of otherwise serviceable roads or other transportation structures, such as groins and riprap protecting roads, causeways, bridge abutments or approaches, and boat ramps is exempt. "Recently" means that the parts shall have been damaged within the past twelve months for this exemption to apply.

(7) **Prospecting and Non-Motorized Activities within Designated Essential Indigenous Anadromous Salmonid Habitat (ESH) and State Scenic Waterways.** A permit is not required for prospecting or other non-motorized activities resulting in removal-fill of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material within a particular stream in a single year. Prospecting or other nonmotorized activities may be conducted only within the bed or wet perimeter of the waterway and shall not occur at any site where fish eggs are present.

(8) **Fish Passage and Fish Screening Structures in Essential Indigenous Anadromous Salmonid Habitat (ESH).** Less than 50 cubic yards of removal-fill for the construction and maintenance of fish passage and fish screening structures is exempt, provided the project complies with applicable Oregon Department of Fish and Wildlife fish passage statutes (ORS 509.580-509.910). This exemption includes removal of material that inhibits fish passage or prevents fish screens from functioning properly.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0535

Exemptions Specific to Agricultural Activities

(1) For the purposes of this rule, "converted wetland" means:

(a) Wetlands that on or before June 30, 1989, have been diked, drained, dredged, filled, leveled or otherwise manipulated to impair or reduce the flow, circulation or reach of water for the purpose of enabling production of an agricultural commodity and are actively managed for that purpose; and

(b) Includes land that the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland or farmed wetlands, so long as agricultural management of the land has not been abandoned for five or more years.

(2) Exemptions Do Not Apply to Non-farm Uses. The exemptions in sections (3) and (4) do not apply to any removal-fill activity which involves changing an area of wetlands to a non-farm use.

(3) Normal Farming and Ranching Activities on Converted Wetlands. Exempt activities on converted wetlands include:

(a) Plowing;

(b) Grazing;

(c) Seeding;

(d) Cultivating;

(e) Conventional crop rotation;

(f) Harvesting for the production of food and fiber;

(g) Upland soil and water conservation practices; and

(h) Reestablishment of crops under federal conservation reserve program provisions.

(4) Certain Activities Conducted on Exclusive Farm Use (EFU) Zoned Land.

The following activities on EFU land as designated in the city or county comprehensive plan are exempt:

(a) Drainage or maintenance of farm or stock ponds;

(b) Maintenance of existing farm roads in such a manner as to not significantly adversely affect wetlands;

(c) Subsurface drainage by deep ripping, tiling or moling on converted wetlands; and

(d) Any activity described as a farm use in ORS 215.203 that is conducted on certified prior converted cropland, so long as agricultural management of the land has not been abandoned for five or more years. "Certified prior converted cropland" means converted wetlands that the

United States Department of Agriculture, Natural Resources Conservation Service, certifies in writing as prior converted cropland.

(5) Activities Customarily Associated with Agriculture in Essential Indigenous Anadromous Salmonid Habitat (ESH). These are activities that are commonly and usually associated with the raising of livestock or the growing of crops in Oregon. Removal-fill covered by this exemption shall not exceed 50 cubic yards of material. In addition, this exemption extends to the removal and/or disposal of material resulting from maintenance activities.

(6) Push-Up Dams.

(a) Department-authorized push-up dams greater than 50 cubic yards can continue to be maintained indefinitely during the irrigation season and reconstructed each successive season provided the work is done in compliance with all original permit conditions and the Oregon Department of Fish and Wildlife fish passage statutes (ORS 509.580 - 509.910). In the event of conflicts with the original permit conditions, the most recent fish passage requirements will be controlling.

(b) Push-up dams that were built prior to September 13, 1967, are exempt if they meet the following tests:

(A) Are reconstructed, serviceable and used within the past five years; and

(B) Have the same effect as when first constructed (i.e., size and location); and

(C) Are operated in a manner consistent with the water right certificate and ORS 540.510(5).

(c) Push-up dams less than 50 cubic yards used for agricultural purposes in ESH are exempt.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0540

Types of Authorizations

One of the following types of authorizations is required for regulated activities in waters of this state.

(1) Individual Permits (IPs). IPs are issued for projects that do not qualify for other types of authorizations.

(2) General Authorizations (GAs). GAs are adopted by rule for a category of activities that have minimal impacts to waters of this state.

(3) General Permits (GPs). GPs are issued for a category of activities or to a specific applicant for multiple activities or for a particular geographical area. The Department may initiate a General Permit or the public may apply to the Department for a General Permit.

(4) Emergency Authorizations (EAs). EAs are issued in circumstances that pose an immediate threat to public health, safety or substantial property including crop or farmland.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0545

Fees; Amounts and Disposition

(1) Fee Amounts. Fees are adjusted annually, on January 1 of each year. By December 1 of each year the Department will consult the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor to determine the appropriate annual fee adjustment to become effective on January 1 of the following year. The Department will then revise the fees in accordance with the Price Index and post the fee schedule on the Department's website (<http://oregonstatelands.us/>).

(a) For individual permits and general permits, the fee includes a base fee and a volume fee. For each application that involves both removal and filling, the application fee assessed will be either for removal or filling, whichever fee is higher in accordance with the current fee schedule.

(b) For General Authorizations, the fee amount is set forth in the rules establishing each general authorization (OAR 141-089).

(c) For erosion-flood repair or stream-bank stabilization, regardless of the authorization type, no fee is required.

(d) No fee is required for voluntary habitat restoration projects directed at habitat improvement.

(2) Disposition of Fees. Fees are due at the time of application submission. Applications that do not include the fee are considered incomplete.

(a) An applicant who receives an Emergency Authorization shall, within 45 calendar days after receiving the authorization, submit a fee to the Department according to the current fee schedule.

ADMINISTRATIVE RULES

(b) Fees for multi-year individual permits shall either be paid annually no later than the anniversary date of the permit, or may be paid in advance, as directed by the Department.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0550

Application Requirements for All Authorizations

(1) Complete and Accurate Information Required. Failure to provide complete and accurate information in the application may be grounds for denial, suspension or revocation of the authorization.

(2) Fee Required for a Complete Application. A complete application shall include the appropriate fee.

(3) Level of Detail Required May Vary. The applicant is responsible for providing sufficient detail in the application to enable the Department to render the necessary determinations and decisions. The level of documentation may vary depending upon the degree of adverse impacts, the level of public interest and other factors that increase the complexity of the project.

(4) Required Information: A completed and signed application on forms provided by the Department, including any maps, necessary photos and drawings, is required. The information shall be entered in the appropriate blocks on the application form and include the following:

(a) The applicant and property owner information including name, address and phone number;

(b) If the applicant is not the owner of the property upon which the removal-fill activity is to occur, a written authorization from the owner of the property consenting to the application must be provided;

(c) If the application is on behalf of a legal entity such as a partnership or a corporation, a certification that the individual signing the application is authorized to do so must be provided;

(d) Project site location information including Township, Range, Quarter/Quarter Section and Tax Lot(s), latitude and longitude, street location if any, and location maps with site location indicated;

(e) The location of any off-site disposal or borrow sites if these sites contain waters of this state;

(f) Project information including a project description and the volumes and area of removal-fill within jurisdictional areas. Area of wetland impact shall be expressed in acres to the nearest 0.01-acre;

(g) A description of the purpose and need for the project. All projects shall have a defined purpose or purposes and be based on a documented need or needs. The project purpose and need statement shall be specific enough to allow the Department to determine whether the applicant has considered a reasonable range of alternatives;

(h) Project plan views and cross-sectional views drawn to scale that clearly identify the jurisdictional boundaries of the waters of this state (e.g., wetland delineation or ordinary high water determination). Project details, such as footprint and impact area shall also be included so that the amount and extent of the impact to jurisdictional areas can be readily determined;

(i) A written analysis of potential changes that the project may make to the hydrologic characteristics of the waters of this state, and an explanation of measures taken to avoid or minimize any adverse impacts of those changes, such as:

(A) Impeding, restricting or increasing flows;

(B) Relocating or redirecting flow; and

(C) Potential flooding or erosion downstream of the project;

(j) A description of the existing biological and physical characteristics of the water resources, along with the identification of the adverse impacts that will result from the project;

(k) A description of the navigation, fishing and public recreation uses, if any, at the project site;

(l) If the proposed activity involves wetland impacts, a wetland determination or delineation report that meets the requirements in OAR 141-090 shall be submitted. A wetland delineation is usually required to determine the precise acreage of wetland impact and compensatory wetland mitigation requirements. Whenever possible, wetland determination and delineation reports should be submitted for review well in advance of the permit application. Although an approved wetland delineation report is not required for application completeness, a jurisdictional determination shall be obtained prior to the permit decision;

(m) A functions and values assessment is required if impacts to wetlands are proposed;

(n) Any information known by the applicant concerning the presence of any federal or state listed species;

(o) Any information known by the applicant concerning historical, cultural and/or archeological resources. Information may include but is not

limited to a statement on the results of consultation with impacted tribal governments and/or the Oregon State Historic Preservation Office of the Oregon Department of Parks and Recreation;

(p) An analysis of alternatives to derive the practicable alternative that has the least reasonably expected adverse impacts on waters of this state. The alternatives analysis shall provide the Department all the underlying information to support its considerations enumerated in OAR 141-085-0565, such as:

(A) A description of alternative project sites and designs that would avoid impacts to waters of this state altogether, with an explanation of why each alternative is, or is not practicable, in light of the project purpose and need;

(B) A description of alternative project sites and designs that would minimize adverse impacts to waters of this state with an explanation of why each alternative is, or is not practicable, in light of the project purpose and need;

(C) A description of methods to repair, rehabilitate or restore the impact area to rectify the adverse impacts; and

(D) A description of methods to further reduce or eliminate the impacts over time through monitoring and implementation of corrective measures;

(q) After reasonably expected adverse impacts to the water resources have been avoided, minimized, rectified or reduced to the maximum extent practicable, a compensatory mitigation plan is required to compensate for unavoidable permanent impacts, and/or a rehabilitation plan for unavoidable temporary impacts to waters of this state;

(r) Names and addresses of adjoining property owners including those across a stream or street from the project;

(s) The signed local government land use affidavit; and

(t) Coastal zone certification statement, if the project is in the coastal zone.

(3) Additional Requirements for Estuarine Fill. If the activity is proposed in an estuary for a non-water-dependent use, a complete application shall also include a written statement that describes the following:

(a) The public use of the proposed project;

(b) The public need for the proposed project; and

(c) The availability of alternative, non-estuarine sites for the proposed use.

(4) Additional Information as Requested. The Department may request additional information necessary to make an informed decision on whether or not to issue the authorization.

(5) Permit Application Modifications. A modification to a permit application may be submitted at any time prior to the permit decision. If the modification is received after the public review period, the Department may circulate the revised application again for public review. Modifications proposing significantly different or additional adverse impacts will generally be resubmitted for public review. The Department may set an expedited time frame for public review.

(6) Pre-Application Conference. An applicant may request the Department to hold a pre-application meeting. In considering whether to grant the request, the Department will consider the complexity of the project and the availability of Department staff resources.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0555

Individual Removal-Fill Permit Application Review Process

(1) Initial Review. Within 30 calendar days of the receipt of an application, the Department will perform an initial review to determine if the application is complete and the information contained in the application adequately addresses the application requirements. During this time, the Department will inform the applicant of one or more of the following findings:

(a) The application is complete and will proceed to the public review process;

(b) The application is incomplete and/or deficient;

(c) The project qualifies for a general authorization; or

(d) The project does not require an authorization from the Department (no state permit is required).

(2) Failure to Perform Timely Initial Review. If the Department fails to complete its initial review within 30 calendar days of receipt of the application, and fails to notify the applicant, the application will be deemed complete. In this situation, the Department will still provide a list of deficiencies, if applicable, to be addressed prior to the permit decision.

ADMINISTRATIVE RULES

(3) Incomplete Application. If the Department determines that the application is incomplete or deficient, the Department will notify the applicant in writing and list the missing or deficient information. The application will remain suspended awaiting revision. The applicant shall resubmit the entire amended package for reconsideration, unless instructed by the Department to do otherwise. Submission of a new or amended application package starts a new 30-day initial review period.

(4) Applicant Must Respond to the Department's Request for Additional Information within 120 Calendar Days. If a revised application is not resubmitted within 120 calendar days of the Department's written request, the Department may consider the file closed. If the Department closes the file for failure of the applicant to respond in a timely fashion to the request for additional information, the Department will retain the application fee. A subsequent application for the same or similar project will require submittal of a new application and payment of an application fee.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0560

Public Review Process for Individual Removal-Fill Permit Applications

(1) Circulation of the Application for Public Review. Once the application has been deemed complete and sufficient, the Department will provide notification of the availability of the application for review either by U.S. mail or electronically (e.g., facsimile, e-mail, posting on the internet) to adjacent property owners, watershed councils, public interest groups, affected local government land use planning departments, state agencies, federal agencies and tribal governments in the geographic area affected by the permit.

(2) Copies of the Application by Request. The Department will furnish to any member of the public, upon written request and at the expense of the member of the public, a printed copy of any application.

(3) Deadline for Receipt of Public Comments. All recommendations and comments regarding the application shall be submitted in writing to the Department within the period established by the Department, but not more than 30 calendar days from the date of the notice, except as noted under (a), below:

(a) The Department will grant an extension of up to 75 calendar days to the Department of Environmental Quality if the application requires a Section 401 certification under the Federal Water Pollution Control Act (P.L. 92-500) as amended;

(b) If a commenter fails to comment on the application within the comment period, the Department will assume the commenter has no objection to the project.

(4) Department Review of Public Comments/Public Hearing. The Department will review and consider substantive comments received during the public review period, and may conduct any necessary investigations to develop a factual basis for a permit decision.

(a) The Department may, as a result of the public review process and/or the Department's investigations, request that the applicant submit supplemental information prior to the Department making the permit decision. The Department may schedule a permit review coordination meeting with interested agencies or groups and the applicant to provide the applicant an opportunity to explain the project and to resolve issues.

(b) At the Department's discretion, the Department may hold a public hearing to gather necessary information that may not otherwise be available to make a decision.

(5) Applicant Response to Comments.

(a) Comments resulting from the public review process will be forwarded to the applicant within seven calendar days of the comment period deadline.

(b) The applicant may, at his or her discretion, respond to public and agency comments. The response may be in the form of additional information to support the application and/or revisions to the project that address the comments.

(c) If no response is received from the applicant by the date specified by the Department, the Department will presume that the applicant does not intend to provide additional supporting information or revisions to the application.

(6) Final Review

(a) The Department will render a final permit decision within 90 calendar days after determining an application is complete.

(b) The applicant may request additional time to respond to comments or to satisfy other requirements. The applicant and the Department may agree to extend the timeline for making a final permit decision beyond 90

calendar days. If no agreement is reached, the Department will make a final permit decision within the original 90 day time period.

(7) Application Withdrawal. An applicant may withdraw an application at any time prior to the permit decision. In the event the applicant fails to respond to the Department's requests for information or otherwise fails to reasonably proceed with the application process, the Department may administratively withdraw the application upon 30-calendar days notice to the applicant. There will be no refund of the application fee in either case.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0565

Department Determinations and Considerations in Evaluating Individual Permit Applications

(1) Departmental Final Review. The Department will evaluate the information provided in the application, conduct its own investigation, and consider the comments submitted during the public review process to determine whether or not to issue an individual removal-fill permit.

(2) Effective Date of Review Standards. The Department may consider only standards and criteria in effect on the date the Department receives the complete application or renewal request.

(3) Department Determinations. The Department will issue a permit if it determines the project described in the application:

(a) Is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.990; and

(b) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation.

(4) Department Considerations. In determining whether to issue a permit, the Department will consider all of the following:

(a) The public need for the proposed fill or removal and the social, economic or other public benefits likely to result from the proposed fill or removal. When the applicant for a permit is a public body, the Department may accept and rely upon the public body's findings as to local public need and local public benefit;

(b) The economic cost to the public if the proposed fill or removal is not accomplished;

(c) The availability of alternatives to the project for which the fill or removal is proposed;

(d) The availability of alternative sites for the proposed fill or removal;

(e) Whether the proposed fill or removal conforms to sound policies of conservation and would not interfere with public health and safety;

(f) Whether the proposed fill or removal is in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged comprehensive plan and land use regulations;

(g) Whether the proposed fill or removal is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill or removal is to take place or can be conditioned on a future local approval to meet this criterion;

(h) Whether the proposed fill or removal is for stream-bank protection; and

(i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal in the manner set forth in ORS 196.800. If off-site compensatory wetland mitigation is proposed, the applicant shall document the impracticability of on-site compensatory wetland mitigation.

(5) Alternatives Analysis. The Department will issue a permit only upon the Department's determination that a fill or removal project is consistent with the protection, conservation and best use of the water resources of this state and would not unreasonably interfere with the preservation of the use of the waters of this state for navigation, fishing and public recreation. The Department will analyze a proposed project using the criteria set forth in the determinations and considerations in sections (3) and (4) above (OAR 141-085-0565). The applicant bears the burden of providing the Department with all information necessary to make this determination.

(6) Fills in an Estuary for Non-Water Dependent Use. A "substantial fill" in an estuary is any amount of fill regulated by the Department. No authorizations will be issued for a substantial fill in an estuary for a non-water dependent use unless all of the following apply:

(a) The fill is for a public use;

(b) The fill satisfies a public need that outweighs the harm, if any, to navigation, fisheries and recreation; and

(c) The removal-fill meets all other review standards.

ADMINISTRATIVE RULES

(7) Written Findings. In the following cases, the Department will prepare written findings to document an individual removal-fill permit decision:

- (a) Permit denial;
- (b) Fill of two acres or more in wetlands;
- (c) Fill in estuaries (except cable crossings, pipelines, or bridge construction);
- (e) Removal from estuaries of more than 10,000 cubic yards of material (except for maintenance dredging);
- (f) Placement of greater than 2,500 cubic yards of riprap in coastal streams or estuaries;
- (g) Removal-fill in the Oregon territorial sea in accordance with Statewide Planning Goal 19-Ocean Resources; and
- (h) Any permit decision that is contrary to the final decision recommendation of a state agency.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0570

Emergency Authorizations

In the event an emergency exists, the Department may issue an emergency authorization.

(1) Eligibility and Applicability. In order to qualify for an emergency authorization the Department shall determine that:

- (a) The emergency poses a direct threat to substantial property, including but not limited to a dwelling, transportation structure, farm or cropland;
- (b) Prompt action is required to reduce or eliminate the threat;
- (c) The nature of the threat does not allow the time necessary to obtain some other form of authorization; and
- (d) The proposed project is the minimal amount necessary to reduce or eliminate the threat and minimizes, to the extent practicable, adverse impacts to waters of this state.

(2) Information Requirements. Any person requesting an emergency authorization may apply verbally or in writing. Written applications may be sent via facsimile, e-mail or U.S. mail. Applications for an emergency authorization shall include:

- (a) The applicant planning and carrying out the activity;
- (b) The location of the project;
- (c) The nature of the emergency (specifically, the nature of the threat to public health, public safety or property and the immediacy of the threat and need to act promptly);
- (d) A description of the proposed work, including the approximate volume of material to be removed and/or filled, how the work will be accomplished and the schedule for doing the work;
- (e) The date and approximate time when the event that caused the emergency took place;
- (f) A statement as to whether the emergency action is intended as a temporary or permanent response measure; and
- (g) Additional information, as requested from the Department.

(3) Authorized Representative. The Department may authorize a person, including personnel from public agencies, to act as a representative of the Department to conduct an on-site evaluation of the planned activity and make recommendations as to whether or not the application should be approved as requested, approved with conditions, denied or processed as an individual removal-fill authorization application.

(4) Department Decision. Based on review of all the available information, the Department may take the following action(s):

- (a) Approve the emergency authorization, either verbally or in writing; or
- (b) Deny issuance of the emergency authorization. If a request for an emergency authorization is denied, the applicant may resubmit the application as an individual removal-fill authorization or general authorization.

(5) Written Authorization Needed to Confirm Verbal Authorization. If an emergency authorization is issued verbally, the authorization will be confirmed in writing by the Department within ten calendar days confirming the issuance and setting forth the conditions of operation.

(6) Term. The term of the emergency authorization shall be limited to the time necessary to complete the planned project and shall be specifically stated in the authorization.

(7) Conditions of Emergency Authorizations. An emergency authorization may contain conditions to minimize the reasonably expected adverse impacts of the activity to waters of this state. Conditions may include:

- (a) Compensatory mitigation or compensatory wetland mitigation;

(b) A requirement to revise the project and apply for a removal-fill permit after the emergency situation has subsided;

(c) A requirement to submit a report on the outcome of the project or monitor the project removal-fill sites; and/or

(d) Any other condition necessary to minimize reasonably expected adverse impacts on waters of this state.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0575

Permit Appeals

(1) Applicant Appeal Within 21 Calendar Days. An applicant may request a contested case hearing if they object to an application incompleteness determination, permit decision or permit condition imposed by the Department. The request shall be in writing and shall be received within 21 calendar days of the decision. The request shall include the reasons for the request for hearing.

(2) Other Parties Appeal Within 21 Calendar Days. Any person who is aggrieved or adversely affected by the Department's final decision concerning an individual permit or a condition therein may file a written request for a hearing with the Department within 21 calendar days after the authorization approval date. The request shall include the reasons for the request for hearing.

(3) Standing in Contested Case Hearings. For a person other than the applicant to have standing to request a contested case, the person shall be either "adversely affected" or "aggrieved."

(a) To be "adversely affected" by the Department's individual removal-fill permit decision, the person shall have a legally protected interest that would be harmed, degraded or destroyed by the authorized project. Eligible parties may include adjacent property owners and other parties;

(b) To be "aggrieved" by the Department's individual removal-fill permit decision the person shall have participated in the Department's review of the project application by submitting written or verbal comments stating a position on the merits of the proposed removal-fill to the Department.

(4) Setting a Contested Case Hearing. If the written request for hearing is timely and made by an eligible person, the matter shall be referred to the Office of Administrative Hearings for hearing, and shall be conducted as follows:

- (a) The hearing shall be conducted as a contested case;
- (b) The permit holder and any other persons that have filed a written request and have a legally protected interest that may be adversely affected shall be parties to the proceeding; and
- (c) Persons that do not have legally protected interests that are adversely affected, but are aggrieved, may nevertheless petition to be included in the contested case hearing as a party.

(5) Referral to the Office of Administrative Hearings. The referral of a request for hearing to the Office of Administrative Hearings by the Department will include the individual removal-fill permit, or denial, and the request for hearing. An administrative law judge shall conduct a contested case hearing only on the issues raised in the request for hearing and the referral from the Department.

(6) Review of Jurisdictional Determinations. Jurisdictional determinations of the existence, or boundaries, of the waters of this state on a parcel of property, issued more than 60 calendar days before a request for hearing, are final. Jurisdictional determinations are judicially cognizable facts of which the Department may take official notice under ORS 183.450(3) in removal-fill contested cases. Challenges to jurisdictional determinations are only permitted under the process set out in OAR 141-090.

(7) The Proposed Order. The Administrative Law Judge shall issue a proposed order containing findings of fact and conclusions of law within 20 calendar days of the hearing, and as required by ORS 183.460, provide an opportunity to file written exceptions with the Department.

(8) The Final Order. Within 45 calendar days after the hearing the Department will consider the record, any exceptions, and enter an order containing findings of fact and conclusions of law. The final order shall rescind, affirm or modify the permit or proposed order.

(9) Pre-Hearing Suspension of Permits. A permit granted by the Department may be suspended by the Department during the pendency of the contested case proceeding. Petitions for suspension shall be made to the Department and will be either granted or denied by the Department. The permit shall not be suspended unless the person aggrieved or adversely affected by grant of permit makes a showing before the Department by clear and convincing evidence that commencement or continuation of the

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fill would cause irreparable damage and would be inconsistent with ORS 196.800 to 196.990.

(10) Issuance or Denial of a Permit. Interested persons who request notification in writing of the Department's decision on a permit will be notified at the time of issuance or denial. The Department's failure to notify an interested person will not extend the statutory timeframe for hearing requests.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0580

Discovery in Contested Cases

In contested cases conducted on matters relating to these rules, the Department delegates to the hearing officer the authority to rule on any issues relating to discovery, except that depositions will only be awarded if it is likely that a witness will not be available at a hearing.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0585

Permit Conditions, Permit Expiration Dates and Permit Transfer

(1) Applicable Permit Conditions. If the Department approves the permit, it will impose applicable conditions to eliminate or reduce the reasonably expected adverse impacts of project development to waters of this state.

(2) Applicant Acceptance of Permit Conditions. Once an authorization holder initiates the removal fill activity authorized by a permit, it is understood that the permit holder accepts the conditions contained within the permit.

(3) Enforceability of Permit Conditions. Authorizations may include conditions, including compensatory mitigation and monitoring conditions that impose obligations beyond the expiration date of the removal/fill activity. All such conditions are enforceable until such obligations are satisfied.

(4) Conflicts Between the Application and Permit Conditions. The application, including all plans and operating specification, becomes an enforceable part of the removal fill authorization. In the event there is a conflict between information contained in the application and conditions in the removal fill authorization, the authorization conditions prevail.

(5) Permit Expiration Date. The permit will remain in effect until the removal fill activity, approved by the authorization, is complete. The Department may issue an individual removal-fill authorization for up to five years for removal fill activities that occur on a continuing basis or will take more than one year to complete.

(6) Limits on Terms for Commercial Gravel Operations. For commercial gravel removal, the Department will only issue a multi-year permit when it determines that:

(a) There is sufficient aggregate resource or annual recharge to allow the proposed volumes to be removed; and

(b) The authorization holder has, for at least one year preceding the pending renewal, conducted removal in compliance with permit conditions.

(7) Modification of Permit Conditions. Modifications of permit conditions may be either requested by the authorization holder or initiated by the Department. Upon the written request of the authorization holder, the Department may modify any permit condition. At the time of permit renewal, the Department may modify permit conditions as a result of new information related to water resource impacts or operating conditions. At its discretion, the Department may circulate any proposed modification for public review as described in OAR 141-085-0560. Situations where public review may be necessary include those that would result in an increase in adverse impacts or those that involve significant changes in operating conditions.

(8) Transfer of Permit Responsibility. Authorizations are issued to the applicant and are not automatically transferred through property transactions. The applicant is responsible for complying with the conditions of the permit, unless the permit is officially transferred to a different person or party through one of the following means:

(a) The authorization holder submits a completed transfer form to the Department;

(b) If the authorization has not expired, the Department will issue a modified permit to the transferee, who will then be responsible for complying with all of the conditions in the permit. If a bond was required for compensatory mitigation, a new bond shall be provided to the Department; or

(c) If the authorization has expired but mitigation monitoring is still pending, the mitigation obligation shall be transferred to the transferee. If a

bond was required for the pending mitigation monitoring, a new bond shall be provided prior to the transfer.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0590

Renewal and Extension of Individual Removal-Fill Permits

(1) Renewal of Individual Permits. Individual permits may be renewed if the permit holder anticipates that the project within waters of this state will not be completed by the permit expiration date.

(2) Renewal Notice. At least 90 calendar days prior to the expiration of a valid removal-fill permit, the Department will send a renewal notice to the permit holder. The renewal notice will inform the permit holder of the expiration date of the permit and offer an opportunity to renew the permit.

(3) Request for Renewal. In order to renew the permit, the permit holder shall respond with a request to renew the permit. The request for renewal shall:

(a) Include a short statement of the status of the project, including any compensatory mitigation requirements;

(b) Include the base fee;

(c) Be received by the Department at least 45 calendar days prior to the expiration of the permit; and

(d) If requested by the Department, be accompanied by an updated application. Updated applications may be required for multi-year permits or if there is a significant change in project activities, and shall be completed on current forms provided by the Department.

(4) Processing the Renewal Request. Upon receipt of a request for renewal, the Department:

(a) Must review the request pursuant to the standards contained in the applicable rules in effect at the time of the request; and

(b) May provide public notice of the renewal.

(5) Department's Decision. Upon review of the renewal request, along with any updated information or public comments, the Department will either:

(a) Renew the permit, with or without modified conditions;

(b) Extend the permit for an additional time period; or

(c) Deny the request for permit renewal.

(6) Extension of a Permit Expiration Date. At the discretion of the Department, a permit expiration date may be extended:

(a) If more time is needed to resolve issues that arise during the renewal process; or

(b) If the applicant failed to respond to the renewal request in a timely manner.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0595

Permit Requirements and Interagency Coordination for Department of Environmental Quality Approved Remedial Action, Corrections Facilities, Solid Waste Land Fills and Energy Facilities

(1) Pursuant to ORS 465.315, no removal-fill authorization is required for remedial action conducted on a site selected or approved by the Department of Environmental Quality. The responsible party shall notify the Department of its intended action, pay applicable fees, and comply with the substantive requirements that the Department would otherwise apply.

(2) Upon submission by the applicant of a complete application and payment of the proper fees, the Department will issue the permits authorized by the authorized siting entity listed below, subject to the conditions set forth by the siting entity (including conditions supplied to the siting authority by the Department). The Department will continue to exercise enforcement authority over a permit issued pursuant to this section. These siting entities are:

(a) The Department of Corrections, pursuant to ORS 421.628, relating to siting corrections facilities;

(b) The Environmental Quality Commission, pursuant to ORS 459.047, relating to siting solid waste land fills; and

(c) The Energy Facility Siting Council, pursuant to ORS 469.300 et seq. related to siting energy facilities.

Stat. Auth.: ORS 196.825 & 196.600-196.665
Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990
Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0665

Expedited Process for Industrial or Traded Sector Sites

(1) Department Assistance with Industrial Siting. The Department will participate in planning and authorizing removal-fill within waters of

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this state for certain industrial or traded sector sites identified by the Economic Revitalization Team (ERT) or having the potential to be certified by the Oregon Economic and Community Development Department (OECD). The Department will provide assistance to the maximum extent feasible, taking into account budget and staffing constraints.

(2) Site Designation Process. The Director shall, upon the request of ERT or OECD, designate a site for expedited planning and processing. The project proponent or sponsor shall have authority to authorize the Department or its agent's physical access to the site.

(3) Department-Appointed Project Leader. The Director will assign a project leader from the Department to work with the ERT, OECD, other applicable agencies and the project sponsor. Such work will include, but is not limited to:

(a) Expedited jurisdictional determinations by the Department;

(b) Technical assistance in the preparation of wetland delineation and functional assessment reports, impact avoidance and minimization strategies, alternatives analyses and compensatory mitigation plans;

(c) Assistance with other permit application documents necessary to issue an authorization or to avoid the need to obtain an authorization by planning the project in such a way so as to avoid impacts to waters of this state;

(d) Expedited review of removal-fill applications and prompt permit decision so long as doing so will not result in the Department missing statutory deadlines for other permits; and/or

(e) Assistance with the early identification and resolution of issues raised by other agencies and the public.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0670

General Authorizations (GA); Standards and Criteria; Process for Establishing

General Authorizations are adopted individually by rule and can be found in OAR 141-089.

(1) Individual Permit May Not Be Necessary. If a proposed activity meets the requirements of a general authorization, a person does not need to obtain an individual removal-fill permit for that activity. Any person proposing to conduct a removal-fill under a general authorization shall first notify the Department in writing in accordance with the requirements of the specific general authorizations being sought, and pay any applicable fee to the Department.

(2) GAs May Apply Statewide or Regionally. General authorizations are adopted, amended and repealed as administrative rules in accordance with the Administrative Procedure Act (ORS 183.310 to 183.550). A general authorization may be granted on a statewide or other geographic basis.

(3) Criteria for Adopting GAs. The Department may propose to adopt a general authorization upon a finding that the category of removal-fill, as described in the proposed general authorization (including the applicable conditions):

(a) Are substantially similar in nature;

(b) Would cause only minimal individual and cumulative adverse impacts;

(c) Will not result in long-term harm to the water resources of this state; and

(d) Are consistent with the policies of these rules.

(4) Public May Request Department to Amend or Rescind GAs. The Department may amend or rescind any general authorization, through rule-making, upon a determination that the removal-fill conducted under the general authorization has resulted in or would result in more than minimal adverse effect or long-term harm to the water resources of this state. Any person may request the Department invoke this provision. Such a request shall include the specific general authorization to be rescinded or amended and clearly and convincingly state the reasons for the request.

(5) GAs Must Be Compatible with Local Comprehensive Plan. No general authorization is valid where the removal-fill is prohibited by the local comprehensive plan or implementing regulations or other applicable ordinance.

(6) GAs Valid for Five Years. The rule promulgating the general authorization will be effective for up to a five-year term and will be reviewed every five years. Upon review, the general authorization will be reissued in a similar or amended form or repealed.

(7) GAs Are Enforceable. Failure of a person to adhere to the terms of any general authorization adopted under this section will be considered a violation of the removal-fill law and subject to appropriate enforcement in accordance with these rules.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0675

General Permits; Standards and Criteria; Process for Establishing

(1) Purpose. The purpose of the General Permit is to allow an applicant or group of applicants, or the Department, to propose or create a general permit that will authorize a group of activities. These activities shall be:

(a) Substantially similar in nature;

(b) Recurring or ongoing; and

(c) Have predictable effects and outcomes.

(2) May Apply Statewide or Regionally. The Department may issue a General Permit to the general public or to an applicant or group of applicants. It may do so on a statewide or regional basis. The Department may issue a General Permit in collaboration with the issuance by the U.S. Army Corps of Engineers of a Regional General Permit for the same or similar activities.

(3) Do Not Apply in SSWs. General Permit activities may not be located within a designated State Scenic Waterway (SSW).

(4) Application Process. Before applying for a General Permit, a person shall contact the Department to determine if the Department will accept an application for a General Permit for the person's proposed activity:

(a) The Department reserves the right to decline to accept an application for a General Permit, based on staff or resource considerations; and

(b) The applicant may request pre-application meetings, and the Department may also set-up interagency meetings, or other such coordinating efforts prior to accepting an application for a General Permit.

(5) Application Requirements. An application for a General Permit under this rule shall be submitted on an application form available from the Department:

(a) The level of detail provided in the application shall be commensurate with the scope and complexity of the proposed activities;

(b) The Department will review the application for completeness; and

(c) When appropriate the Department may modify or waive specific completeness requirements.

(d) The Department is not required to submit an application for a General Permit proposed by the Department.

(6) Information Requirements. For each type of activity, the applicant shall provide, at a minimum, the following information in the application:

(a) Activity description and purpose;

(b) Estimated range of removal and fill volumes within waters of this state;

(c) Estimated range of acres of fill and removal within waters of this state;

(d) Proposed number of projects to be covered on an annual basis;

(e) Proposed geographic extent to be covered by the General Permit;

(f) Anticipated adverse impacts to waters of this state (including cumulative effects) and proposed measures to minimize effects;

(g) Criteria for selecting project sites;

(h) Location information on all known project locations; and

(i) Adjacent landowner information for all known locations.

(7) Pre-Project Notice Requirement. The Department may require a pre-project notice for each activity to obtain any information that is deemed necessary to determine whether the activity meets the criteria contained in the General Permit.

(8) Limitations to Permanent Impacts to Wetlands. Permanent impacts to wetlands will only be allowed under a General Permit if the effects are fully described and quantified in the initial application. For known activities that will involve permanent impacts to wetlands, the applicant shall provide the following:

(a) A wetland delineation report that meets the requirements in OAR 141-090; and

(b) An acceptable compensatory wetland mitigation plan.

(9) Permanent Impacts to Non-Wetland Waters. For activities that will involve permanent impacts to waters other than wetlands, the applicant shall provide a compensatory mitigation plan.

(10) Public Review. The Department will send the complete application out for public review, unless the Department determines that additional notice or another appropriate method is necessary to meet the obligations for the public review. The Department reserves the right to require additional public review and notify affected parties following receipt of a pre-project notice. The Department will provide a public review process for a General Permit proposed by the Department.

(11) Conditions May Be Imposed. Activities conducted under a General Permit shall be in compliance with the general and project specific conditions described in the Permit.

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(12) General Permits Are Enforceable. Failure to comply with any conditions or submit any required information (e.g. pre-project notifications, mitigation monitoring reports or project completion reports) may result in suspension or revocation of the General Permit as well as subject the permittee to other administrative or legal penalties.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0680

Compensatory Wetland and Tidal Waters Mitigation (CWM); Applicability and Principal Objectives

(1) Applicability. OAR 141-085-0680 to 0760 applies to removal-fill that occurs within wetlands and tidal waters and applies to all forms of compensatory mitigation (i.e., mitigation bank, in-lieu fee mitigation, advance mitigation, permittee responsible mitigation, payment in-lieu mitigation). OAR 141-085-0680 to 0760 does not apply to removal-fill within areas covered by an approved Wetland Conservation Plan.

(2) Principal Objectives for CWM. For projects where impacts to wetlands or tidal waters cannot be avoided, CWM will be required to compensate for the reasonably expected adverse impacts in fulfillment of the following principal objectives.

(a) The principal objectives of CWM are to:

(A) Replace functions and values lost at the removal-fill site;

(B) Provide local replacement for locally important functions and values, where appropriate;

(C) Enhance, restore or create wetlands or tidal areas that are self-sustaining and minimize long-term maintenance needs;

(D) Ensure the siting of CWM in ecologically suitable locations considering: local watershed needs and priorities; appropriate landscape position for the wetland types, functions, and values sought; connectivity to other habitats and protected resources; and the absence of contaminants or conflicting adjacent land uses that would compromise wetland functions; and

(E) Minimize temporal loss of wetlands and tidal waters and their functions and values.

(b) Applicants shall demonstrate how the selected method of CWM (i.e., mitigation bank, in-lieu fee mitigation, advance mitigation, permittee responsible mitigation, and payment in-lieu mitigation) addresses the principal objectives.

(3) General Requirements.

(a) Permittee responsible CWM at an off-site location shall be located within the 4th field Hydrologic Unit Code (HUC) in which the removal-fill site is located.

(b) Impacts to tidal waters shall be replaced in the same estuary.

(c) For projects that involve wetland or tidal waters impact of greater than 0.20 acres, payment in-lieu mitigation may only be used when all other mitigation methods are demonstrated, to the satisfaction of the Department, to be unavailable or impracticable. Projects that involve wetland or tidal waters impact of 0.20 acres or less, where no bank credits are available, may use payment in-lieu mitigation without consideration of other CWM methods or the principal objectives. If bank credits are available at the time of the permit decision, payment-in-lieu shall not be used.

(d) For projects requiring CWM and involving project development on 0.20 acres or less of wetlands, there is a rebuttable presumption that on-site, permittee-responsible CWM is impracticable. The applicant may propose to fulfill CWM requirements through off-site CWM without first considering on-site CWM.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0685

Functions and Values Assessment

(1) Purpose. The purpose of the functions and values assessment is to document those wetland or tidal waters functions and values anticipated to be lost as a result of the project and help ensure that the proposed CWM will replace those functions and values.

(2) Assessment Requirements. Elements of a functions and values assessment shall include the following:

(a) Existing functions and values at the proposed project site;

(b) Functions and values reasonably expected to be adversely impacted by the proposed project;

(c) Existing functions and values at the proposed CWM site, if the site is currently wetland or tidal waters; and

(d) The projected net gain or loss of specific functions and values as a result of the CWM project compared to the reasonably expected adverse impacts as a result of the project.

(3) Functions and Values Assessment Methods. Wetland functions and values assessment methods and requirements are as follows:

(a) All applications for tidal waters impacts or for wetland impacts of greater than 0.20 acres shall include a functions and values assessment using the appropriate Hydrogeomorphic Method (HGM) Guidebook, if available, or other assessment method as approved by the Department. The same functions and values assessment methodology shall be used on the impact site and the proposed CWM site, unless CWM will be fulfilled by purchase of bank credits, advance mitigation credits, or in-lieu fee program credits. If the impact site and the proposed CWM site are the same HGM subclass, the appropriate HGM reference-based method shall be used. If they are not the same HGM subclass, the HGM judgmental method, or other assessment method as approved by the Department, shall be used. Best professional judgment, as a methodology, may not be used.

(b) For non-tidal wetland impacts involving 0.20 acres or less, best professional judgment may be used to assess wetland functions and values. A written discussion of the basis of the conclusions based upon best professional judgment shall be provided. For example, if the water quality function is determined to be "low", a detailed rationale based upon direct measurement or observation of indicators of water quality function shall be discussed.

(c) If best professional judgment is used, wetland functions and values to be assessed shall include, but are not limited to:

(A) Water quality and quantity;

(B) Fish and wildlife habitat;

(C) Native plant communities and species diversity; and

(D) Recreation and education.

(d) The Oregon Freshwater Wetland Assessment Methodology will not satisfy the requirements of OAR 141-085-0685.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0690

Additional Requirements for CWM

(1) Replacement by Class and Functions and Values.

(a) The CWM project shall have the capability to replace:

(A) Wetland or tidal water type(s) impacted by the project, as classified per Cowardin system and class (e.g., palustrine forested) and by HGM class/subclass(es) impacted by the project (e.g., riverine impounding), using the Oregon HGM Statewide Classification (Oregon Department of State Lands, 2001); and

(B) The functions and values of the impacted wetland or tidal waters.

(2) Exceptions. The Department may approve exceptions to replacement by class and function if the applicant demonstrates, in writing, that the alternative CWM:

(a) Replaces functions and values that address problems (such as flooding) that are identified in a watershed management plan or water quality management plan;

(b) Replaces important wetland or tidal waters types (Cowardin/HGM) and functions and values historically lost in the region;

(c) Replaces rare or uncommon plant communities appropriate to the region, as identified in the most recent Oregon Natural Heritage Program plant community classification; or

(d) Is for the replacement of a non-tidal wetland or tidal water type that is technically impracticable to replace. Upon demonstration of such to the satisfaction of the Department, the Department may require re-consideration of alternatives to ensure that all practicable opportunities to avoid and minimize impacts have been reasonably incorporated into the project.

(3) Conversion of Wetland to Tidal Waters. CWM involving the conversion of wetland to tidal waters will not be approved where the wetland proposed for conversion provides a high level of functionality, provides locally important functions or values, or supports listed species or rare plant community or communities.

(4) CWM Ratios.

(a) The purpose of CWM ratios is to:

(A) Ensure that the total area of the state's wetland and tidal waters resource base is maintained; and

(B) Replace wetland and tidal waters functions that may be size dependent.

(b) Ratios will not be used as the sole basis for demonstrating functional replacement.

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(c) Except as otherwise provided in this section, the following minimum ratios shall be used in the development of CWM plans.

(A) One acre of restore wetland or tidal waters for one acre of impacted wetland or tidal waters (1:1).

(B) One and one-half acres of created wetland or tidal waters for one acre of impacted wetland or tidal waters (1.5:1).

(C) Three acres of enhanced wetland or tidal waters for one acre of impacted wetland or tidal waters (3:1).

(D) Two acres of enhanced cropped wetland for one acre of impacted wetland (2:1). Cropped wetland is converted wetland that is regularly plowed, seeded and harvested in order to produce a crop for market. Pasture, including lands determined by the Natural Resources and Conservation Service to be "farmed wetland pasture," is not cropped wetland.

(E) There is no established ratio for CWM using conservation. The acreage needed under conservation will be determined on a case-by-case basis by the Department.

(d) The Department may double the minimum ratio requirements for project development affecting existing CWM sites; for example, using enhancement to compensate for effects to an existing CWM site may require a minimum ratio of six acres enhanced for every one acre impacted (6:1).

(e) The Department may increase the ratios when:

(A) Mitigation is proposed to compensate for an unauthorized removal-fill activity; and/or

(B) Mitigation will not be implemented in the same construction season as the authorized impact

(f) At the option of the applicant, CWM may consist of any one or a combination of the following CWM ratios for commercial aggregate mining operations where both the mining operation and the CWM are conducted on converted wetlands (not including pasture): (A) One acre of wetland and open water habitat, with depths less than 35 feet, for one acre of wetland impacted;

(B) Three acres of wetland and open water habitat, with depths greater than 35 feet, for one acre of wetland impacted;

(C) One acre of a combination of restored, created or enhanced wetland and upland, comprising at least 50 percent wetland, for one acre of wetland impacted.

(g) The Department may also apply the following CWM measures for commercial aggregate mining operations on converted wetland (not including pasture):

(A) Allow for staged CWM or mined land reclamation required under ORS 517.700; or

(B) Allow the applicant, upon approval by the Department, to pay the entire cost of CWM according to the following criteria:

(i) On an annual basis for a period not to exceed 20 years over the life expectancy of the operation, whichever is less; or

(ii) On an annual basis over time at a monetary rate per cubic yard or ton of aggregate material removed annually from the site.

(5) Timing of CWM Implementation. CWM earthwork shall be completed within the same construction season as the authorized removal-fill project. The Department may approve non-concurrent CWM if the applicant clearly demonstrates, in writing, the reason for the delay or that there is benefit to the water resources in doing so.

(6) CWM in Areas with High Natural Resource Value. CWM projects shall not degrade areas with existing high natural resource values (e.g., forested uplands).

(7) CWM Hydrology Must Be Self-Sustaining. CWM shall not rely on features or facilities that require frequent and regular long-term maintenance and management. For example, permanent water control structures may be acceptable, whereas pumping from a groundwater well to provide adequate hydrologic support is not acceptable.

(8) Multiple Purpose CWM. CWM sites may fulfill multiple purposes including storm water retention or detention, provided:

(a) All other CWM requirements are met;

(b) No alteration or management is required to maintain the functionality of the storm water facility that would degrade the wetland functions and values;

(c) The runoff water entering the CWM site has been pretreated to the level necessary to assure that state water quality standards and criteria are met in the mitigation area;

(d) Construction of storm water facilities in existing wetlands meets the criteria for enhancement;

(e) Construction of the CWM site will not adversely affect adjacent wetlands or tidal waters;

(f) Construction of the CWM site will not significantly change pre-development hydrologic conditions or increase peak flows of velocity to receiving streams; and

(g) Storm water discharges to existing or CWM wetlands will not result in hydrologic conditions that impair vegetation or substrate characteristics necessary to support wetland functions.

(9) Special Requirements for Enhancement as CWM. CWM enhancement shall conform to the following additional requirements. Enhancement shall:

(a) Be conducted only on degraded wetlands or tidal waters;

(b) Result in a demonstrable net gain in functions and values at the CWM site as compared to those functions and values lost or diminished as a result of the project and those functions and values that already exist at the CWM site;

(c) Not replace or diminish existing wetland or tidal waters functions and values with different functions and values unless the applicant justifies, in writing, that it is ecologically preferable to do so;

(d) Not consist solely of the conversion of one HGM or Cowardin class to another;

(e) Identify the causes of wetland or tidal waters degradation at the CWM site and the means by which the CWM plan will reverse, minimize or control those causes of degradation in order to ensure self-sustaining success; and

(f) Not consist solely of removal of non-native, invasive vegetation and replanting or seeding of native plant species.

(10) Conservation as CWM. Conservation of wetlands or tidal waters may be used for meeting the CWM requirement when the wetland or tidal waters site proposed for conservation is demonstrated to be under threat of development (e.g., zoned for a development use), and one of the following applies:

(a) The conservation site supports a significant population of rare plant or animal species;

(b) The conservation site is a rare wetland or tidal waters type (S1 or S2 according to the Oregon Natural Heritage Program);

(c) The conservation site is a native, mature forested wetland; or

(d) The conservation site is in good condition and is highly functioning (as determined using a Department-approved assessment method) that accomplishes one or more of the following:

(A) Serves a documented watershed need; or

(B) Preserves wetland types historically lost in the watershed.

(11) Conservation as the Preferred CWM Option. Conservation may be accepted as the preferred CWM option when the lost or diminished functions and values are exceptionally difficult to replace. Examples of such waters include, but are not limited to, vernal pools, fens, bogs and tidal spruce wetlands, as defined by the Oregon Natural Heritage Program.

(12) Special Case; CWM for Linear Projects in Multiple Watersheds. The Department will review and approve CWM for linear projects in multiple watersheds (e.g., roads or utility lines with wetland or tidal waters impacts) on a case-by-case basis and may establish other CWM requirements than those explicitly set forth in these rules.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0695

Administrative Protection of CWM Sites

(1) Administrative Protection Instruments. All CWM sites shall be protected from adverse impacts in perpetuity with appropriate protection instruments.

(2) Protection Instrument Standards. Protection instruments shall meet the following standards:

(a) The permanent protection instrument shall prohibit any uses of the CWM site that would violate conditions of the removal-fill authorization or otherwise adversely affect functions and values provided by the CWM site;

(b) Any proposed revisions to the protection instrument require prior approval from the Department;

(c) A conservation easement may only be granted to qualifying parties set forth in ORS 271; and

(d) Conservation easements shall provide the Department a third party right-of-enforcement.

(3) Publicly Owned CWM Sites. For publicly owned CWM sites, administrative protection may be provided through an adopted management plan. Such plan shall provide for appropriate protection of the CWM site as determined by the Department.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

ADMINISTRATIVE RULES

141-085-0700

Financial Security for CWM Sites

(1) Purpose. Financial security instruments are required for CWM sites as a guarantee that the CWM will be constructed, monitored and maintained in accordance with removal-fill authorization requirements.

(2) Exceptions. Financial security Instruments are required for CWM projects except in the following circumstances:

(a) No financial security instrument is required for projects conducted by government agencies;

(b) The Department may waive the requirement for a financial security instrument for impacts (0.20 of an acre or less; and

(c) Financial security instruments are not required when CWM is satisfied by purchase of credits from a wetland mitigation bank, an in-lieu fee program, advance mitigation, or payment in-lieu mitigation.

(3) Types of Financial Security Instruments. To ensure compliance with CWM requirements, the Department may allow for any of the following types of financial security instruments:

(a) Surety bond;

(b) Assignment of Deposit;

(c) Irrevocable Letter of Credit; or

(d) Such other financial instrument as the Department deems appropriate to secure the financial commitment of the applicant to fulfill the success of the CWM.

(4) Financial Security Form. The applicant shall file the financial security instrument or instruments on a form or forms prescribed and furnished by the Department. Financial security instruments shall be made payable to the Department and shall be submitted to the Department prior to permit issuance or prior to release of credits from a mitigation bank.

(5) Commencement of the Liability Period. The period of liability shall begin at the time of authorization issuance. The liability period shall be renewable until the Department deems the CWM to be complete and the Department releases the permittee from any further monitoring requirements.

(6) Determining the Amount. The Department will annually set the amount of the financial security instrument equal to either the cost of mitigation bank credit(s) within a service area covering the removal-fill site, or the current cost of payment in-lieu mitigation, whichever is greater. For mitigation banks, the amount shall be sufficient to ensure a high level of confidence that the mitigation will be successfully completed.

(7) Financial Security Instrument Replacement. The Department may allow a permit holder to replace an existing financial security instrument with another if the total liability is transferred to the replacement. The Department will not release an existing financial security instrument until the permit holder has submitted and the Department has approved the replacement.

(8) Financial Security Instrument Release. The Department will authorize release of the financial security instrument when the CWM meets the requirements of the CWM plan and the conditions of the removal-fill authorization. The permit holder shall file a request with the Department for the release of all or part of a financial security instrument. The request shall include:

(a) The precise location of the CWM area;

(b) The permit holder's name;

(c) The removal-fill authorization number and the date it was approved;

(d) The amount of the financial security instrument filed and the portion proposed for release; and

(e) A description of the results achieved relative to the permit holder's approved CWM plan.

(9) Forfeiture. The Department may declare forfeiture of all or part of a financial security instrument for any project area or an increment of a project area if CWM activities fail to meet success criteria, the permittee fails to provide monitoring reports, or fails to follow other permit conditions related to mitigation. The Department will identify, in writing, the reasons for the declaration.

(10) Determination of Forfeiture Amount and Use of Funds. The permit holder shall forfeit the amount of the outstanding liability in the financial security instrument. The Department will either use the funds collected from the security forfeiture to complete the CWM or deposit the proceeds in the Oregon Wetlands Mitigation Bank Revolving Fund Account.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0705

Requirements for All CWM Plans

(1) CWM Plan Content. CWM Plan detail shall be commensurate with the size and complexity of the proposed mitigation. A CWM Plan is not required for proposed CWM by means of using credits from an approved bank, advance mitigation site, fee-in-lieu mitigation or payment in-lieu mitigation. A CWM plan for permittee responsible CWM (on-site or off-site) shall include the sections listed below.

(a) CWM plan overview, including:

(A) CWM ecological goals and objectives;

(B) The CWM concept in general terms including a description of how the plan, when implemented, will replace the functions and values of the impacted non-tidal wetland or tidal waters;

(C) Mitigation site acreage by method(s) of mitigation proposed (restoration, creation and enhancement) and by proposed HGM and Cowardin classification for each method; and

(D) Summary of proposed net losses and gains of wetland or tidal waters functions and values.

(b) CWM site ownership and location information:

(A) CWM site ownership information (name, address, phone). If this is different from the applicant, copies of legal agreements granting permission to conduct the CWM and willingness of the property owner to provide long-term protection are required;

(B) Legal description (Township, Range, Quarter and Quarter-quarter Section and tax lot or lots); and

(C) CWM site location shown on a USGS or similar map showing the CWM site location relative to the impacted site, longitude and latitude, physical address, if any (e.g., 512 Elm Street), and road milepost (e.g., mp 25.21).

(c) A description of how the proposed CWM addresses each of the principal objectives for CWM as defined in OAR 141-085-0680.

(d) CWM site existing conditions, including the following, as applicable.

(A) If wetlands or tidal waters exist on the CWM site, then the following information be provided:

(i) A wetland determination/delineation report pursuant to OAR 141-090 for existing wetlands on the CWM site (or for tidal waters, any wetlands above highest measured tide elevation), as necessary to confirm acreage of proposed CWM;

(ii) Identification of HGM and Cowardin class(es) and subclass(es) of all wetlands and tidal waters present within the CWM site;

(iii) A general description of the existing and proposed water source, duration and frequency of inundation or saturation, and depth of surface water for wetlands or tidal waters on the CWM site. This information shall include identification of any water rights necessary to sustain the intended functions. Evidence that the water right has either been secured or is not required shall be documented in the first year mitigation monitoring report; and

(iv) Plans that involve enhancement shall include identification of the cause(s) of degradation and how the plan will reverse it and sustain the reversal.

(B) A description of the major plant communities and their relative distribution, including the abundance of exotic species within the CWM site and associated buffers.

(C) Approximate location of all water features (e.g., wetlands, streams, lakes) within 500 feet of the CWM site.

(D) Any known CWM site constraints or limitations.

(E) Plans for CWM by means of restoration shall include documentation sufficient to demonstrate that the site was formerly, but is not currently, a wetland or tidal water.

(e) A functions and values assessment. A summary of the assessment shall be placed in the body of the CWM plan, and supporting data sheets or assessment model outputs shall be placed in an appendix of the CWM Plan.

(f) CWM drawings and specifications, including:

(A) Proposed construction schedule;

(B) Scaled site plan(s) showing CWM project boundaries, existing and proposed wetland or tidal waters boundaries, restoration, creation and enhancement areas, buffers, existing and proposed contours, cross section locations, construction access location and staging areas;

(C) Scaled cross sections showing existing and proposed contours and proposed water depths;

(D) Plant list for each Cowardin and HGM class at the CWM site (include scientific names and wetland indicator status);

(E) Schematic of any proposed water control structures; and

ADMINISTRATIVE RULES

(F) For CWM sites involving tidal waters, plan views and cross-sections shall show relevant tidal elevations relative to mean lower low water (MLLW) using the nearest local tidal datum. The elevation of MLLW shall be referenced to the North American Vertical Datum 1988 (NAVD88).

(g) Proposed CWM performance standards. The applicant may propose to use applicable pre-defined performance standards as approved by the Department, or may provide CWM site-specific performance standards that:

(A) Address the proposed ecological goals and objectives for the CWM;

(B) Are objective and measurable; and

(C) Provide a timeline for achievement of each performance standard.

(h) A description of the proposed financial security instrument. The Department will determine the amount of security required. A final financial security instrument will be required prior to permit issuance unless otherwise approved by the Department.

(i) A monitoring plan including specific methods, timing, monitoring plot locations, and photo-documentation locations.

(j) A long-term maintenance plan describing:

(A) How the applicant anticipates providing for maintenance of the CWM site beyond the monitoring period to ensure its sustainability (e.g., maintenance of any water control structures, weed management, prescribed burning, and vandalism repair);

(B) Expected long-term ownership of the CWM site and the anticipated responsible party or parties for long-term maintenance; and

(C) How the maintenance activities are anticipated to be funded.

(k) The CWM plan shall identify the long-term protection instrument for the CWM site in accordance with OAR 141-085-0695.

(l) The Department may require additional information as necessary to determine the appropriateness, feasibility and sustainability of the proposed CWM and at any time prior to the permit decision may make recommendations for improvements to CWM plans.

(2) CWM Plans Using Conservation. A CWM plan using conservation shall include:

(a) Functions and values assessment of the removal-fill site and site proposed for conservation;

(b) Maps showing the conservation site including all delineated wetlands or tidal waters to be conserved;

(c) Documentation demonstrating that the proposed conservation site meets the requirements of OAR 141-085-0690(10);

(d) The surrounding land uses and an analysis of the both the short-term and long-term known and probable effects of those land uses and activities on the conserved wetlands or tidal waters;

(e) Measures that may be necessary to minimize the effects of surrounding land uses and activities on the conserved wetlands or tidal waters;

(f) Identification of the party or parties responsible for long-term protection of the conservation site;

(g) A long-term protection instrument;

(h) A long-term management plan with a funding mechanism that addresses the specific management needs to maintain functionality and ecological sustainability of the wetlands or tidal waters to be conserved; and

(i) The protection instrument, management plan and funding mechanism shall be in place prior to issuance of the authorization.

(3) Authorization Conditions for CWM Plans.

(a) The Department will review the CWM plan for sufficiency. In approving the final CWM plan, the Department may impose authorization conditions necessary to ensure compliance.

(b) The approved CWM plan becomes an enforceable part of the removal-fill authorization. In the event of conflict between CWM Plan provisions and removal-fill authorization conditions, the authorization conditions prevail.

(c) Regardless of the expiration date of the authorization, all compensatory mitigation conditions remain enforceable until the Department declares that the CWM has been successful.

(d) The permit holder cannot delegate responsibility for CWM requirements, unless the Department has officially transferred the mitigation obligation.

(e) If applicable, the Department will approve necessary draft administrative protection instrument(s) prior to permit issuance. A copy or copies of the recorded administrative protection instrument(s) shall be submitted to the Department with the post construction report unless the Department approves another schedule.

(f) For authorizations involving payment in-lieu mitigation as CWM:

(A) The individual removal-fill permit or letter of authorization for an activity will not be issued until payment has been made as approved by the Department; and

(B) Once an approved removal-fill permit activity has begun as proposed, the payment is non-refundable.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0710

Monitoring Requirements for CWM

(1) Purpose. The purpose of the CWM monitoring requirement is to provide information for the Department to:

(a) Determine whether the CWM complies with the conditions of the authorization and whether the CWM has achieved its stated goals, objectives and performance standards;

(b) Determine whether the CWM is replacing wetland and tidal waters area and functions and values; and

(c) Provide information for removal-fill program monitoring.

(2) Monitoring Reports. The permit holder shall monitor the CWM site and provide to the Department monitoring reports commensurate with CWM site size and complexity. Those reports shall include at minimum:

(a) A post construction report demonstrating as built conditions and discussing any variation from the approved plan. Unless waived by the Department, the post construction report shall be submitted within 90 calendar days of completing grading;

(b) An annual written monitoring report that includes all data necessary to document compliance with CWM conditions and performance standards; and

(c) A sufficient number of permanent monitoring points to provide a representative sampling of the CWM site and buffers.

(3) Duration. Monitoring shall be conducted for five years unless otherwise specified by the Department.

(4) Final Monitoring Report Requirements. To determine whether the CWM project will meet acreage and functional replacement requirements, the Department shall receive by not later than the fifth year of the monitoring program the following additional documentation:

(a) Mapping of the CWM site boundary and verification of quantities of actual restoration, creation and enhancement acreages achieved by HGM and Cowardin class; and

(b) Comparison of actual functions and values attained at the CWM site compared to the predicted functions and values for the CWM site identified in the CWM Plan.

(5) Additional Monitoring. The Department may require modifications to the CWM plan, as well as require additional monitoring, if the Department determines that the CWM fails to meet performance standards, replacement acreage requirements, or replace functions and values.

(6) Release From Monitoring Obligations. When the Department determines that the CWM complies with the conditions of the removal-fill authorization, the Department will notify the permit holder in writing that additional monitoring is not required.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0715

Mitigation for Temporary Impacts

Applicants for projects that involve temporary impacts to waters of this state shall provide a rehabilitation plan. A monitoring plan to confirm the reestablishment of wetland or tidal waters, or reestablishment of wood vegetation will be required.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0720

Mitigation Banking Purpose, Applicability and Policies

Purpose and Applicability. These rules describe the requirements to establish and operate mitigation banks, which can be used to compensate for impacts to waters of this state. Although focused mainly on compensatory wetland mitigation (CWM), these rules pertain to mitigation banks that compensate for impacts to all types of waters of this state

(1) Coordination with the Corps of Engineers. The Department will coordinate with and participate on the Interagency Review Team as a co-chair agency with the Corps of Engineers to establish mitigation banks that also meet the Federal regulatory requirements, as appropriate.

(2) Development of Mitigation Banks is Encouraged. The Department encourages the development and expeditious approval of mitigation banks.

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(3) Compensation for Expected or Historical Losses to Aquatic Resources. Mitigation banks shall be located and designed to compensate for expected or historical losses to aquatic resources by:

(a) Maintaining regional functions and values of aquatic resources in their service area;

(b) Matching the demand for wetland credits with wetland losses; and

(c) Meeting other ecological or watershed needs as determined by the Department.

(4) Banks Must Meet Principal Objectives for CWM: Mitigation banks established and operated under these rules shall meet the principal objectives of compensatory wetland mitigation in OAR 141-085-0680.

(5) Subject to All CM Rules. Mitigation banks are subject to all rules governing CWM and CNWM, as applicable.

(6) Collaboration with Public Resource Protection and Restoration Programs. The Department encourages collaboration with voluntary watershed enhancement projects in conjunction with, but supplemental to, the generation of compensatory mitigation credit, when greater ecological gains can be recognized. Except where public funding is specifically authorized to provide compensatory mitigation, or the Department otherwise approves the use or accounting of such funds, funds dedicated to non-compensatory aquatic resource restoration or conservation projects shall not generate transferable mitigation credit.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. eff. 3-1-09

141-085-0725

Process for Establishing Mitigation Banks

(1) Pre-prospectus Meeting with the Department. To initiate a mitigation bank, a prospective bank sponsor shall request a meeting with the Department for initial review of the mitigation concept, site suitability, and content of the Prospectus.

(2) Department Review of Draft Documents, Generally. The process for establishing a mitigation bank involves the development of a Prospectus and Mitigation Bank Instrument in consultation with an interagency review team (IRT). In an effort to supply the IRT with complete documents that meet the requirements of these rules, multiple drafts and completeness reviews may be required.

(3) Submittal of the Prospectus. After discussion of the mitigation concept with the Department, a mitigation bank sponsor shall submit a Mitigation Bank Prospectus. A Mitigation Bank Prospectus shall include:

(a) Site information including location, size, ownership, soil mapping, and recent air photo;

(b) The objectives of the proposed mitigation bank;

(c) How the mitigation bank will be established and operated, in general terms;

(d) The proposed service area;

(e) A market or other analysis that demonstrates the general need for the mitigation bank;

(f) A description of the technical feasibility of the proposed mitigation bank;

(g) The proposed ownership arrangements and long-term management strategy for the mitigation bank;

(h) How the mitigation bank addresses each of the principal objectives for CWM listed in 141-085-0680; and

(i) Names and addresses of all landowners within 500 feet of the bank.

(4) Prospectus Completeness Review. Within 30 calendar days of the Department's receipt of a Prospectus, the Department will conduct an initial review to determine if the Prospectus is complete and the information contained in the Prospectus adequately addresses the requirements. During this time, the Department will inform the applicant of one or more of the following findings:

(a) The Prospectus is complete and will proceed to the public notice;

(b) The Prospectus is incomplete.

(5) Incomplete Prospectus. If the Department determines that the Prospectus is incomplete, the Department will notify the sponsor in writing and list the missing or deficient information. The Department will take no action on the incomplete Prospectus until the required information is submitted. The Sponsor shall resubmit the entire amended Prospectus for reconsideration, unless instructed by the Department to do otherwise. Submission of a new or amended Prospectus starts a new 30 calendar day initial review period.

(6) Department May Decline to Participate. If a mitigation bank sponsor cannot demonstrate the need for the mitigation credits or the technical feasibility and ecological desirability of the bank, the Department may decline to participate in its development.

(7) Public Notice of Prospectus. Upon determining that a Prospectus is sufficient, the Department will issue a public notice entitled, "Intent To Create A Mitigation Bank." The Department will:

(a) Post the notice on the Department's web site for 30 calendar days;

(b) Send the notice to city and county planning departments, affected state and federal natural resource and regulatory agencies, adjacent landowners, conservation organizations and other interested persons requesting such notices;

(c) Briefly describe the proposed mitigation bank and reference the Prospectus provided by the bank sponsor; and

(d) Solicit comments for 30 calendar days from the date of the public notice.

(8) Consideration of Comments Received During the Public Notice Period. All comments received will be provided to the bank sponsor and to the IRT. If comments are not received from an interested party within the 30-day comment period, the Department will assume the entity does not desire to provide comments.

(9) Establishment of an Interagency Review Team (IRT) and the Role of the IRT. The Department will invite participants to serve on an IRT within 30 calendar days of the date of the public notice. The Department will serve as chair (or co-chair) of the IRT.

(a) The Department will invite each of the following agencies to nominate a representative for an IRT:

(A) Oregon Department of Environmental Quality;

(B) Oregon Department of Fish and Wildlife;

(C) Oregon Department of Land Conservation and Development;

(D) U.S. Fish and Wildlife Service;

(E) U.S. Environmental Protection Agency;

(F) Soil and Water Conservation District; and

(G) Local Government Planner, or equivalent.

(b) The Department may appoint other members of the IRT based on the nature and location of the project, particular interest in the project by persons or groups, and/or any specific expertise that may be required by the Department in development of the MBI.

(c) The IRT acts in an advisory capacity to the Department in the establishment and operation of mitigation banks. The IRT member agencies may elect to be signatories on the MBI. By participating as signatories, IRT member agencies confirm that the approved bank supports the regulatory authorities and/or missions of the IRT agency. The IRT may:

(A) Review and provide input to the Department on the Prospectus and the comments received during the public notice for use in the development of the MBI;

(B) Review and provide input on the Draft MBI;

(C) Review the performance of the bank to assist the Department in determining compliance with the MBI; and

(D) Provide input on adaptive management of the mitigation bank, as necessary, to achieve the ecological goals and objectives.

(10) Mitigation Bank Instrument (MBI). After consideration of the public comments and input from the IRT, the bank sponsor shall develop a Draft Mitigation Bank Instrument (MBI) for submittal to the Department. If the sponsor intends that the MBI serve as the permit application, he/she shall notify the Department of this intention at the time of submittal of the first draft MBI. If an MBI is used in place of a permit application, in addition to all requirements below, it shall meet the requirements for fees, content, and review procedures as specified in 141-85-0545 through 0565. The Draft MBI shall contain:

(a) All requirements for CWM plans per OAR 141-085-0680 to 0710;

(b) The applicant shall also provide the following information:

(A) The proposed service area for the bank, including a map clearly showing recognizable geographic place names and watershed boundaries;

(B) Demonstration of the need for the bank as shown by past removal-fill activities, projected demographics for the proposed service area, statements of expected activities from the local planning agency, and like documentation;

(C) A description of the projected wetland losses in the service area by HGM and Cowardin wetland classes;

(D) Proof of ownership including a title report and disclosure of any and all liens or easements on the bank site. If the sponsor does not own the land, the MBI shall contain explicit legal and recordable permission granted by the landowner to perpetually dedicate the land upon which the proposed bank and any associated buffer is located;

(E) A description of the methods and results of the evaluation of ecological stressors, such as contaminants, present at the bank site that could compromise the wetland functions;

ADMINISTRATIVE RULES

(F) Description of the location and plant community composition of reference site(s), unless an HGM reference data set is used;

(G) Description of the method(s) used to determine the number of credits to be created at the proposed bank, as well as those that will be used to account for and report credit and debit transactions;

(H) The proposed credit release schedule linked to achievement of specific performance standards;

(I) Detailed contingency plans describing how project deficiencies or performance failures will be corrected, including assignment of responsibilities for failures such as floods, vandalism, damage by pests and wildlife, invasion by weedy vegetation, etc.;

(J) Land use affidavit; and

(K) A statement indicating when each of the conditions of the MBI will terminate, unless they are perpetual in nature.

(11) Review of the Draft MBI. Within 30 calendar days of the Department's receipt of a draft MBI, the Department will conduct an initial review to determine if the MBI is complete and the information contained in the MBI adequately addresses the requirements. During this time, the Department will make and inform the sponsor of its findings, either:

(a) The Draft MBI is complete and will proceed to the IRT review process; or

(b) The Draft MBI is incomplete.

(12) Incomplete Draft MBI. If the Department determines that the Draft MBI is incomplete or deficient, the Department will notify the sponsor in writing and list the missing or deficient information. The Department will take no action on the incomplete draft MBI until the required information is submitted. The applicant shall resubmit the entire draft MBI for reconsideration, unless instructed by the Department to do otherwise. Submission of a new or amended draft MBI starts a new 30-day review period.

(13) IRT Review of the Draft MBI. Upon notification that the Draft MBI is complete, the sponsor shall provide copies to the IRT for review. At the next available IRT meeting, the IRT will review and discuss the draft MBI and identify any issues that need to be resolved prior to finalizing the MBI. IRT meetings will be held as necessary to resolve issues identified by the co-chairs.

(14) Preparation of the Final MBI. When revisions have been completed and issues identified through the IRT process have been resolved, the sponsor shall submit a final MBI to the Department and IRT members.

(15) Final Approval of the MBI. Within 30 calendar days of receipt of the final MBI, the Department will notify the sponsor and the IRT whether the agency will approve the MBI.

(16) Appeal of Department Decision. Appeals of the Department decision to affirm or deny mitigation bank approval shall be administered according to 141-085-0575.

(17) Construction Timing. At their own risk, a sponsor may begin construction of a bank prior to approval of the final MBI if the sponsor:

(a) Provides the Department with detailed documentation of the baseline conditions existing at the proposed site(s) of the bank; and

(b) Receives written consent from the Department prior to undertaking any construction. However, such consent from the Department does not exempt the sponsor from having to apply for, and obtain a removal-fill permit, if required. Written consent from the Department recognizes the sponsor's intent to create a bank but does not guarantee subsequent approval of the MBI by the Department. The Department assumes no liability for the sponsor's actions.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0730

Establishment of Mitigation Credits

(1) Credit Options. Credits can be established by using:

(a) The minimum mitigation ratios as stated in OAR 141-085-0690 (4); or

(b) By applying a wetland function based credit accounting method approved by the Department. Credits within a bank are determined by the difference between the baseline conditions of the bank prior to restoration, enhancement or creation activities, and the increased wetland functions and values that result, or are expected to result, from those activities.

(2) Bonus Credits. Additional credits beyond those established in an approved MBI may be released after five consecutive years in which the mitigation wetland meets all performance standards:

(a) For those bank credits using the 1.5:1 ratio for creation, or a function based credit accounting method approved by the Department, additional credits may be recognized by the Department when the total number

for credits for such area, including the initial release and these additional credits, does not exceed a 1:1 ratio by acreage; or

(b) Bonus credits may be recognized, at the discretion of the Department in consultation with the IRT, to cover the reasonable costs of the addition of long-term stewardship provisions to existing banks that were approved without such measures.

(3) Buffer Area Credits. Credits may be granted on an area basis for upland buffers at the discretion of the Department. Such buffers shall be essential to protect the functions of a bank from potentially adverse effects of adjacent land uses, and shall be subject to the same site protections as the bank.

(4) Credits for Non-Wetland Areas. The Department may recognize wetland credits for improvement of non-wetlands such as in-stream channel habitat, riparian floodplains, non-wetland inclusions in wetland/upland mosaics, and other ecosystem components that provide ecological benefits to the larger wetland bank.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0735

Release, Use and Sale of Mitigation Credits

(1) Initial Release of Credits Must Be Specified in the MBI. The maximum number of credits that may be released for sale in advance of bank certification shall be clearly specified in the MBI. In no case may this amount exceed 30 percent of the total credits anticipated for each phase of bank construction. Advance releases require a commensurate financial security per OAR 141-085-0700.

(2) Release of Credits Must Be in Compliance with MBI. The Department will not allow the sale or exchange of credits by a mitigation bank that is not in compliance with the terms of the MBI, the Removal-Fill Law, and all rules governing CWM. The Department may consult with the IRT in order to determine noncompliance and appropriate remedies, including enforcement action. The Department may, in consultation with the IRT, modify the credit release schedule, including reducing the number of credits or suspending credit transfers, when necessary to ensure that all credit transfers are backed by mitigation projects with a high probability of meeting performance standards.

(3) Sales to Permit Applicants. After credits have been released to the bank sponsor, they may be sold to permit applicants upon approval by the Department that such credits will satisfy the mitigation obligation of a specific permit, or to resolve an enforcement case.

(4) Sales to Public Benefit Corporations or Public Bodies. At the request of a mitigation bank sponsor, the Department may authorize the withdrawal of mitigation bank credits by a public benefit corporation as defined in ORS 65.001 or a public body. Such entities shall be designated by the Director for the purpose of reserving credits for future use in accordance with this subsection. The Director will manage such transactions to ensure that each credit is used no more than once to satisfy a use in accordance with this section. Mitigation Banks shall report every credit sale to the Department and will provide an annual credit ledger.

(5) The Department May Purchase Bank Credits. Funds from the wetland mitigation bank revolving fund may be used to purchase approved bank credits where such purchases will provide appropriate CWM.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0740

Authorization for Mitigation Banks

(1) Authorization Requirement. Bank sponsors shall obtain a removal-fill permit for any removal-fill necessary to create a proposed bank in jurisdictional areas. At the discretion of the Department, the MBI may serve as the application if complete pursuant to OAR 141-085-0550, and may also serve as the Department's authorization. If the Department accepts the MBI as the application for a removal-fill permit, the Bank sponsor shall pay the applicable fee for a removal-fill application.

(2) Baseline Conditions Must Be Approved Prior to Construction. When removal-fill permits are not required to establish a mitigation bank, the Department will approve baseline conditions prior to construction.

(3) MBI Constitutes a Department Order. If a removal-fill permit is not required to construct a mitigation bank, the Department will consider the fully executed MBI an enforceable order.

(4) Draft MBI May Be Circulated for Public Notice. For mitigation banks that do not require a permit for construction, or for such banks that the Department elects to allow the MBI to serve as the permit application, a 15 calendar day public notice will be provided of the Departments' Intent

ADMINISTRATIVE RULES

to Approve the Bank. The Department may elect to circulate a public notice of the MBI according to 141-085-0560. If an MBI is used in place of a removal-fill permit application, it shall meet the requirements for fees, content, and review procedures as specified in OAR 141-085-0545 to 0565.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0745

Records; Reporting

The Department will maintain a record of credit releases and withdrawals for each active wetland mitigation bank.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0750

Payments; Expenditure of Funds for Payment In-Lieu (PIL) Mitigation

The Department will use the Oregon Wetlands Mitigation Bank Revolving Fund Account to hold and disperse money collected from the program.

(1) Limitations on PIL Fund Expenditures. The Department will expend funds collected under the PIL mitigation option to:

(a) Restore, enhance, or create wetlands (including acquisition of land or easements as necessary to conduct restoration, enhancement or creation projects) as compensatory mitigation to compensate or replace wetland functions and values lost or diminished as result of an approved project;

(b) Purchase credits from an approved wetland mitigation bank for the purpose of fulfilling the CWM requirements of an approved project;

(c) Monitor the compensatory wetland mitigation;

(d) Conduct site management for the compensatory mitigation project as necessary to assure that the mitigation is successful; and

(e) Administer the program and fund a staff position.

(2) Geographic Limitations of Funds Expenditures. The Department will expend funds collected under the PIL option within the basin where the wetland removal-fill site occurs, unless the Department determines in that this option is not feasible.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0755

Advance Mitigation; Standard Path

(1) Set-Aside Excess Credits. As part of an existing, active individual removal-fill permit application process, an applicant may request that the Department consider that the proposed permittee responsible CWM (as documented in a CWM Plan prepared in accordance with OAR 141-085-0705) could produce mitigation credits in excess of those needed to satisfy project requirements.

(2) Additional Information Required. If the applicant desires to preserve the option of receiving additional mitigation credit from the excess credits for future projects by the same applicant and by up to one additional party, then the following additional information shall be submitted as a part of the applicant's CWM Plan:

(a) The specific area(s) of the CWM site that compensates for the specific permitted effect, and identification of the specific areas of the CWM site that are proposed for credit in future projects;

(b) A table showing how much credit, in acres under suitable mitigation ratios, is being claimed at the CWM site; and

(c) The name of any additional person who would use the advance credits.

(3) Applicant Assumes All Risk. If the applicant elects to pursue this option, he/she does so completely at his/her own risk. CWM in advance does not create the presumption that a proposed future wetland impact will be authorized, or that the CWM will be considered suitable CWM. A separate alternative analysis will be required for each and every separate individual removal-fill permit application.

(4) Monitoring Requirements. Monitoring to determine if success criteria are met shall continue for five years or until the success criteria are achieved, whichever is longer. Such monitoring requirements shall apply to each designated mitigation area, or for the entire mitigation site if constructed at one time.

(5) Conversion of Unused Credits. Unused credits created by standard path advance mitigation may be converted to alternate path mitigation credits at the discretion of the applicant and in accordance with OAR 141-085-0760.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0760

Pilot Program for Advance Mitigation; Alternate Path

(1) Objective. The objective of advance mitigation is to provide compensatory wetland mitigation that replaces wetland functions and values prior to authorized wetland impacts. Currently, the Department has an advance mitigation option available through the mitigation banking program (OAR 141-085-0720 to 0745.) and standard path advance mitigation program (OAR 141-085-0755). The current methods of advance mitigation remain in effect and are not modified by this alternate path approach. The purpose for creating alternate path advance mitigation is to:

(a) Reduce or eliminate the temporal loss of wetland functions and values associated with permittee responsible CWM;

(b) Reduce the risk of mitigation site failure by demonstrating mitigation site success prior to credit release;

(c) Reduce entry requirements associated with wetland mitigation banking by reducing initial administrative requirements and performance security requirements; and

(d) Reduce the Department's administrative burden for authorizing advance mitigation.

(2) Implementation. The Department will establish a method for implementing the alternate path advance mitigation program, including, but not limited to the following elements:

(a) Requirements for baseline condition documentation, including but not limited to: wetland delineation, wetland functions and values assessment, site selection criteria, proposed success criteria, and monitoring plan;

(b) Department approval of baseline documentation;

(c) Advance mitigation site development including Removal-fill authorization, as necessary;

(d) Mitigation site monitoring by the advance mitigation proponent; and

(e) Petition to the Department for credit certification including, but not limited to, final wetland delineation and functions and values assessment, monitoring results, credit ledger management, and long-term management and site protection plan.

(3) Term of Pilot Program. The Department will evaluate the pilot program no later than five years after implementation and may continue, modify or suspend the program depending on evaluation outcome. The Department's evaluation will consider the extent to which the program:

(a) Accomplishes the program purposes described in (1) above;

(b) Provides CWM of quality at least commensurate with wetland mitigation banking; and

(c) Influences the viability of the existing wetland mitigation banking program.

(4) Applications May Be Limited. The Department may limit the number of applicants for the alternate path advance mitigation pilot program.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0765

Compensatory Non-Wetland Mitigation (CNWM)

(1) Compensatory Non-Wetland Mitigation (CNWM) for Waters Other Than Wetlands or Tidal Waters. The Department will also require CNWM for unavoidable impacts to waters of this state for waters other than wetlands or tidal waters. Such conditions may impose obligations on the permit holder beyond the expiration of the authorization.

(2) Scope of CNWM. CNWM will be commensurate with removal-fill impacts and may include, but is not limited to:

(a) Offsite or onsite enhancement, creation, restoration or preservation of water resources of this state such as rivers, intermittent and perennial streams, lakes, ponds and springs; and

(b) Offsite or onsite improvements to enhance navigation, fishing or public recreation uses of waters of this state.

(3) CNWM Approval Standard. In order for the Department to approve compensatory mitigation for impacts to waters of this state other than wetlands or tidal waters, the applicant shall demonstrate in writing, using a method approved by the Department, that the compensatory mitigation plan will replace or provide comparable substitute water resources of the state.

(4) CNWM Conditions of Approval. The Department may require that the CNWM include:

(a) Defined performance standards;

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(b) Site monitoring and reporting using a method approved by the Department;

- (c) Administrative protection of the CNWM site; and
(d) Financial security.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0770

Complaints and Investigations

(1) Violations. A violation is:

- (a) Removal-fill without a valid authorization;
(b) Non-compliance with any condition of an authorization;

(c) Obtaining an authorization or reporting on conditions of an authorization by misrepresentation or by failure to fully disclose known material facts;

(d) Failing to comply with any terms of an enforcement order;

(e) Failing to comply with the requirements of the Removal-Fill Law or these rules; or

(f) Violation of any condition of an approved wetlands conservation plan.

(2) Reporting Suspected Violations; Complaints. Alleged or suspected violations may be reported as complaints to the Department in person, by e-mail, facsimile, telephone or in writing. When reports of alleged or suspected violations are submitted to the Department in confidence, as expressly requested by the complainant, and the information is not otherwise required by law to be submitted, the Department may keep the name of the person making the report confidential if the criteria set forth in ORS 192.501 or 192.502 are met.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0775

Enforcement Actions and Procedures; Appeals

(1) Enforcement Powers. The Department is authorized to take or recommend such civil, criminal or administrative actions as are necessary to enforce the removal-fill law and these rules.

(2) Administrative Remedies. The Department may take appropriate action to remedy violations or alleged violations, or to enforce these rules or a final order. The following administrative remedies may be used:

(a) The Department may enter an order requiring any person to cease and desist from any project if the Department determines that such violation or threatened violation presents an imminent and substantial risk of injury, loss or damage to water resources. A cease and desist order may be entered without prior notice or hearing and will be served upon the person by personal service or by registered or certified mail. A cease and desist order will state that a hearing will be held on the order if a written request for hearing is filed by the person subject to the order within 10 calendar days after receipt of the order. If a person subject to a cease and desist order files a timely request for a hearing, the Department will hold a contested case hearing before the Office of Administrative Hearings pursuant to the applicable provisions of ORS 183.310 to 183.550. Cease and desist orders will not be stayed during the pendency of a hearing conducted under this section. Neither the Department nor any duly authorized representative of the Department will be liable for any damages a person may sustain as a result of a cease and desist order issued under this section;

(b) Consent agreements and consent orders are cooperative in nature and are used when an agreement can be reached to resolve the violation. In signing a consent agreement, the violator waives his or her right to appeal;

(c) Restoration orders may be issued when cooperative agreement cannot be reached to resolve the violation. Restoration orders are appealable;

(d) Revocation or suspension of an authorization, as per OAR 14-085-0780; and

(e) Consent agreements, consent orders and restoration orders may include a civil penalty and corrective action necessary to resolve the violation.

(3) Notice and Due Process. The Department will give notice of any proposed restoration order relating to a violation by personal service or by mailing the notice by registered or certified mail to the person or public body affected. Any proposed restoration order will include a notice of violation and will describe the nature and extent of the violation.

(4) Request for Hearing. If a person subject to a restoration order under this section files a timely request for hearing, the Department will hold a contested case hearing before the Office of Administrative Hearings according to the applicable provisions of ORS 183.310 to 183.550. If the

person fails to request a hearing, a final order will be issued upon a prima facie case made on the record of the agency.

(5) Restoration Orders Must be Appealed Within 20 Calendar Days. Any person aggrieved by a proposed restoration order may request a hearing within 20 calendar days of the date of personal service or mailing of the notice.

(6) Written Requests for Hearings. Any written request for a hearing concerning a cease and desist or proposed restoration order shall admit or deny all factual matters stated in the proposed restoration order and shall state any and all claims or defenses regarding the alleged violation. Any factual matters not denied shall be presumed admitted, and failure to raise a claim or defense shall be presumed to be a waiver of such claim or defense. Evidence shall not be taken at the hearing on any issue not raised in the written request for hearing.

(7) Civil Remedies. Any violation of ORS 196.600 to 196.990 or of any rule or final order of the Department under ORS 196.600 to 196.990 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in any such proceedings the Department may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation. Civil remedies sought under this section may also include property liens. Proceedings thus brought by the Department will set forth, if applicable, the dates of notice and hearing and the specific rule or order of the Department, together with the facts of non-compliance, the facts giving rise to the public nuisance, and a statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from such violation.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

141-085-0780

Revoking or Suspending an Authorization; Allowing Corrective Action

(1) Revocation or Suspension if Out of Compliance. The Department may revoke or suspend an authorization if an alleged violator is not in compliance with any conditions of an authorization, or if the applicant failed to provide complete and accurate information in the permit application.

(2) Suspension for Delinquency of Payment. Any authorization may be suspended during any period of delinquency of payment of the renewal fee and shall be treated as though no authorization had been issued.

(3) Procedures to Revoke or Suspend Authorization. The Department may initiate the following proceedings to revoke an authorization:

(a) The Department will issue a Notice of Intent to Revoke or Suspend to the alleged violator stating the intent to revoke or suspend the authorization; and

(b) The Notice will include the following information:

(A) A statement of the alleged violator's right to a contested case hearing within 20 calendar days of receiving the notice;

(B) A statement of the authority and jurisdiction under which the contested case hearing is to be held;

(C) Citations for the relevant sections of law and rule;

(D) A short and plain statement of the matters asserted or charged as constituting the violation(s); and

(E) A statement of any action that is necessary by the alleged violator to correct or offset the effects of the violation including, but not limited to, removal of filled material or replacement of removed material.

(c) Any action specified in the notice will include a reasonable time period in which to complete the corrective action.

(A) If the alleged violator completes such action within the specified time period, the revocation or suspension procedure will be terminated; and

(B) If the authorization holder fails to request a contested case hearing, the Department may issue a final order revoking or suspending the authorization after presenting a prima facie case demonstrating that a violation has occurred.

(4) Revocation or Suspension of Multi-Year Authorizations. If a person fails to comply with reporting requirements or any other condition of a multi-year authorization the Department may revoke the multi-year status and require annual renewal, suspend the permit pending correction, or take any other enforcement action available to the Department.

(5) Appeals Procedures. Procedures for requesting an appeal on a revocation or suspension are as set forth in OAR 141-085-0775(4) and (6).

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. ef. 3-1-09

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141-085-0785

Civil Penalties; Appeals

(1) Civil Penalties May Be Assessed. In addition to any other remedy allowed by law or these rules, the Department may assess a civil penalty for any violation of the removal-fill law, these rules, an authorization or an order issued pursuant to these rules (OAR 141-085).

(2) Each Day is a Separate Offense. Each day a violation continues constitutes a separate offense for which the Department may assess a separate penalty.

(3) Multiple Penalties May Be Assessed. A civil penalty assessed on an initial violation may be followed by one or more separate civil penalties for failure to comply with a restoration order issued on the same violation.

(4) Required Notice; Right to Appeal Within 20 Calendar Days. The Department will give written notice of intent to assess a civil penalty by personal service or by registered or certified mail to the permit holder or person (hereinafter referred to as "party") incurring the civil penalty. The notice will include the following:

(a) The particular section of the statute, rule, order or authorization involved;

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the party's right to request a hearing within 20 calendar days of receiving the notice;

(d) A statement of the amount of civil penalty assessed and terms and conditions of payment; and

(e) Notification that the party may request a contested case hearing.

(5) Appeals Procedures. Procedures for requesting an appeal on a civil penalty are as set forth in OAR 141-085-0775(4) and (6).

(6) Calculating the Civil Penalty.

(a) The amount of civil penalty (F), as expressed in U.S. currency dollars, will be determined by the Department using the following formula: F = BPCI:

(A) B is the base fine factor of \$1,000;

(B) "P" is the prior knowledge factor to be determined as follows:

(i) A value of 1 will be applied if the alleged violator was unaware of the removal-fill law at the time of the alleged violation;

(ii) A value of 2 will be applied if the alleged violator was aware of the removal-fill law at the time of the alleged violation and in cases of permit non-compliance; or

(iii) A value of 5 will be applied if the alleged violator had a previous violation. A previous violation exists, if there was an adjudication (either in court or administrative hearing), or the violator failed to appeal an enforcement order (and a final order was issued), or the violator signed a consent agreement. This value will not be imposed if the previous violation occurred more than five years prior to the current incident.

(C) The cooperation value (C) will be determined by the Department after reviewing the past history of the person in taking all feasible steps or procedures necessary or appropriate to correct the violation for which the penalty is being assessed. The value will be assessed as follows:

(i) A value of 1 will be applied when the person responds to communications from the Department, supplies information requested by the Department, permits access to the site to conduct site investigations and/or complies with restoration as requested by the Department; or

(ii) A value of 3 will be applied when the person is not responsive to communications from the Department, not cooperative in providing information as requested by the Department and/or the person does not, after receiving verbal or written notification from the Department, cease the activity alleged to constitute a violation or threatened violation.

(D) "I" is the water resource adverse effect factor to be determined as follows:

(i) A value of 1 will be applied if the damage to the resource is minimal and/or the resource is expected to naturally self-restore within one year;

(ii) A value of 3 will be applied if the adverse impacts are significant and/or not expected to naturally self-restore within one year. In the case of permit non-compliance, a value of 3 will be applied if failure to correct the deficiency could result in reasonably expected adverse impacts to waters of this state or a deficiency in the obligation to provide mitigation.

(b) In cases where the prior knowledge (P) factor is greater than one (1) and the cooperation (C) factor is greater than one (1), the total amount of the civil penalty (F), in dollars U.S. currency, will be doubled, not to exceed \$10,000 per day.

(c) In determining whether to assess a separate penalty for each day a violation continues, the Department may consider the number of days during which the activity alleged to constitute a violation occurred, as well as the number of days the adverse effect of this activity continues unabated.

(7) Failure to Pay Civil Penalty. Once the final adjudication of any civil penalty has been calculated and noticed, the amount of the civil penalty will increase by the amount of the original civil penalty for every 20 calendar days that pass without the alleged violator remitting payment to the Department for the full amount of the civil penalty and the Department taking receipt of the payment. In no case will the amount of the civil penalty be increased by more than ten times the original civil penalty amount. If a civil penalty or any portion of the civil penalty is not paid, interest will accrue at the rate of nine percent per annum on the unpaid balance (pursuant to ORS 82.010).

(8) Civil Penalty Relief. The alleged violator may request from the Department a reduction or waiver of the civil penalty by showing evidence of financial hardship. The request shall be received within 20 calendar days from the date of personal service or mailing of the notice of civil penalty. Evidence provided as to the alleged violator's economic and financial condition may be presented without prejudice to any claim by the person that no violation has occurred or that the person is not responsible for the violation. The Department will reduce or waive a civil penalty upon request if the Department determines that the imposition of the full civil penalty would result in extreme financial hardship for the violator, and that the public interest in avoiding extreme financial hardship outweighs the public interest in deterring future violations.

(9) Settlement. The Department may settle violations and penalties in the exercise of its discretion taking into account the cooperation of the violator in addressing the violation.

Stat. Auth.: ORS 196.825 & 196.600-196.665

Stats. Implemented: ORS 196.600-196.692 & 196.800-196.990

Hist.: DSL 1-2009, f. 2-13-09, cert. cf. 3-1-09

Rule Caption: Minor changes to the General Authorizations rules.

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Rules Repealed: 141-089-0157, 141-089-0550, 141-089-0555, 141-089-0560, 141-089-0565, 141-089-0570, 141-089-0572, 141-089-0575, 141-089-0580

Subject: The agency made minor changes in the General Authorizations rules in division 89 to make them consistent with statute and clarify state water quality standards.

Rules Coordinator: Elizabeth Martino—(503) 986-5239

141-089-0100

Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without an individual removal-fill permit from the Department, place or remove material within waters of this state (including Essential Salmon Habitat as designated in OAR 141-102) for the purposes of fish habitat enhancement (OAR 141-085).

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

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(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085.

(5) Unless specified, the terms used in this general authorization (GA) are defined in OAR 141-085.

(6) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085 except a single application, for activities eligible for General Authorizations for Fish Enhancement and Wetland Restoration and Enhancement may be used in combination to authorize the same project.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0105

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be constructed for the primary purpose of improving aquatic habitat;

(b) Consist of fill or removal of material such as:

(A) Randomly placed rock

(B) Deflectors

(C) Rock and log weirs

(D) Gravel placement

(E) Pool and pond construction

(F) Back/side channel construction

(G) Channel reconstruction

(H) Barrier removal and placement of fish passage ways

(I) Woody material

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements;

(b) The project is not for the primary purpose of improving aquatic habitat; or

(c) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permit under 141-085; except as provided for in 141-089-0205 Wetland Restoration and Enhancement.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0110

Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements:

(1) Be consistent with the Oregon Aquatic Habitat Restoration and Enhancement Guide.

(2) Demonstrate consistency with the Oregon Department of Fish and Wildlife's requirements under ORS 509.580 to 509.645 for upstream and downstream fish passage.

(3) Fills shall be of a size appropriate to the stream, and not exceed 150 cubic yards per site unless otherwise recommended by the Oregon Department of Fish and Wildlife for purposes of providing or improving fish passage (e.g., a simulated stream bottom or reconstructed channel). For purposes of this general authorization, a site can be a single location of the entire project or a component of a project with multiple elements and geographic locations.

(4) Channel reconstruction projects shall restore pre-channelized morphology to channelized streams by providing for sinuosity and width/depth ratios that emulate the natural stream channel, as practicable.

(5) In order to stabilize deflectors, log weirs and other similar structures, the bed and the bank may be stabilized with nonstructural methods or riprap not more than 15 feet upstream and downstream of the structure. Rock fill shall not exceed 50 cubic yards at each site.

(6) Rock and log weirs and full-spanning boulder weirs may be placed within the bed and banks only if they promote fish passage, prevent streambed degradation and/or recruit spawning gravel and do not require annual reconstruction. Weirs must incorporate a keystone rock or rocks that allow for juvenile fish passage at all flows.

(7) Deflectors may be placed only if they add stream structure and increase habitat complexity.

(8) Clean, river-run gravel used for enhancing or improving spawning areas must come from within the same river system as the placement site and not exceed 100 cubic yards per site.

(9) Pools and ponds shall be designed to allow fish to escape during low water periods. Bed material may be removed to create instream pools and hydrologically connected off-channel ponds, so long as pool depth does not exceed the depth of adjacent pools.

(10) Gravel and bed materials may be removed to create or clear side or back channels.

(11) Artificial barriers to fish passage including but not limited to culverts, tidegates and road crossings (not exempt from the removal-fill law under OAR 141-085) may be removed and fish passage structures may be placed within the bed and banks of waters of this state.

(12) The project may convert wetlands to other waters if the project approximates or restores fish habitat lost by past land use activities. The project shall have only minimal adverse effects to wetlands.

(13) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department (unless exempt) in accordance with OAR 141-100.

(14) When necessary to protect and conserve the water resources of the state, the Department may waive and/or modify any conflicting guidelines, mandatory requirements or conditions in either the Fish Habitat Enhancement or Wetland Restoration and Enhancement General Authorizations.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0115

Application Requirements; Public Notice Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To reinitiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application

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that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The applicant may request additional time to respond to comments or to satisfy other requirements. The applicant and the Department will agree on a new decision date before the expiration of the 40-day period. If no agreement is reached, the Department will make a final decision within the original 40-day time period

(8) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0120

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall demonstrate that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The authorization holder shall adhere to all applicable Department of Environmental Quality (DEQ) water quality requirements. If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the water quality conditions in the 401 WQC will govern water quality requirements pertaining to the authorized removal-fill activity. In this event, a copy of the 401 Water Quality Certification shall be retained on site.

(12) The authorization holder shall obtain a water right or reservoir permit, if needed, from the Oregon Department of Water Resources if the project involves a water diversion or impoundment.

(13) The authorization holder may use streambed gravels from the trench excavation for a filter blanket.

(14) Upon completion of the project the authorization holder shall report to the Oregon Watershed Enhancement Board on Restoration Inventory Report forms provided by the Department.

(15) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(16) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(17) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(18) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(19) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(20) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0130

Expiration; Review of General Authorization

(1) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(2) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90-day extension will be allowed by the Department, if the applicant provides the Department with a written notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90-day extension.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

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141-089-0135

Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without an individual removal-fill permit, place or remove material within waters of this state, except estuaries and the Pacific Ocean, for streambank stabilization.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0145

Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) Where revetments, riprap, rock bars, log and boulder deflectors and/or any other structural techniques are unavoidable, they shall be used in combination with nonstructural approaches to streambank stabilization.

(2) Nonstructural approaches such as slope pull-back, willow mats and revegetation with native plant species, shall be used to the maximum extent possible and where technically feasible.

(3) Only clean, durable rock shall be used as riprap. Riprap used for the toe material shall be placed in an irregular pattern using large boulders or rock clusters.

(4) No material shall be removed in excess of the amount required to construct a toe trench, key material to the bank, or slope the bank.

(5) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department (unless otherwise exempt) in accordance with OAR 141-100.

(6) No material shall be placed in excess of the minimum needed to stabilize the area subject to active erosion.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0150

Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an

amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received within fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual removal-fill permit as provided in OAR 141-085.

(7) The applicant may request additional time to respond to comments or to satisfy other requirements. The applicant and the Department will agree on a new decision date before the expiration of the 40-day period. If no agreement is reached, the Department will make a final decision within the original 40-day time period.

(8) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0155

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

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(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The authorization holder shall adhere to all applicable Department of Environmental Quality (DEQ) water quality requirements. If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the water quality conditions in the 401 WQC will govern water quality requirements pertaining to the authorized removal-fill activity. In this event, a copy of the 401 Water Quality Certification shall be retained on site.

(12) The authorization holder shall ensure that all structures are placed in a manner that does not increase the upland surface area.

(13) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(14) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(15) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(16) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(17) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(18) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(19) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(20) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0165

Expiration; Review of General Authorization

(1) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public

hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(2) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90-day extension will be allowed by the Department, if the applicant provides the Department with a written notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90-day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0170

Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without obtaining an individual removal-fill permit, place or remove material from waters of this state (as described in OAR 141-085), except within the Pacific Ocean, for certain transportation related structures including roads, railroads, culverts, bridges, boat ramps, airport runways and taxiways, bicycle lanes and trails.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must obtain an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085.

(7) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0175

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable Mandatory Requirements as described in this rule. To be eligible a project must:

(a) Be for one of the following purposes:

(A) Widening shoulder for new roadside embankment, airport runways and taxiways, curbs, trails, sidewalks and rail crossings;

(B) Widening road for additional passing lanes, turn lanes and refuges and travel lanes;

(C) Widening, realigning, replacing, or removing existing railroad beds;

(D) Widening, realigning, replacing, or removing existing roads;

(E) Widening, realigning, replacing, or removing existing bridges or similar structures;

(F) Widening, realigning, replacing, or removing existing bicycle, pedestrian or other lanes or trails;

(G) Widening, realigning, replacing, or removing existing boat ramps.

(H) Widening, realigning, replacing, or removing existing airport runways and taxiways;

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(I) Constructing new bicycle, pedestrian or other lanes or trails;
(J) Replacement of culverts or similar water conveyance structures along roads, airport runways and taxiways and trails that extend beyond the existing road prism;

(K) Construction of new culverts;

(L) Extension of existing culverts beyond the existing road prism;

(M) Streambank stabilization associated with projects listed in (A) through (K); and

(N) Hydraulic scour protection associated with bridges and similar structures including but not limited to: construction of a new trench and stone embankment; construction of new bridge footings; placing new riprap to stabilize a transportation structure foundation.

(b) In waters other than wetlands, no more than a total of five thousand (5000) cubic yards of material filled, removed, or altered in waters of this state for a single and complete project. Exceeding five thousand (5,000) cubic yards may be authorized only where necessary to improve or restore fluvial processes on a project specific basis (i.e. removal of constrictive fill).

(c) Be for streambank stabilization associated with a transportation-related project as listed above, with no more than one thousand (1,000) cubic yards of material placed in a one-quarter mile reach of waters of this state for a single project or two thousand (2,000) cubic yards for multiple-related projects within a subbasin.

(d) Involve fill in wetlands of 0.5 acres or less for projects as described above in (a).

(e) Be for test holes, borings and similar activities associated with planning and design of transportation structures.

(f) Be for an activity that is incidental to the project necessary to provide fish passage or needed for the structural integrity of the project (i.e. compensatory mitigation, relocate or add utilities, etc.).

(2) A project is not eligible for this general authorization if:

(a) The project is not a transportation-related structure as described above;

(b) The project fails to meet any of the requirements of (1) above or the mandatory requirements;

(c) The project is located within the Pacific Ocean.

(d) The project involves stream channel relocation, other than temporary diversions approved by the Department.

(e) The project includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual removal-fill permit under OAR 141-085, unless it is incidental to the project or is necessary to provide compensatory mitigation, compensatory wetland mitigation, fish passage or for the structural integrity of the project.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0185

Application Requirements; Public Notice; Review Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the

Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The applicant may request additional time to respond to comments or to satisfy other requirements. The applicant and the Department will agree on a new decision date before the expiration of the 40-day period. If no agreement is reached, the Department will make a final decision within the original 40-day time period

(8) The Department may require an individual removal-fill permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0190

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

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(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The authorization holder shall adhere to all applicable Department of Environmental Quality (DEQ) water quality requirements. If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the water quality conditions in the 401 WQC will govern water quality requirements pertaining to the authorized removal-fill activity. In this event, a copy of the 401 Water Quality Certification shall be retained on site.

(12) Stormwater from any authorized activity, conveyed or discharged to a water of the state, including wetlands, must be treated by a facility specifically designed to remove stormwater contaminants before entering streams, wetlands, or other waters of this state, including mitigation wetlands, so as to minimize pollutants entering those water bodies.

(13) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(14) The authorization holder shall ensure that nonstructural approaches to bank stabilization such as slope pull-back, willow mats, rock bars, revegetation with localized native plant species, log and boulder deflectors, are utilized unless otherwise approved by Department. Where, riprap and/or other structural techniques are unavoidable, they shall be used in combination with nonstructural approaches. Where riprap is used, the toe material shall be placed in an irregular pattern using large boulders or rock clusters. Only clean, durable rock shall be used as riprap. No concrete or asphalt shall be used.

(15) In the case of road removal, the authorization holder shall ensure that all affected stream and bank areas are restored to their approximate original contour.

(16) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(17) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(18) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(19) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(20) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(21) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(22) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0200

Expiration; Review of General Authorization

(1) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public

informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012; and

(2) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90-day extension will be allowed by the Department, if the applicant provides the Department with a written notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90-day extension.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0205

Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without an individual removal-fill permit from the Department, place or remove material within waters of this state for the purposes of wetland restoration or enhancement as defined in OAR 141-085.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085, except a single application for activities eligible for General Authorizations for Fish Enhancement and Wetland Restoration and Enhancement may be used in combination to authorize the same project.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0210

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be for the primary purpose of restoring or enhancing a wetland for ecological benefits;

(b) Restore or enhance wetland functions and values; or

(c) Support the purposes of waterfowl or wetland management within a state or federally designated management area as identified in a management plan for the area.

(2) A project is not eligible for this general authorization if:

(a) The project is proposed primarily for the purpose of storm or waste water management, stock ponds, or aquaculture;

(b) The project is proposed for the purpose of complying with the requirements of compensatory wetland mitigation under OAR 141-085;

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(c) The project is for restoring a wetland previously constructed, restored or enhanced for the purpose of complying with the requirements for compensatory wetland mitigation under OAR 141-085;

(d) The project is proposed within a Wetland Conservation Plan area and is not in conformance with the approved plan; or

(e) The project is designed to restore or enhance wetlands used as amenities in golf courses, subdivisions or similar settings where their purpose is primarily aesthetic.

(f) The project replaces or diminishes existing wetland functions and values with different wetland functions and values unless it is environmentally preferable to do so.

(g) The project consists solely of the conversion of one HGM or Cowardin class of wetland to another unless it is environmentally preferable to do so (e.g., replacing important wetland or tidal water types and functions and values historically lost in the region).

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0215

Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements:

(1) The project shall have only minimal adverse effect to existing wetlands and result in a measurable increase in wetland functions and values;

(2) The project may not include clearing or removal of trees from forested wetlands to convert the forested wetland to emergent or open water wetlands, unless the resultant wetland type was historically abundant but currently disproportionately scarce within the basin;

(3) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

(4) When necessary to protect and conserve the water resources of the state, the Department may waive and/or modify any conflicting guidelines, mandatory requirements or conditions in either the Fish Habitat Enhancement or Wetland Restoration and Enhancement General Authorizations.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0220

Project Guidelines

(1) The wetland restoration or enhancement project should use techniques identified in An Introduction and Users' Guide to Wetland Restoration, Creation and Enhancement developed by the Interagency Work Group on Wetland Restoration.

(2) The following activities are specifically allowed under this general authorization:

(a) Water diversion structures. Water diversion structures may be used to direct flow into restoration or enhancement sites. The diversion structure shall be consistent with the fish passage and screening requirements of ODFW.

(b) Water impoundment structures. Water depth, duration and degree of fluctuation in the restored wetland shall be characteristic of similar wetlands in the eco-region. Water control structures may be used to manipulate water levels to simulate historical conditions, including complete drying out of the wetland.

(c) Dikes and ditches. Dikes and/or ditches may be altered or constructed. Relocating existing dikes to expand the floodplain and enlarge wetlands is an appropriate use of this general authorization. All spoil materials shall be removed from the wetland or floodplain portion of the wetland site, but some material may be used within the restoration area as long as it assists in accomplishing the objectives of the restoration. Dike and levee slopes shall be constructed at between 6:1 and 20:1 unless the wetland site does not allow it due to shape/size.

(d) Dike removal or breaching. For the purposes of restoring seasonal, tidal or other periodic flooding or saturation, dikes may be removed or breached under this General Authorization. Any breach should be sized sufficiently to prevent hydraulic interference in tidal and/or other flooding and to prevent scour. Dike material may be used in the restoration project or moved to an offsite, upland location.

(e) Filling of drainage ditches and or removal of drain tile. Drainage ditches may be filled and drain tile removed or broken under this general authorization.

(f) Streambank excavation. Expanding the surface area of areas subject to seasonal inundation in order to expand the wetland fringes of adjacent wetland areas by removal of bank material may be authorized under this general authorization.

(g) Surface excavation and recontouring. Restoring the uneven topographic surface to lands that have been subject to excavation and historical degradation may be authorized. All materials must be removed from the wetland or floodplain portion of the wetland site, but some material may be used within the restoration area as long as it assists in accomplishing the objectives of the restoration.

(h) Blasting. Blasting to create depressions or recreate habitat channels is allowed. A blasting permit may be required by the Oregon Department of Fish and Wildlife.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0225

Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The applicant may request additional time to respond to comments or to satisfy other requirements. The applicant and the Department will agree on a new decision date before the expiration of the 40-day period. If no agreement is reached, the Department will make a final decision within the original 40-day time period.

(8) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term

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harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0230

Conditions for Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The authorization holder shall adhere to all applicable Department of Environmental Quality (DEQ) water quality requirements. If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the water quality conditions in the 401 WQC will govern water quality requirements pertaining to the authorized removal-fill activity. In this event, a copy of the 401 Water Quality Certification shall be retained on site.

(12) The authorization holder shall provide a vegetated buffer of at least 50 feet to be maintained on uplands adjacent to the wetland enhancement or restoration project area, unless otherwise authorized by the Department.

(13) Upon completion of the project, the project shall be reported to the Oregon Watershed Enhancement Board and the Department on a Restoration Inventory Report form provided by the Department.

(14) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(15) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(16) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance,

except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(17) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(18) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(19) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(20) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0240

Expiration; Review of General Authorization

(1) This General Authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(2) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90-day extension will be allowed by the Department, if the applicant provides the Department with a written notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90-day extension.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0245

Purpose and Applicability

(1) These rules set forth conditions under which an applicant may, without an individual removal-fill permit from the Department, place (fill), remove (removal), alter material in waters of this state within areas designated as Essential Indigenous Anadromous Salmonid Habitat (Essential Salmon Habitat as described in OAR 141-102) for the purposes of recreational and small scale placer mining.

(2) "Prospecting" as defined by law and OAR 141-085, and activities conducted beyond the jurisdiction of the removal-fill law, as described in OAR 141-085, are all activities exempt from regulation under the removal-fill law, OAR 141-085 and this general authorization.

(3) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. This letter of authorization is not transferable to another person.

(4) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(5) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085.

(6) This general authorization is exclusive to recreational and small scale placer mining.

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(7) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(8) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085.

(9) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(10) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0250

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be for the specific purpose of recreational or small scale placer mining;

(b) Be conducted within Essential Salmon Habitat; and

(c) Remove, fill or alter less than twenty-five (25) cubic yards of material annually from the bed of a stream designated as Essential Salmon Habitat; and

(2) A project is not eligible for this general authorization if:

(a) The project does not meet the eligibility and mandatory requirements;

(b) The project involves the construction of permanent dams; or

(c) The project involves excavation from the streambank.

(d) The project involves dredging within a Scenic Waterway.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0255

Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements: If the project is within a state Scenic Waterway dredging is not permitted.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0260

Application Requirements; Review and Approval Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) Within ten (10) calendar days of receipt of an application, the Department will review the application for eligibility and compliance with the mandatory requirements and notify the applicant of approval, denial, or modification.

(3) If the application is deemed incomplete, the Department shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information.

(4) If the Department determines that the application meets all the requirements for this general authorization, it shall do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085(7). The applicant may request additional time to satisfy requirements. The applicant and the Department will agree on a new decision date before the

expiration of the 10-day period. If no agreement is reached, the Department will make a final decision within the original 10-day time period

(5) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0265

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) An authorization holder may construct a temporary low rise dam if the structure:

(a) Does not extend across the entire width of waterway, and allows the free passage of water in an amount sufficient to enable fish to travel unimpeded up and down the stream;

(b) Creates only the minimal area of impounded water necessary to operate the dredge; and

(c) Is removed upon completion of the mining activity unless otherwise instructed by the Department.

(2) The general authorization does not allow nozzling, sluicing, or digging to occur outside the wet perimeter, nor extend the wet perimeter.

(3) The general authorization does not allow disturbance of rooted or embedded woody plants including trees and shrubs, regardless of their location (for example, on gravel bars).

(4) The general authorization does not allow movement of boulders, logs, stumps, or other woody material from within the wet perimeter other than movement by hand and non-motorized equipment.

(5) The general authorization requires that the authorization holder upon completion of the project, and to the greatest extent possible, level all piles outside the main channel of the waterway created by the activity. In addition, all furrows, potholes, or other depressions outside the main channel of the waterway created by the activity shall, if practical, have at least one open side to prevent fish entrapment as the water level falls.

(6) The authorization holder shall obtain landowner permission before operating on public or private property.

(7) If the authorization holder intends to use a motorized suction dredge, a suction dredge waste discharge permit (700 PM) from the Department of Environmental Quality, must be obtained, as applicable.

(8) The authorization holder shall conduct the activity only during the recommended in-water work period identified in the Oregon Department of Fish and Wildlife's "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources", unless after consultation with ODFW, a waiver is granted by the Department for a longer or alternative time period.

(9) The authorization holder shall adhere to all applicable Department of Environmental Quality (DEQ) water quality requirements. If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the water quality conditions in the 401 WQC will govern water quality requirements pertaining to the authorized removal-fill activity. In this event, a copy of the 401 Water Quality Certification shall be retained on site.

(10) The authorization holder must ensure that the activity complies with other applicable local, state, and federal laws and regulations, including the state and federal Endangered Species Act.

(11) The authorization holder shall not allow the project to interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(12) The authorization holder shall adhere to the following conditions:

(a) The activity shall not impede recreational boating.

(b) Use of motorized suction dredges shall be restricted to the hours between 8 a.m. and 6 p.m. within five hundred (500) feet of a residence or within five hundred (500) feet of a campground except within a federally designated recreational mining site.

(c) The activity shall not occur within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

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(13) The authorization holder shall report, on a form provided by the Department, the estimated amount of material removed, placed, or altered in each waterway operated in during the preceding calendar year. The Department must receive this report no later than January 31st of each year that this general authorization is valid.

(14) The project shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during the authorized activity, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(15) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(16) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(17) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(18) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(19) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0275

Expiration; Review of General Authorization

(1) No letter of authorization will be issued with an expiration date beyond January 1, 2011, at which time this General Authorization will be reviewed in accordance with the provisions of ORS 196.850(5). An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(2) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90-day extension will be allowed by the Department, if the applicant provides the Department with a written notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90-day extension.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0280

Purpose and Applicability

(1) These rules set forth conditions under which an applicant may, without an individual removal-fill permit from the Department, dispose (fill), and place (fill), remove (removal), or alter material in waters of this state for the purposes of removing and disposing of sediment while maintaining or cleaning natural or artificially created drainage ditches upstream from tidegates.

(2) This general authorization is exclusive to:

(a) The disposal of sediments within waters of this state (e.g. wetlands) removed as a result of ditch maintenance/cleaning in drainage ditches upstream of tidegates; and/or

(b) The removal of material from drainage ditches (cleaning) upstream of tidegates that does not meet the requirements described in OAR 141-089-0280(4) below.

(3) Drainage ditches that have a free and open connection to other natural waterways and are presumed to contain food and game fish are waters of this state.

(4) The regular maintenance of legally constructed or altered ditches upstream of tidegates is exempt from regulation under the removal-fill law, OAR 141-085, 141-085 and this general authorization if:

(a) The drainage ditch was serviceable within the past five (5) years; and

(b) The maintenance would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of the drainage ditches.

(5) The placement of sediment removed from drainage ditches on wetlands may be an activity subject to the removal-fill law, OAR 141-085 and this general authorization.

(6) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085.

(7) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(8) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085.

(9) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(10) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085.

(11) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0295

Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To reinitiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

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(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The applicant may request additional time to respond to comments or to satisfy other requirements. The applicant and the Department will agree on a new decision date before the expiration of the 40-day period. If no agreement is reached, the Department will make a final decision within the original 40-day time period

(8) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0300

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are stabilized with the appropriate erosion control best management practices and revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise

approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The authorization holder shall adhere to all applicable Department of Environmental Quality (DEQ) water quality requirements. If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the water quality conditions in the 401 WQC will govern water quality requirements pertaining to the authorized removal-fill activity. In this event, a copy of the 401 Water Quality Certification shall be retained on site.

(12) For drainage ditch cleaning activities, the authorization holder shall comply with the following:

(a) Removal of existing woody vegetation, other than that growing within the maintained channel bed is prohibited;

(b) Only sand and silt sediments may be removed. This authorization is not for the removal of gravel;

(c) Erosion of disturbed areas (i.e., drainage ditch banks and work areas) shall be minimized through revegetation with grass and/or planting of trees and shrubs; and

(d) Removal shall be conducted with land-based equipment from one side of the drainage ditch unless specifically authorized by the Department.

(e) At any time excavated material is placed on adjacent dikes it shall be stabilized to eliminate erosion back into the drainage ditch.

(f) If excavated material is to be thinly spread over adjacent wetland, wet pasture, or farmed wetland, it is to be spread prior to the onset of winter rains, and controlled from eroding back into the drainage ditch.

(13) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(14) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(15) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(16) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(17) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(18) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(19) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(20) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0310

Expiration; Review of General Authorization

(1) No letter of authorization will be issued with an expiration date beyond January 1, 2011, at which time this general authorization will be reviewed in accordance with the provisions of ORS 196.850(5). An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(2) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one

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time 90-day extension will be allowed by the Department, if the applicant provides the Department with a written notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90-day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0350

Purpose and Applicability

This rule sets forth conditions under which an applicant may, without an individual removal-fill permit from the Department, place large wood, boulders, and/or spawning gravel within waters of this state (including Essential Salmon Habitat as designated in OAR 141-102) for the purpose of aquatic habitat enhancement. An authorization from the Department is required before beginning an activity authorized by this general authorization. An applicant must submit a complete application on a form provided by the Department and agree to the eligibility requirements (141-089-0355), mandatory requirements (141-089-0360), project guidelines (141-089-0365), and conditions for issuance (141-089-0375). The terms and conditions of issuance will be stated in the authorization. The authorization is not transferable to another person.

(1) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature, will not result in long-term harm to water resources of this state, and will cause only minimal individual and cumulative environmental impacts.

(2) Unless otherwise specified, the terms used in this general authorization (GA) are defined in OAR 141-085.

(3) Applications that qualify for this general authorization are exempt from the removal-fill permit fees.

(4) If a dispute arises as to the applicability of this general authorization to a proposal, the Department makes the final determination. The Department will rely upon the application, its supporting documentation and other relevant criteria.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990
Hist.: DSL 1-2008, f. 4-14-08, cert. ef. 5-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0355

Eligibility Requirements

The Department will review each application to determine whether the proposed activity complies with this general authorization rule.

(1) To be eligible, a project must be for the purpose of improving aquatic habitat and consist of placement of the following in a non-tidal river or stream:

- (a) Unanchored large wood;
- (b) Boulders to stabilize large wood;
- (c) Boulders to improve habitat complexity; or
- (d) Spawning gravel in conjunction with one of the above.

(2) A project is not eligible for this general authorization if it:

(a) Fails to meet any eligibility requirement, mandatory requirement (141-089-0360), or project guideline (141-089-0365);

(b) Is within a State Scenic Waterway or Federal Wild and Scenic Waterway;

- (c) Is within an area that is tidally influenced;
- (d) Is within city limits or urban growth boundary; or
- (e) Includes any other structure, use or activity subject to other permit requirements.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990
Hist.: DSL 1-2008, f. 4-14-08, cert. ef. 5-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0370

Application Requirements; Agency Review

(1) An application for general authorization under this rule must be submitted on a form available from the Department.

(2) A complete application must:

- (a) Contain all the information required by the application form.
- (b) Be signed by:

(A) The appropriate District Fisheries Biologist of the Oregon Department of Fish and Wildlife; and

(B) The local city or county planning department.

(3) Within fifteen (15) calendar days of receipt of an application, the Department will review it for compliance with these rules and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project modifications, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for this general authorization, the applicant may submit the project for processing and review under other another general authorization rule or as an individual permit under OAR 141-085.

(4) The applicant may request additional time to satisfy requirements. The applicant and the Department will agree on a new decision date before the expiration of the 15-day period. If no agreement is reached, the Department will make a final decision within the original 15-day time period

(5) If the application is deemed incomplete, the Department will notify the applicant, return the application and identify any missing, inaccurate or insufficient information.

(6) If the Department determines the application does not meet all the requirements for this general authorization, but does meet the requirements for the Fish Habitat Enhancement General Authorization (OAR 141-085-0100 through 0130), the Department will so notify the applicant and process the application accordingly.

(7) The Department may require an individual removal-fill permit for a project that would otherwise qualify for this general authorization if the Department determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990
Hist.: DSL 1-2008, f. 4-14-08, cert. ef. 5-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0390

Appeals; Expiration; Review of General Authorization

This General Authorization will be reviewed in accordance with the provisions of ORS 196.850(5) on or before January 1, 2011. An authorization letter issued prior to expiration of this General Authorization will remain in effect until April 1, 2013.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800-196.990
Hist.: DSL 1-2008, f. 4-14-08, cert. ef. 5-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0400

Purpose and Applicability

(1) These rules set forth conditions under which an applicant may, without an individual removal-fill permit from the Department, place or remove piling in waters of this state including areas designated as Essential Indigenous Anadromous Salmonid Habitat (Essential Salmon Habitat as described in OAR 141-102) for such purposes as over-water structure support or navigational aid.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0016 and 0021.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0011.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

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(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0405

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be placement of no more than five (5) piles or one (1) dolphin consisting of three (3) to five (5) piles;

(b) Be individual piles and piles placed for over-water structure support (e.g., pile associated with docks, piers), mooring and turning dolphins, or navigational aids not otherwise exempt from the removal-fill law as described in OAR 141-085 and 0020);

(c) Be untreated wood, steel, fiberglass or plastic piles;

(d) Be piles fitted with devices to effectively prevent perching by piscivorous bird species;

(e) Be placed from a barge-mounted or above top-of-bank position. If barge-mounted, barge shall not at any time be grounded on the bed or banks.

(f) Be placed by means of effect or vibratory methods or removed (to the extent regulated as material pursuant to OAR 141-085) by means of vibratory method only.

(2) A project is not eligible for this general authorization if:

(a) Piling is placed to construct headwalls or other bank treatment structure;

(b) Piling is placed to create new uplands;

(c) Piling is sheetpile;

(d) Piling is placed or removed by excavation (including hydraulic jet method) of streambed or banks;

(e) Piling is placed in wetlands;

(f) Piling is placed so as to impede normal water flow into or within wetlands or deflect water in a manner that causes erosion;

(g) Piling is placed so as to interfere with, or create hazard to, recreational or commercial navigation;

(h) Piling is placed as poured-in-place concrete;

(i) The project includes placement of footings or other support structure for piling;

(j) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under 141-085; or

(k) The project fails to meet any eligibility or mandatory requirements.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0415

Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation

Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual removal-fill permit as provided in OAR 141-085.

(7) The applicant may request additional time to respond to comments or to satisfy other requirements. The applicant and the Department will agree on a new decision date before the expiration of the 40-day period. If no agreement is reached, the Department will make a final decision within the original 40-day time period

(8) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0420

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Department designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeologi-

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cal sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall not disturb or destroy woody vegetation to complete the project.

(9) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(10) The authorization holder shall adhere to all applicable Department of Environmental Quality (DEQ) water quality requirements. If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the water quality conditions in the 401 WQC will govern water quality requirements pertaining to the authorized removal-fill activity. In this event, a copy of the 401 Water Quality Certification shall be retained on site.

(11) The authorization holder shall ensure that all structures are placed in a manner that does not increase the upland surface area.

(12) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(13) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(14) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(15) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(16) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(17) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(18) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0430

Expiration; Review of General Authorization

(1) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(2) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90-day extension will be allowed by the Department, if the applicant provides the Department with a written notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90-day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0500

Purpose and Applicability

(1) These rules set forth the conditions under which an applicant may, without an individual removal-fill permit from the Director, place or remove very small quantities of material within designated essential indigenous anadromous salmonid habitat areas for projects that have only minimal, temporary short-term adverse effects and no mid-term or long-term adverse effects. For purposes of this General Authorization "project" means the same as defined in OAR 141-085

(2) An authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. An applicant is required to submit a complete application on a form provided by the Department and must agree to the eligibility requirements (OAR 141-089-0505), mandatory requirements (141-089-0510) and the conditions for issuance (131-089-0520). The term and conditions of issuance shall be stated in the authorization. The term shall not exceed the expiration date of this general authorization. The authorization is not transferable to another person.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085 .

(5) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085.

(6) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(7) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0505

Eligibility Requirements; Ineligible Projects

(1) In order to authorize an activity under this general authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Have only minimal, temporary short-term adverse effects and no mid-term or long-term adverse effects;

(b) Place or remove not more than four cubic yards of material at any individual site and, cumulatively, not more than ten cubic yards of material within a designated essential indigenous anadromous salmonid habitat stream in a single project year;

(c) Have no effect on any listed species; and

(d) Have no effect on known archeological sites.

(2) Examples of eligible projects include, but are not limited to, the following:

(a) Investigative drilling to gather necessary technical data for designing building and/or road foundations;

(b) Installation of scientific measurement devices whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures;

(c) Limited surveys for historic resources.

(d) ODFW-approved fish trapping structures used for research purposes and population management purposes.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0515

Application Requirements; Review and Approval Process

(1) Any person proposing to conduct an activity covered by this general authorization shall submit an application to do so on a form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department will review the application for eligibility and compliance with the mandatory requirements.

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(3) If the application is deemed incomplete or ineligible, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information.

(4) If the Department determines that the application does not meet all the requirements for this general authorization, it shall deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(5) The applicant may request additional time to satisfy requirements. The applicant and the Department will agree on a new decision date if the Department intends to deny the application. If no agreement is reached, the Department will make a final decision to deny the application.

(6) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0520

Conditions for Issuance of General Authorization

All persons conducting activities under this general authorization shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) If previously unknown listed species are encountered during the project, the authorization holder shall immediately cease work and contact the Department as soon as possible.

(6) When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(11) The authorization holder shall adhere to all applicable Department of Environmental Quality (DEQ) water quality requirements. If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the water quality conditions in the 401 WQC will govern water quality requirements pertaining to the authorized removal-fill activity. In this event, a copy of the 401 Water Quality Certification shall be retained on site.

(12) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(13) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(14) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(15) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS chapters 196 and related administrative rules.

(16) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(17) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(18) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(19) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0530

Expiration; Review of General Authorization

(1) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be reviewed in accordance with the provisions of ORS 196.850(5), and modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(2) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90-day extension will be allowed by the Department, if the applicant provides the Department with a written notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90-day extension.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0585

Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without obtaining an individual removal-fill permit, place or remove material from certain freshwater wetlands within waters of this state (as described in OAR 141-085-0016), for all types of activities within designated Urban Growth Boundaries (UGB) or Urban Unincorporated Communities (UUC).

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental effects.

ADMINISTRATIVE RULES

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085 .

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must obtain an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085.

(7) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0600

Application Requirements; Public Notice; Review Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The applicant may request additional time to respond to comments or to satisfy other requirements. The applicant and the Department will agree on a new decision date before the expiration of the 40-day period. If no agreement is reached, the Department will make a final decision within the original 40-day time period

(8) The Department may require an individual removal-fill permit for projects that would otherwise be authorized by this general authorization, if

the Department determines that the activity might cause more than minimal individual or cumulative environmental effects or might result in long-term harm to the water resources of the state. The Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0605

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) If previously unknown state or federal listed species are encountered during the project, the authorization holder shall cease work immediately and contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(8) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(9) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of this state.

(10) The authorization holder shall adhere to all applicable Department of Environmental Quality (DEQ) water quality requirements. If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the water quality conditions in the 401 WQC will govern water quality requirements pertaining to the authorized removal-fill activity. In this event, a copy of the 401 Water Quality Certification shall be retained on site.

(11) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(12) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(13) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(14) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(15) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or

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personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(16) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental effects and will not result in long-term harm to water resources of the state.

(17) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental effects.

(18) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

141-089-0615

Expiration; Review of General Authorization

(1) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(2) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90-day extension will be allowed by the Department, if the applicant provides the Department with a written notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90-day extension.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06; DSL 2-2009, f. 2-13-09, cert. ef. 3-1-09

Rule Caption: Minor changes to the rules governing Oregon scenic waterway removal-fill permits.

Adm. Order No.: DSL 3-2009

Filed with Sec. of State: 2-13-2009

Certified to be Effective: 3-1-09

Notice Publication Date: 11-1-2008

Rules Amended: 141-100-0000, 141-100-0020, 141-100-0030, 141-100-0040, 141-100-0050, 141-100-0055, 141-100-0060, 141-100-0070, 141-100-0080, 141-100-0090

Subject: The agency is making minor changes to conform the State Scenic Waterway Rules in division 100 to the sunseting on December 31, 2005 of a provision of law allowing recreational placer mining by dredging in state scenic waterways. Since December 31, 2005, the Department of State Lands is no longer authorized by law to issue placer mining permits for dredging in state scenic waterways.

Rules Coordinator: Elizabeth Martino—(503) 986-5239

141-100-0000

Definitions

For purposes of these rules, the definitions contained in ORS 390.805 apply. In addition, the following definitions apply:

(1) "Activity" means any action(s) or project(s) involving the filling, removal or alteration of the bed or banks of the waters of a Scenic Waterway, regardless of the amount of material involved or area disturbed. Types of Activities (Note1) include:

- (a) Riverbank Erosion Control/Wetland Restoration;
- (b) Bridge;
- (c) Pipeline;
- (d) Sand and Gravel Removal;
- (e) Irrigation Diversion Work (permanent and temporary);
- (f) Fishery Enhancement Structure (Note 2);
- (g) Temporary Construction Works (e.g., cofferdams);

(h) Dredge Material Disposal;

(i) Stream Gauging Station (Note 3);

(j) Oil and Gas Exploration and Development;

(k) Bulkhead;

(l) Utility Crossing;

(m) Boat Ramp;

(n) Water Intake;

(o) Channel Access Dredging;

(p) Boat Dock;

(q) Road Fill;

(r) Fills for Structures;

(s) Underwater Blasting;

(t) Riverbank Excavation (e.g., bank sloping/reshaping);

(u) Stormwater, Waste Water;

(v) Sewer Outfall;

(w) Prospecting; and

(x) Recreational Placer Mining using equipment that does not involve dredging (Note 4)

NOTES: -1- This is not an exhaustive list of activities that could result in fill, removal, or alteration of the bed and banks of a Scenic Waterway. -2- ORS 390.835(5) allows the Oregon Department of Fish and Wildlife to undertake these projects without Scenic Waterway review. However, a removal-fill permit, lease, easement, or license may be needed. -3- ORS 390.835(6) allows the Water Resources Commission to undertake these projects without Scenic Waterway review. However, a removal-fill permit, and/or lease, easement, or license may be needed. -4- Due to action by the 2001 Oregon legislature (Oregon Laws 2001, Chapter 499, section 4), the Department is no longer authorized to issue permits for dredging related to recreational placer mining on scenic waterways.

(2) "Bed and/or Banks" means the land lying beneath the waters of the Scenic Waterway and extending to the Ordinary High Water Line.

(3) "Demonstrated Need" means the proposed activity is clearly and convincingly required.

(4) "Director" is the Director of the Department of State Lands (ORS 196.800(3)) or designate.

(5) "Department" means the Oregon Department of State Lands and/or its Director or designate.

(6) "Dredging" means to dig, gather or pull out with a machine.

(7) "Easement" is a property right granted by the Department to use state-owned land for a specific purpose and time period.

(8) "Emergency Circumstances" are immediate natural or human caused events such as, but not limited to fire, flood, or hazardous substance spills, the effects of which require prompt action to prevent irreparable harm, injury or damage to persons or property.

(9) "Irreparable" means without reasonable possibility of repair or restoration, or an extreme condition that cannot be corrected.

(10) "Lease" is an agreement between a person and the Department allowing a specific use of state-owned land for a specific period of time, subject to specified terms and conditions.

(11) "License" is a temporary, short-term (usually less than one year) authorization from the Department for a particular use or activity on state-owned land.

(12) "Navigable Waterway" is any waterbody within the State of Oregon that has been declared navigable for purposes of state ownership by a federal court, or meets the following criteria generally established by federal courts to determine title navigability:

(a) The waterbody must be capable of, or susceptible to, use as a highway for the transportation of people or goods;

(b) Transportation must be conducted in customary modes of trade and travel on water;

(c) Waters must be navigable in their natural and ordinary condition;

(d) Title navigability is determined as of the date of statehood (February 14, 1859).

(13) "Ordinary High Water" is the line on the bank or shore of a waterway to which the water ordinarily rises annually in season. The Ordinary High Water line excludes exceptionally high water levels caused by large flood events. The Department establishes ordinary high water by reference to historical data, vegetation, field observations, survey, or other generally accepted methods under OAR 141-085.

(14) "Person" is an individual, political subdivision, or government agency; or any corporation, association, firm, partnership, joint stock company; or quasi-public corporation registered to do business in the State of Oregon.

(15) "Prospecting/Recreational Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using non-motorized methods, by filling, removing or moving by artificial means less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single Scenic Waterway in a single year.

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(16) "Recreational Placer Mining" means to remove, fill or move by artificial means, one cubic yard or more of material at any one individual site and cumulatively, less than 25 cubic yards of material annually from or within the bed of a State Scenic Waterway by methods other than dredging. "Recreational placer mining" does not include dredging, which is no longer authorized in State Scenic Waterways. "Recreational placer mining" also does not include recreational prospecting that does not require a permit.

(17) "Related Adjacent Land" is all land within 1/4 of one mile of the bank of Waldo Lake, or any river or segment of river within a Scenic Waterway, except land that, in the Oregon Parks and Recreation Department's (OPRD) judgment, does not affect the view from the waters within a Scenic Waterway.

(18) "Repair" means to restore or reconstruct to a safe, sound, or original condition in order to protect persons or property from loss as a result of an unforeseeable event, such as, but not limited to, fire, flood, or hazardous substance spills.

(19) "Scenic Waterway" as described in ORS 390.805(3) includes Waldo Lake, or any river segment that has been designated under ORS 390.805 to 390.925 or any subsequent act, and includes related adjacent lands.

(20) "Scenic Waterway Emergency Removal-fill Permit" is an authorization issued by the Director for temporary, emergency-specific removal-fill activity in a Scenic Waterway upon a finding of emergency circumstances.

(21) "Scenic Waterway Removal-fill Permit" is an authorization issued by the Department for any removal, filling or alteration of the bed and banks of a Scenic Waterway.

(22) "Special Attribute" means an aesthetic, scenic, environmental, scientific, recreational or similar feature(s) identified by OPRD in a Scenic Waterway Management Plan as the value that caused a particular waterway to be included in the Oregon Scenic Waterway Program. (ORS 390.845)

(23) "Waters of a Scenic Waterway" are any waters within a designated Scenic Waterway, including its related adjacent lands that are subject to the jurisdiction of the Department.

(24) "Wet Perimeter" means the area of the stream that is underwater, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223
Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09

141-100-0020 Policy

The Department shall:

(1) Preserve and protect the natural setting, water quality, and free flowing condition of Scenic Waterways. ORS 390.815

(2) Recognize recreation, fish and wildlife uses as the highest and best uses of the waters of a Scenic Waterway. ORS 390.835(1)

(3) Protect and enhance scenic, aesthetic, natural, historic, archaeological, recreation, scientific, and fish and wildlife values along Scenic Waterways by protecting the special attributes (as listed in each Scenic Waterway Management Plan prepared by OPRD) that caused the waterway to be included in the Scenic Waterway system.

(4) Not authorize activities prohibited by law (dams, reservoirs, impoundments, all types of large-scale placer mining and the use of any dredges).

(5) Require applicants to employ streambank stabilization and rehabilitation techniques utilizing native riparian vegetation and other non-structural alternatives, unless it can be demonstrated such approaches are unlikely to be effective for the given situation under consideration by the Department.

(6) Prohibit filling, removal, or alteration of the beds and banks of Scenic Waterways except as permitted by the Director as provided in these rules.

(7) Recognize the interrelated nature of regulatory activities affecting Scenic Waterways and the need to achieve coordinated management and protection of Scenic Waterway values. The Department shall work in close cooperation with state, local, and federal agencies, particularly OPRD, Water Resources Department (WRD), Department of Environmental Quality (DEQ), Oregon Department of Fish and Wildlife (ODFW), U.S. Army Corps of Engineers (COE), affected Tribes, and local government land use planning agencies.

(8) Recognize the high level of public interest in Oregon Scenic Waterway management by providing opportunities for comment on proposed policies or rules and individual applications.

(9) Adhere to the Department's State Agency Coordination Program (OAR 141-095-0005 to 0015), to assure compliance with the statewide planning goals and compatibility with acknowledged city and county comprehensive land use plans.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478, 223
Stats. Implemented: ORS 390.835, 478, 223, 1997 OL
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09

141-100-0030

Coordination with Key Agencies Involved in Scenic Waterway Management

(1) Managing the Scenic Waterway Program is a cooperative effort of the OPRD, WRD and the Department. In addition, ODFW, DEQ, the Department of Forestry (DOF) and the Oregon State Marine Board play key roles. Therefore, the Department shall:

(a) Coordinate the review and issuance of all Scenic Waterway removal-fill permits with the affected state agencies;

(b) Coordinate the investigation of alleged Scenic Waterway removal-fill violations with affected agencies;

(c) Advise applicants of the need to obtain concurrence from OPRD for projects on related adjacent lands; and

(d) Seek to utilize the expertise of other agency staff.

(2) Because many Scenic Waterways are also included in the federal Wild and Scenic River system or similar designations on tribal lands, the Department will work closely with the appropriate federal agencies (U.S. Forest Service (USFS), Bureau of Land Management (BLM), and COE) and affected Tribes as follows:

(a) Fully coordinate the review and issuance of all Scenic Waterway removal-fill permits with the analysis outlined in the Review Procedures for Scenic Waterway Removal-fill Permits (OAR 141-100-0050(2)), and participate in National Environmental Protection Act review or any similar evaluations conducted by federal agencies; and

(b) Immediately notify the appropriate federal agency or affected Tribe of alleged Scenic Waterway removal-fill violations.

Stat. Auth.: ORS 196.800-196.990, 274.040 & 390.835(2) & (3)
Stats. Implemented: ORS 196.800-196.990, 274, 390.805, 390.835
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09

141-100-0040 Permit Types

One of the following types of permits is required prior to undertaking any removal-fill activity within waters of a Scenic Waterway:

(1) Scenic Waterway Removal-fill Permit; or

(2) Scenic Waterway Emergency Removal-fill Permit.

Stat. Auth.: ORS 196.800-196.990, 274.040 & 390.835(2) & (3)
Stats. Implemented: ORS 196.800-196.990, 274, 390.805, 390.835
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09

141-100-0050

Scenic Waterway Removal-fill Permits

(1) Application Procedures. Applications for approval of removal-fill activities in Scenic Waterways shall be submitted to the Department in writing, in advance of the proposed activity, and shall include all information needed to evaluate the request. The application shall be submitted on the Joint Permit Application Form of the COE and the Department and must meet the standards for completed applications in OAR 141-085.

(2) Review Standards. The Department shall issue Scenic Waterway removal-fill permits only upon written findings that:

(a) The proposed activity is consistent with:

(A) The Scenic Waterway Act (ORS 390.805 to 390.925) (i.e., maintenance of free-flowing character, and highest and best uses of the water for fish, wildlife, and recreation), and these rules;

(B) Any applicable OPRD Scenic Waterway Management Plan or interim classification. The Department shall coordinate with OPRD and WRD prior to making this determination.

(b) The proposed activity is consistent with ORS 196.800 to 196.825 and 196.840 to 196.870, as well as associated rules related to removal of materials from the beds and/or banks and filling of any waters of this state, for projects greater than or equal to 50 cubic yards in volume

(c) The proposed activity meets a demonstrated need and minimizes adverse impacts to special attributes of designated Scenic Waterways;

(d) The proposed activity, individually or collectively, would not degrade fish, wildlife or recreation values; and

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(e) For activities within navigable waterways, any required lease, license, easement, or right of entry has been or shall be obtained from the Department.

(3) Review Procedures:

(a) Applications shall be reviewed and processed in a manner consistent with OAR 141-085, the Department rules for individual removal and fill permits;

(b) In reviewing an application, the Department shall conduct the necessary investigations to develop a rational basis for a decision consistent with the requirements of the Review Standards and policies of this rule;

(c) The Department may consult with any person, group, or agency interested in or affected by a permit decision. Recommendations and comments regarding the project shall generally be required to be submitted in writing to the Director within 21 calendar days from the date the application notice is mailed by the Department;

(d) The Department shall provide application notice for comment to the Department of Fish and Wildlife, Department of Environmental Quality, Department of Land Conservation and Development, Department of Agriculture, Water Resources Department, Economic Development Department, State Parks and Recreation Department, State Historic Preservation Office, Department of Geology and Mineral Industries, Department of Transportation, Department of Forestry, and any other affected state or federal agency and Tribe. The Department shall also provide application notice to adjacent property owners listed on the application and interested persons who request notice;

(e) In accordance with the procedures in the Department State Agency Coordination Program, the Department shall provide application notice to the appropriate local government planning department(s) for a determination of the proposed activity's compatibility or non-compatibility with the affected city and county comprehensive plan(s) and land use regulations. If it is necessary to adopt findings of compliance with the statewide planning goals, the Department will act in accordance with its State Agency Coordination Program;

(f) The Department shall give reasonable consideration to permit conditions or comments offered by any person;

(g) The Director shall deny any permit application, based upon written findings, if the proposed activity does not comply with one or more of the Review Standards in this rule;

(h) Permits may be issued for multi-year projects in the same manner as OAR 141-085.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223

Stats. Implemented: ORS 390.835, 478 & ORS 223, 1997 Law

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09

141-100-0055

Scenic Waterway Removal-fill Permit Requirements

(1) A permit will not be required for non-motorized methods of recreational prospecting resulting in filling, removing or moving by artificial means less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single Scenic Waterway in a single year. Recreational prospecting is prohibited from any site where fish eggs are present.

(2) A permit will be required for non-motorized recreational placer mining involving filling, removing or moving by artificial means more than one cubic yard of material at any one individual site and, cumulatively, five cubic yards or more from within the bed or wet perimeter of any single scenic waterway in a single year. A permit will also be required for any amount of non-dredge, motorized placer mining.

(3) To be eligible for a Scenic Waterway removal-fill permit, recreational placer mining and non-dredge, motorized placer mining operations must conform to the following:

(a) The activity must be for recreational placer mining as defined in these rules;

(b) The activity shall not dam or divert a waterway or obstruct fish passage;

(c) Nozzling, sluicing, or digging shall not occur outside the wet perimeter, nor extend the wet perimeter;

(d) The activity shall not involve disturbance of rooted or embedded woody plants including trees and shrubs, regardless of their location (for example, on gravel bars);

(e) The activity shall not include excavation from the streambank (i.e., between the edge of the wet perimeter and the Ordinary High Water Line.);

(f) The activity shall not include movement of boulders, logs, stumps, or other woody material from the wet perimeter other than movement by hand and non-motorized equipment;

(g) Upon completion of the mining activity all piles, pits, furrows or potholes outside the main channel of the waterway created by the activity shall be leveled by hand.

(h) The recreational placer miner shall obtain landowner permission before operating on private property;

(i) The recreational placer miner shall obtain prior permission, as applicable, before operating on public lands;

(j) The activity shall occur only during the recommended in-water work period identified in the Oregon Department of Fish and Wildlife's "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources";

(k) The activity must comply with other applicable local, state, and federal laws and regulations, including the federal Endangered Species Act;

(l) The activity shall not impede recreational boating;

(m) The activity shall not occur within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(4) To qualify for a Scenic Waterway removal-fill permit for recreational placer mining under these rules, the applicant shall, before beginning operation, submit to the Department an application on a form provided by the Department, or in a letter that includes the following information:

(a) The stream(s) and the location(s) the operator will be working;

(b) The type of equipment to be used; and

(c) The approximate amount of material to be moved by the activity and the anticipated number of days per year the activity will occur at each location.

(5) Within fifteen (15) working days of receipt of a completed application, the Department will review the application for compliance with the requirements in OAR 141-100-0055(1)(a)-(n) of these rules and notify the applicant of approval, denial, or modification. Where it determines that a proposed recreational placer mining activity qualifies for approval the Department will approve the application by letter. Where it determines that a proposed recreational placer mining activity does not meet the eligibility requirements the Department will:

(a) Deny the application and inform the applicant; or

(b) Request that the applicant modify the activity to conform with the requirements in OAR 141-100-0055(1)(a)-(n) of these rules.

(6) No permit approval for recreational placer mining will be issued with an expiration date greater than five (5) years from issue date.

(7) For the purposes of review and issuance of Scenic Waterway removal-fill permits for recreational placer mining, "Bed" means the land within the wet perimeter and any adjacent non-vegetated dry gravel bar.

(8) The authorization holder shall report, on a form provided by the Department, the estimated amount of material removed, placed or altered in each waterway operated in during the preceding calendar year. The Department must receive this report no later than January 31st of each year that this general authorization is valid.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223

Stats. Implemented: ORS 390.835, 478 & 223, 1997 Law

Hist.: DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09

141-100-0060

Scenic Waterway Emergency Removal/Fill Permits

(1) Application Procedures. Applications for a Scenic Waterway emergency removal-fill permit may be made verbally (e.g., by phone), or by written application, including facsimile, by the following procedures:

(a) Applicants shall provide the Department the following information:

(A) Location of emergency;

(B) A description of the emergency;

(C) The proposed action to be taken; and

(D) The potential consequences of taking no action.

(b) Within five calendar days of receiving a verbal confirmation of an emergency permit for removal-fill activities, the applicant shall submit to the Department a written emergency permit application, in accord with the procedures herein.

(2) Review Standards. The Director shall issue Scenic Waterway emergency removal-fill permits only after determination that:

(a) Natural or human-caused situation(s) exist which cause the emergency circumstance(s), such as, but not limited to, flooding, landslides, wildfire, and hazardous substance spills;

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(b) It is necessary to make repairs or take action to prevent irreparable harm, injury, or damage to persons or property.

(3) Review Procedures. The Director shall conduct the review of Scenic Waterway emergency removal-fill permit applications by:

(a) Consulting with ODFW and OPRD prior to issuance of a temporary permit as provided by ORS 390.835(3)(a) and DEQ, and WRD (if applicable). Consultation may be achieved by Memorandum of Agreement with the applicable agencies and/or case-by-case permit review;

(b) Completing an investigation sufficient to develop a rational basis for a decision consistent with the requirements of the Review Standards;

(c) Consulting with others — such as Tribes, federal land managers and regulators (e.g., if the proposed activity is within a Wild and Scenic River) — depending upon circumstances and time constraints, and by reasonable consideration to recommendations for temporary permit conditions; and

(d) Assuring compatibility of the project, to the extent practical, with the affected local government(s) comprehensive plan and land use regulations.

(4) Permit Decisions:

(a) The Director may issue an emergency permit, only if all the Review Standards for emergency permits are met. Emergency permit issuance by the Director may be made by written confirmation to the applicant, verbally (to be followed by written confirmation), or through procedures established in Memoranda of Agreement with other agencies (e.g., through the Oregon Emergency Response System);

(b) The Department shall visit the site of the emergency permitted activity as soon as practicable following permit issuance;

(c) Following the issuance of an emergency permit, the Department shall review the emergency permit and determine if any further action is necessary to modify the permit conditions after the emergency has passed.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223

Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09

141-100-0070

Appeals

(1) Any applicant whose application to the Department for a permit has been denied, or who objects to any of the permit conditions imposed by the Director, may, within 10 calendar days of the denial of the permit or the imposition of any condition, request a hearing from the Director. The hearing shall be conducted as a contested case hearing in accordance with ORS 196.825(6).

(2) Any person, excluding permit applicants, aggrieved or adversely affected by issuance or denial of a permit by the Director may request a contested case hearing within 60 calendar days after the date of the permit decision in the manner provided by ORS 196.835.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223

Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09

141-100-0080

Enforcement

The Director is authorized to take civil, criminal, or administrative action to enforce the Removal-fill Law as provided in ORS 196.860 to 196.990:

(1) In the event of unauthorized removal-fill activities greater than or equal to 50 cubic yards in volume, all the policies and procedures of the Removal-Fill Law concerning enforcement of removal-fill violations apply in Scenic Waterways. However, for Scenic Waterway violations, restoration of the affected area to pre-disturbance conditions, to the maximum extent practicable, shall be required.

(2) In the event of removal-fill activities less than 50 cubic yards in volume:

(a) A Cease and Desist Order may be issued to halt activity as provided in ORS 196.860(2), if the Department determines the removal-fill activity threatens to exceed 50 cubic yards in volume;

(b) The Department may coordinate with and assist other state agencies with explicit enforcement authority for Scenic Waterway violations by executing an Interagency Memoranda of Agreement for enforcement.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223

Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09

141-100-0090

Appeals of Enforcement Orders

Any person aggrieved by a proposed enforcement order of the Director for a removal-fill violation in a Scenic Waterway may request a contested case hearing within twenty calendar days of the date of personal service or mailing of the notice of order. However, requesting a contested case hearing on a Cease and Desist Order must be made within 10 calendar days of the date of personal service or mailing of the notice of order. Hearing procedures are the same as for other Removal-fill Law violations as provided in OAR 141-085.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223

Stats. Implemented: ORS 390.835, 478 & ORS 223, 1997 OL

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 3-2009, f. 2-13-09, cert. ef. 3-1-09

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

Rule Caption: Definition of Valid Commercial Driver License.

Adm. Order No.: DMV 1-2009

Filed with Sec. of State: 1-26-2009

Certified to be Effective: 1-26-09

Notice Publication Date: 12-1-2008

Rules Adopted: 735-070-0043

Rules Repealed: 735-070-0043(T)

Subject: The 2007 Legislature added a definition of “holds a commercial driver license” to the Vehicle Code and in ORS 153.090(7), which sets forth the requirements for entry of a judgment in a violation or traffic offense case. (Oregon Laws 2007, Chapter 122, HB 2268). Persons who hold a commercial driver license are subject to stricter requirements under the law, making it necessary to define when a person holds a valid commercial driver license. The term “valid” as used in ORS 801.307 and 153.090(7) was not being interpreted consistently, which led to confusion as to when a person holds a valid commercial driver license. For example, a medical certificate used to prove physical qualification for a CDL may expire, but that does not automatically invalidate the CDL. The person cannot drive a commercial vehicle until he or she has a current medical certificate (ORS 807.100), but the CDL remains valid until DMV suspends, cancels or revokes the license. DMV has defined by rule when a person’s commercial driver license is valid, and the definition is retroactive to January 1, 2008, the effective date of the Act. This rule replaces a temporary rule that went into effect on August 26, 2008.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-070-0043

Definition of Valid Commercial Driver License

(1) As used in the definition of “holds a commercial driver license” in ORS 801.307 and ORS 153.090(7), the term “valid” means the commercial driver license was issued by DMV or another jurisdiction and is not expired, suspended, cancelled or revoked.

(2) This rule shall be applied retroactively to January 1, 2008.

Stat. Auth.: ORS 184.616, 184.619 and 802.020

Stats. Implemented: ORS 153.090(7) and 801.307

Hist.: DMV 21-2008(Temp), f. & cert. ef. 8-26-08 thru 2-20-09; DMV 1-2009, f. & cert. ef. 1-26-09

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

Rule Caption: Corrects eligibility determination for Workforce Investment Act (WIA) Title IB Adult, Dislocated Worker and Youth programs.

Adm. Order No.: EWP 1-2009(Temp)

Filed with Sec. of State: 2-4-2009

Certified to be Effective: 2-5-09 thru 8-4-09

Notice Publication Date:

Rules Amended: 151-020-0030

Subject: Temporarily amends the rule by correcting eligibility determination for Workforce Investment Act (WIA) Title IB Adult, Dislocated Worker and Youth programs.

Rules Coordinator: James Sagar—(503) 378-3921

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151-020-0030

Eligibility Determination for Workforce Investment Act (WIA) Title IB Adult, Dislocated Worker & Youth Programs

The following provisions of the WIA shall apply when determining an individual's eligibility to participate in Title IB programs funded by the Workforce Investment Act (WIA), Public Law 105-220.

(1) All individuals receiving any WIA Title IB funded services beyond self-service and informational services, must meet the provisions of Section 189(h) of the WIA regarding the enforcement of compliance with the Military Selective Service Act; and the provisions of Section 188 of the WIA, regarding the availability of Title IB services to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.

(2) All individuals receiving services beyond self-service and informational services funded by the WIA Title IB adult funding stream under Section 133(b)(2)(A) of the WIA must meet the priority for service determinations established by the local workforce investment board (LWIB) in accordance with Section 134(d)(4)(E) of the WIA for the local workforce area in which the individual is applying for services.

(3) All individuals receiving services beyond self-service and informational services funded by the WIA Title IB dislocated worker funding stream under Section 133(b)(2)(B) of the WIA must meet the definition of dislocated worker in accordance with Section 101(9) of the WIA as follows: The term "dislocated worker" means an individual who:

(a)(A) Has been terminated or laid off, or who has received a notice of termination or layoff, from employment;

(B)(i) Is eligible for or has exhausted entitlement to unemployment compensation; or

(ii) Has been employed for a duration sufficient to demonstrate, to the appropriate entity at a one-stop center referred to in section 134(c), attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a State unemployment compensation law; and

(C) Is unlikely to return to a previous industry or occupation;

(b)(A) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise;

(B) Is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(C) For purposes of eligibility to receive services other than training services described in section 134(d)(4) of the Act, intensive services described in section 134(d)(3) of the Act, or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close;

(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters; or

(d) Is a displaced homemaker. "Displaced homemaker" means an individual who has been providing unpaid services to family members in the home and who:

(A) Has been dependent on the income of another family member but is no longer supported by that income; and

(B) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(4) Individuals receiving services funded by the WIA Title IB youth funding stream under Section 128(b)(2)(A) must be at least 14 years of age and not more than 21 years of age at the time of registration for services and meet the definition of eligible youth in Section 101(13). The term "eligible youth" means an individual who:

(a) Is not less than age 14 and not more than age 21;

(b) Is a low-income individual; and

(c) Is an individual who is one or more of the following:

(A) Deficient in basic literacy skills.

(B) A school dropout.

(C) Homeless, a runaway, or a foster child.

(D) Pregnant or a parent.

(E) An offender.

(F) An individual who requires additional assistance to complete an educational program, or to secure and hold employment.

(5) Not more than 5% of the eligible youth who do not meet the minimum income criteria established in Section 101(25) of the Act may receive youth funded services if they meet the criteria established in WIA Section 129(c)(5) of the Act.

(a) The minimum income criteria established in Section 101(25) of the Act apply to an individual who

(A) Receives, or is a member of a family that receives, cash payments under a Federal, State, or local income-based public assistance program;

(B) Received an income, or is a member of a family that received a total family income, for the 6-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, payments described in subparagraph (A), and old-age and survivors insurance benefits received under section 202 of the Social Security Act (42 U.S.C. 402)) that, in relation to family size, does not exceed the higher of:

(i) The poverty line, for an equivalent period; or

(ii) 70 percent of the lower living standard income level, for an equivalent period;

(C) Is a member of a household that receives (or has been determined within the 6-month period prior to application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(D) Qualifies as a homeless individual, as defined in subsections (a) & (c) of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302);

(E) Is a foster child on behalf of whom State or local government payments are made; or

(F) In cases permitted by regulations promulgated by the Secretary of Labor, is an individual with a disability whose own income meets the requirements of a program described in subparagraph (A) or of subparagraph (B), but who is a member of a family whose income does not meet such requirements.

(b) Individuals who do not meet the minimum income criteria in subsection (a) shall be within one or more of the following categories:

(A) Individuals who are school dropouts.

(B) Individuals who are basic skills deficient.

(C) Individuals with educational attainment that is one or more grade levels below the grade level appropriate to the age of the individuals.

(D) Individuals who are pregnant or parenting.

(E) Individuals with disabilities, including learning disabilities.

(F) Individuals who are homeless or runaway youth.

(G) Individuals who are offenders.

(H) Other eligible youth who face serious barriers to employment as identified by the local board.

(6) Participants receiving services in projects funded by statewide activity funds in accordance with Sections 129(b) and 134(a) of the WIA must meet the following eligibility criteria:

(a) Projects serving adults age 18 and over shall be subject to the eligibility provisions established for the project.

(b) Projects serving dislocated workers shall be subject to the eligibility provisions established in Section (3) above.

(c) Projects serving youth ages 14 to 21 at the time of service entry shall be subject to the provisions of Section (4) above.

(d) Projects serving displaced homemakers may include individuals who are receiving public assistance and are within 2 years of exhausting lifetime eligibility under Part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) in accordance with Section 134(a)(3)(A)(vi)(I) of the WIA.

(7) The following additional definitions from WIA section 101 apply to eligibility determinations for WIA Title IB Youth Programs:

(a) "Family" means two or more persons related by blood, marriage, or decree of court, who are living in a single residence, and are included in one or more of the following categories:

(A) A husband, wife, and dependent children.

(B) A parent or guardian and dependent children.

(C) A husband and wife.

(b) "Offender" means any adult or juvenile who:

(A) Is or has been subject to any stage of the criminal justice process, for whom services under this Act may be beneficial; or

(B) Requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

(c) "Out-of-school youth" means an eligible youth who:

(A) Is a school dropout; or

(B) Has received a secondary school diploma or its equivalent but is basic skills deficient, unemployed, or underemployed.

(d) "School dropout" means an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent.

ADMINISTRATIVE RULES

(e) "Unemployed individual" means an individual who is without a job and who wants and is available for work. The determination of whether an individual is without a job shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining individuals as unemployed.

(8) It is the State policy to require that subrecipients have appropriate procedures to assure that only eligible individuals are served in programs funded under Title IB of the WIA. The State will accept Self-certification as the means to attest that an individual's eligibility for a program under Title IB of WIA is true and accurate. The subrecipient may adopt eligibility documentation procedures requiring a higher level of verification than self-certification. The term "verification" means to confirm eligibility requirements through examination of official documents, e.g., birth certificates, public assistance records, or speaking with official representatives of cognizant agencies.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 285A.455
Stats. Implemented: ORS 285A.455
Hist.: EWP 1-2000(Temp), f. 6-30-00, cert. ef. 7-1-00 thru 12-27-00; EWP 3-2000, f. & cert. ef. 12-22-00; EWP 1-2009(Temp), f. 2-4-09, cert. ef. 2-5-09 thru 8-4-09

Landscaping Contractors Board Chapter 808

Rule Caption: Clarifies the definition of Plan or Install to match the definition of Install in OAR 808-002-0455; housekeeping.

Adm. Order No.: LCB 1-2009

Filed with Sec. of State: 1-30-2009

Certified to be Effective: 2-1-09

Notice Publication Date: 11-1-2008

Rules Amended: 808-002-0780

Subject: The proposed amendment to OAR 808-002-0780 is to clarify the definition of Plan or Install to match the definition of Install in OAR 808-002-0455.

Rules Coordinator: Kim Gladwill-Rowley—(503) 378-5909

808-002-0780

Plan and Install

"Plan or Install" as used in ORS 671.520(2)(a)(b) means the ability to lay out verbally or in sketch or scale drawing form a landscape project for implementation, including preparation, construction, and planting; and the actual preparation, construction, and planting of the landscape project as defined in OAR 808-002-0455.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.520 & 671.540
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99; Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2009, f. 1-30-09, cert. ef. 2-1-09

Oregon Housing and Community Services Chapter 813

Rule Caption: Amends the definition of Lending Institution to be consistent with the definition in ORS 706.008.

Adm. Order No.: OHCS 1-2009(Temp)

Filed with Sec. of State: 2-9-2009

Certified to be Effective: 2-9-09 thru 8-7-09

Notice Publication Date:

Rules Amended: 813-110-0010

Subject: 813-110-0010(8) The definition of "Lending Institution" is amended to be consistent with the definition contained in ORS 706.008.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-110-0010

Definitions

All terms are used in OAR chapter 813, division 110, as defined in the Act, as provided in 813-005-0005 and herein. As used in these rules, unless the context indicates otherwise:

(1) "Application" means a request signed by a sponsor for certification of a project.

(2) "Cap" means the maximum amount of tax credits as set by the Legislature in ORS 317.097(6).

(3) "Certification" means the written verification by the department to a lender that a project is a qualified project for which the lending institution may claim a tax credit under the provisions of the Act.

(4) "Department" means the Oregon Housing and Community Services Department.

(5) "Firm Commitment of Financing" means an agreement by a lending institution to make a loan to a specific borrower on a specific property and which will contain all of the terms and conditions that the borrower has to satisfy before said loan can be funded. Payment of a commitment charge by the borrower to the lending institution may be required as a condition precedent to issuance of such an agreement.

(6) "Housing Payments" as used in the Act means rent or purchase price for a sponsored project.

(7) "Consolidated Plan" means the plan approved by the United States Department of Housing and Urban Development (HUD) which describes the needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs.

(8) "Lending Institution" means any insured institution, as defined in ORS 706.008, any mortgage company that maintains an office in this state, or any community development corporation that is organized under the Oregon Nonprofit Corporation Law.

(9) "Letter of Intent" means a proposal for financing by a lending institution subject to the borrower's compliance with certain terms stipulated by the lending institution.

(10) "Manufactured Dwelling Park" has the meaning given that term in ORS 446.003. It is any place where four or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent or lease space or keep space for rent or lease to any person for a charge or fee paid or to be paid for the rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured dwelling park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to 92.010 to 92.190.

(11) "Median Income" shall be the area median family income, adjusted for family size, as published from time to time by HUD.

(12) "Nonprofit Corporation" means a corporation that is exempt from income taxes under section 501(c)(3) or (4) of the Internal Revenue Code, as amended and in effect on December 31, 2006.

(13) "Preservation Project" means housing that was previously developed as affordable housing with a contract for rental assistance from the United States Department of Housing and Urban Development or the United States Department of Agriculture and that is being acquired by a sponsoring entity. The contract for project-based rental assistance must cover at least 25 percent of all units in the project.

(14) "Project," except as defined under "manufactured dwelling park" or "preservation project," means one or more units of housing, that has been acquired, constructed, developed, or rehabilitated, including refinanced housing, which will be rented to or owned by households whose incomes are less than 80 percent of area median income. The use of a project for eligible occupants shall be maintained for the term of the credit, in accordance with the Act, unless terminated at the discretion of the department. If there is a foreclosure, deed-in-lieu, or an involuntary transfer where title transfers to the lending institution, that lending institution may dispose of the property at its sole discretion.

(15) "Qualified Borrower" means any borrower that is a sponsoring entity that has a controlling interest in the real property that is financed by the loan. Such a controlling interest includes, but is not limited to, a controlling interest in the general partner of a limited partnership that owns the real property.

(16) "Rents Charged at the Market Interest Rate" means the rents that would be required, if the lender charged the market interest rate, in order to make the project financially feasible.

(17) "Rent Reduction" means the amount rents are reduced from the rents charged at the market interest rate as a result of the Oregon Affordable Housing Tax Credit (OAHTC) subsidy.

(18) "Rent Pass Through" means the amount of rent reduction made available to the tenants because of the reduced interest rate attributable to the OAHTC subsidy.

(19) "Sponsor" and "Sponsoring Entity" is a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of government

ADMINISTRATIVE RULES

as defined in ORS 466.706, housing authority or any other person, provided that the person has agreed to restrictive covenants imposed by a non-profit corporation, nonprofit cooperative, state governmental entity, local unit of government or housing authority.

(20) "Tenant" means a renter who occupies or will occupy a unit in a project, or a homeowner who is the borrower in an owner-occupied community rehabilitation program.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720
Stats. Implemented: ORS 317.097

Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1994(Temp), f. & cert. ef. 3-25-94; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 1-2009(Temp), f. & cert. ef. 2-9-09 thru 8-7-09

Oregon Medical Board Chapter 847

Rule Caption: Deletes two limited licenses: the Limited License, Institutional Practice, and the Limited License, Public Health.

Adm. Order No.: BME 1-2009

Filed with Sec. of State: 1-22-2009

Certified to be Effective: 1-22-09

Notice Publication Date: 12-1-2008

Rules Amended: 847-005-0005

Rules Repealed: 847-010-0054, 847-010-0055

Subject: The proposed rule change deletes two limited licenses that are no longer being issued, the Limited License, Institutional Practice, and the Limited License, Public Health.

Rules Coordinator: Diana M. Dolstra—(971) 673-2713

847-005-0005

Fees

(1) Fees to be effective upon adoption:

(a) Doctor of Medicine/Doctor of Osteopathy (MD/DO) Initial License Application — \$375;

(b) MD/DO Registration: Active, Military/Public Health, Teleradiology, Inactive, Locum Tenens, and Telemedicine — \$219/year**

(c) MD/DO Emeritus Registration — \$50/year;

(d) Limited License, SPEX/COMVEX, Visiting; Professor, Fellow, Medical Faculty, Postgraduate, Special — \$185;

(e) Acupuncture Initial License Application — \$245;

(f) Acupuncture Registration: Active, Inactive, and Locum Tenens — \$140/year**

(g) Acupuncture Limited License, Special, Visiting Professor, Postgraduate — \$75;

(h) Physician Assistant Initial License Application — \$245;

(i) Physician Assistant Registration: Active, Inactive, and Locum Tenens — \$165/year**

(j) Physician Assistant Limited License, Special, Postgraduate — \$75;

(k) Podiatrist Initial Application — \$340;

(l) Podiatrist Registration: Active, Inactive, and Locum Tenens — \$219/year**

(m) Podiatrist Emeritus Registration — \$50/year;

(n) Podiatrist Limited License, Special, Postgraduate — \$185;

(o) Miscellaneous: All Fines and Late Fees:

(A) MD/DO Registration Renewal Late Fee — \$150;

(B) Acupuncture Registration Renewal Late Fee — \$75;

(C) Physician Assistant Registration Renewal Late Fee — \$75;

(D) Podiatrist Registration Renewal Late Fee — \$150;

(p) Dispensing MD/DO/DPM Failure to Register — \$150;

(q) Oral Specialty or Competency Examination (\$1,000 deposit required) Actual costs;

(r) Affidavit Processing Fee for Reactivation — \$50;

(s) Licensee Information Requests:

(A) Verification of Licensure-Individual Requests (1-4 Licenses) — \$10 per license;

(B) Verification of Licensure-Multiple (5 or more) — \$7.50 per license;

(C) Verification of MD/DO License Renewal — \$150 Biennially;

(D) Malpractice Report — Individual Requests — \$10 per license;

(E) Malpractice Report — Multiple (monthly report) — \$15 per report;

(F) Disciplinary — Individual Requests — \$10 per license;

(G) Disciplinary Report - Multiple (quarterly report) — \$15 per report;

(t) Base Service Charge for Copying — \$5 + .20/page;

(u) Record Search Fee (+ copy charges see section (z) of this rule):

(A) Clerical — \$20 per hour*

(B) Administrative — \$40 per hour*

(C) Executive — \$50 per hour*

(D) Medical — \$75 per hour*

(v) Data Order:

(A) Standard Data License Order — \$150 each;

(B) Custom Data License Order — \$150.00 + \$40.00 per hour

Administrative time

(C) Address Label Disk — \$100 each;

(D) Active and Locum Tenens MD/DO list — \$75 each;

(E) DPM, PA, or AC list — \$10 each;

(F) Quarterly new MD/DO, DPM, PA, or AC list — \$10 each;

(2) All Board fees and fines are non-refundable, and non-transferable.

*Plus photocopying charge above, if applicable.

**Collected biennially except where noted in the Administrative Rules. All active registration fees include annual assessments of \$ 45.00 for the Oregon Health Professionals Program and all active MD/DO registration fees include \$10.00 for the Oregon Health and Science University Library, and are collected biennially.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.132, 677.265

Hist.: ME 7-1984, f. & ef. 1-26-84; ME 17-1984, f. & ef. 11-5-84; ME 6-1985, f. & ef. 7-30-85; ME 3-1986(Temp), f. & ef. 4-23-86; ME 4-1986, f. & ef. 4-23-86; ME 9-1986, f. & ef. 7-31-86; ME 2-1987, f. & ef. 1-10-87; ME 7-1987(Temp), f. & ef. 1-26-87; ME 9-1987, f. & ef. 4-28-87; ME 25-1987, f. & ef. 11-5-87; ME 9-1988, f. & cert. ef. 8-5-88; ME 14-1988, f. & cert. ef. 10-20-88; ME 1-1989, f. & cert. ef. 1-25-89; ME 5-1989 (Temp), f. & cert. ef. 2-16-89; ME 6-1989, f. & cert. ef. 4-27-89; ME 9-1989(Temp), f. & cert. ef. 8-1-89; ME 17-1989, f. & cert. ef. 10-20-89; ME 4-1990, f. & cert. ef. 4-25-90; ME 9-1990, f. & cert. ef. 8-2-90; ME 5-1991, f. & cert. ef. 7-24-91; ME 11-1991(Temp), f. & cert. ef. 10-21-91; ME 6-1992, f. & cert. ef. 5-26-92; ME 1-1993, f. & cert. ef. 1-29-93; ME 13-1993, f. & cert. ef. 11-1-93; ME 14-1993(Temp), f. & cert. ef. 11-1-93; ME 1-1994, f. & cert. ef. 1-24-94; ME 6-1995, f. & cert. ef. 7-28-95; ME 7-1996, f. & cert. ef. 10-29-96; ME 3-1997, f. & cert. ef. 11-3-97; BME 7-1998, f. & cert. ef. 7-22-98; BME 7-1999, f. & cert. ef. 4-22-99; BME 10-1999, f. & cert. ef. 7-8-99; BME 8-3-99; BME 14-1999, f. & cert. ef. 10-28-99; BME 4-2000, f. & cert. ef. 2-22-00; BME 6-2001(Temp), f. & cert. ef. 7-18-01 thru 11-30-01; BME 10-2001, f. & cert. ef. 10-30-01; BME 8-2003, f. & cert. ef. 4-24-03; BME 16-2003, f. & cert. ef. 10-23-03; BME 17-2004, f. & cert. ef. 9-9-04; BME 6-2005, f. & cert. ef. 7-20-05; BME 15-2006, f. & cert. ef. 7-25-06; BME 1-2007, f. & cert. ef. 1-24-07; BME 1-2008, f. & cert. ef. 1-22-08; BME 15-2008, f. & cert. ef. 7-21-08; BME 1-2009, f. & cert. ef. 1-22-09

Rule Caption: Increase days of practice in Oregon for Locum Tenens; add CME requirement for all licensees.

Adm. Order No.: BME 2-2009

Filed with Sec. of State: 1-22-2009

Certified to be Effective: 1-22-09

Notice Publication Date: 12-1-2008

Rules Adopted: 847-008-0070

Rules Amended: 847-008-0020, 847-008-0040

Subject: The proposed rule change increases from 180 to 240 the number of days a licensee with Locum Tenens status may practice in Oregon per biennium. The proposed rule also allows the Board to renew a licensee at Inactive status if the licensee has been out of practice for more than 12 consecutive months or if there are concerns regarding the licensee's medical competency or fitness to practice. The Board is also drafting a rule on continuing medical education to be obtained by Board licensees during the year or biennium and the CME would be required to renew their license.

Rules Coordinator: Diana M. Dolstra—(971) 673-2713

847-008-0020

Locum Tenens Registration

(1) Any licensee whose official state of residence is a state other than Oregon who proposes to practice intermittently within the State shall register and pay the biennial locum tenens registration fee.

(2) The licensee practicing in Oregon with a locum tenens registration status may practice for a period not longer than two hundred and forty consecutive days in the biennium, or a total of two hundred and forty days on an intermittent basis in the biennium. A licensee practicing in Oregon with a locum tenens registration status who wishes to reactivate to active registration status, may be granted an additional ninety days to complete the reactivation process.

(3) A volunteer camp physician, who provides medical care at a non-profit camp, shall practice with locum tenens registration status. The volunteer camp physician with locum tenens status may practice in Oregon for a period not longer than fourteen days per year.

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(4) A licensee who registers as locum tenens and who does not practice in Oregon during the biennium, shall be registered as inactive at the time of registration renewal, and shall be required to reactivate to locum tenens registration status prior to practicing in Oregon.

(5) Requirements, procedures, and fees for a Locum Tenens registration shall be the same as for active registration.

(6) Any licensee registered as locum tenens shall provide the Board with timely notification of the location and duration of each Oregon practice prior to beginning of such practice.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 3-1993, f. & cert. ef. 4-22-93; BME 6-2000, f. & cert. ef. 7-27-00; BME 7-2001, f. & cert. ef. 7-18-01; BME 11-2002, f. & cert. ef. 10-25-02; BME 2-2009, f. & cert. ef. 1-22-09

847-008-0040

Process of Registration

(1) The application for registration shall be made on a form provided by the Board.

(2) Except as provided in OAR 847-008-0015 and 847-008-0025, the application shall be accompanied by the appropriate fee as listed in 847-005-0005.

(3) The satisfactorily complete application for registration shall be filed with the Board by the first day of the month in which the license or certification is due to expire.

(4) At its discretion, the Board may waive the fee for good and sufficient reason.

(5) If the licensee has been out-of-practice for more than 12 consecutive months and/or there are other concerns regarding the licensee's medical competency or fitness to practice, the Board may renew licensee at Inactive status once the license renewal form has been completed satisfactorily.

(6) The Board shall mail to all licensees who have complied with this section a certificate of registration which shall remain in effect until the end of the last business day of the registration period.

(7) Such certificate shall be displayed in a prominent place in the holder's primary place of practice.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.175, 677.265

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; BME 14-2004, f. & cert. ef. 7-13-04; BME 14-2004, f. & cert. ef. 7-13-04; BME 16-2008, f. & cert. ef. 7-21-08; BME 2-2009, f. & cert. ef. 1-22-09

847-008-0070

Continuing Medical Competency (Education)

Licensees who wish to renew their license must have demonstrated ongoing competency to practice medicine by one of the following methods:

(1) Ongoing participation in re-certification by an American Board of Medical Specialties (ABMS) board, the American Osteopathic Association's Bureau of Osteopathic Specialists (AOA-BOS), the National Commission on Certification of Physician Assistants (NCCPA), or the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM); or

(2) 30 hours of Category 1 continuing medical education (CME) per year relevant to the licensee's current medical practice.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265

Hist.: BME 2-2009, f. & cert. ef. 1-22-09

Rule Caption: States exemptions to pain management CME requirement.

Adm. Order No.: BME 3-2009

Filed with Sec. of State: 1-22-2009

Certified to be Effective: 1-22-09

Notice Publication Date: 12-1-2008

Rules Amended: 847-010-0100

Subject: The proposed rule makes clear that licensees with a limited license or a Telemonitoring license are not required to obtain the 6 hours of CME on pain management and/or the treatment of terminally ill and dying patients, nor the 1 hour pain management course specific to Oregon provided by the Department of Human Service's Pain Commission. Proposed amendment also specifies that licensees who reactivate must complete required pain management CME within 12 months of reactivation.

Rules Coordinator: Diana M. Dolstra—(971) 673-2713

847-010-0100

Mandatory Pain Management Education

(1) All licensees of the Oregon Medical Board, except the licensees listed in section (2) of this rule, will complete mandatory continuing medical education (CME) in the subjects of pain management and/or the treatment of terminally ill and dying patients as follows:

(a) A one-hour pain management course specific to Oregon provided by the Pain Management Commission of the Department of Human Services; and

(b) A minimum of 6 (six) continuing medical education credit hours in the subjects of pain management and/or the treatment of terminally ill and dying patients. Any combination of CME coursework focusing on pain management and/or treatment of terminally ill and dying patients may be used to fulfill this requirement.

(2) Licensees holding the following types of licenses shall not be required to meet this requirement:

(a) Lapsed license;

(b) Limited License;

(c) Telemedicine license;

(d) Teleradiology license; or

(e) Telemonitoring license.

(3) The required CME must be completed after January 1, 2000 and before January 2, 2009.

(4) Licensees must be prepared to provide documentation of CME if requested by the Board.

(5) All applicants granted a license after January 2, 2009, excepting those with a type of license listed in Section (2), must obtain the required CME coursework no later than 12 months after the date the Board granted licensure.

(6) Licensees who are approved to reactivate a license previously in a registration status not requiring completion of the required CME must obtain the required coursework no later than 12 months after the date the Board approved reactivation of the license.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.228, 677.510

Hist.: BME 7-2005, f. & cert. ef. 7-20-05; BME 3-2009, f. & cert. ef. 1-22-09

Rule Caption: Specifies resources used by Board to determine if foreign medical schools meet requirements.

Adm. Order No.: BME 4-2009

Filed with Sec. of State: 1-22-2009

Certified to be Effective: 1-22-09

Notice Publication Date: 12-1-2008

Rules Amended: 847-020-0130

Subject: The proposed rule change specifies the resources used by the Board to determine if a foreign medical school meets the requirements of the Board.

Rules Coordinator: Diana M. Dolstra—(971) 673-2713

847-020-0130

Basic Requirements for Licensure of a Foreign Medical School Graduate

(1) The following requirements must be met in lieu of graduation from a school of medicine approved by the Liaison Committee on Medical Education of the American Medical Association or the Committee on the Accreditation of the Canadian Medical Schools of the Canadian Medical Association in order to qualify under ORS 677.100.

(2) The requirements for licensure of the foreign medical school graduate are as follows:

(a) Must speak English fluently and write English legibly.

(b) Must have graduated from a foreign school of medicine:

(A) The medical school must be chartered in the country in which it is located.

(B) The graduate must have attended at least four full terms of instruction of eight months each, with all courses having been completed by physical on-site attendance in the country in which the school is chartered. The requirement for four full terms of instruction of eight months each term may be waived for any applicant for licensure who has graduated from a foreign school of medicine, has substantially complied with the attendance requirements provided herein, and is certified by a specialty board recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (AOA-BOS).

(C) Any institutions in which clinical clerkships were obtained in a country other than that in which the school is chartered must provide a cer-

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tificate to prove the time spent and the satisfactory completion of the clerkships. After June 30, 1988, clinical clerkships served in the U.S. or Canada shall be taken only in institutions which conduct residencies approved by the Accreditation Council for Graduate Medical Education or the College of Family Physicians of Canada or the Royal College of Physicians and Surgeons of Canada or the American Osteopathic Association in the specific subject of the clerkship.

(D) The applicant must provide the Board with documentation to substantiate that the medical school from which the applicant graduated provided a resident course of professional instruction equivalent to that provided in a medical school approved by either the Liaison Committee on Medical Education of the American Medical Association or by the Committee on Accreditation of Canadian Medical Schools of the Canadian Medical Association. The foreign medical school from which the applicant graduated may be considered equivalent if it is on the list of medical schools recognized by the Medical Board of California or if chartered in one of the countries determined by the US Department of Education's National Committee on Foreign Medical Education and Accreditation (NCFMEA) to use accreditation standards comparable to those used to accredit medical schools in the United States, and is accredited by that country's accrediting body. The Board may determine that a foreign medical school is not equivalent if the Board receives documentation that the medical school has had its authorization, accreditation, certification or approval denied or removed by any state, country or territorial jurisdiction or that its graduates were refused a license by any state, country or territorial jurisdiction on the grounds that the school failed or fails to meet reasonable standards for medical education facilities.

(c) Must have obtained the Standard Educational Commission for Foreign Medical Graduates Certificate issued by the Educational Commission for Foreign Medical Graduates. This requirement may be waived if accredited postgraduate training was completed in Canada, or prior to the enforcement of the ECFMG certification, or if the applicant has been certified by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists (AOA-BOS). In lieu of the ECFMG certificate, Fifth Pathway applicants shall show evidence of passing the examination pursuant to Oregon standards.

(d) Must have satisfactorily completed an approved internship and/or residency (or clinical fellowship) in the United States or Canada of not less than three years of progressive training in not more than two specialties in not more than two training programs accredited for internship, residency or fellowship training by the Accreditation Council for Graduate Medical Education or the College of Family Physicians of Canada or the Royal College of Physicians and Surgeons of Canada or the American Osteopathic Association.

(A) The following may be used in lieu of the three years of post graduate training:

(I) A valid certificate issued by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists (AOA-BOS); or

(II) Successful completion of four years of practice in Oregon under a Limited License, Medical Faculty, in accordance with OAR 847-020-0140 (1) (b)-(c); or

(III) Successful completion of four years of practice in another state or the District of Columbia under a license substantially similar to the Board's Limited License, Medical Faculty.

(B) If the applicant is unable to satisfy the requirement in section (d) of this rule for postgraduate training, and the applicant has been granted a dispensation by a specialty board of the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (AOA-BOS) whereby the ABMS or AOA-BOA specialty board has granted credit to the applicant for postgraduate training completed abroad toward fulfillment of the specialty board's requirements for admission to a future specialty board's certification examination, the Board may consider the ABMS or AOA-BOS specialty board's dispensation as fulfilling that same portion of the Board's requirement for postgraduate training.

(e) A graduate of a school of medicine approved by the Oregon Medical Board pursuant to OAR 847-031-0001, 847-031-0010, 847-031-0020, 847-031-0030 and 847-031-0040 must have satisfactorily completed not less than one year of approved training in the United States or Canada in not more than one hospital accredited for internship, residency or fellowship training by the Accreditation Council for Graduate Medical Education or the Canadian Medical Association or the Royal College of Physicians and Surgeons of Canada.

(f) Must pass a written licensure examination as provided in ORS 677.110 and OAR 847-020-0170.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.100, 677.265(6)

Hist. BME 9-2001, f. & cert. ef. 7-24-01; BME 8-2002, f. & cert. ef. 7-17-02; BME 10-2004(Temp), f. & cert. ef. 4-22-04 thru 10-15-04; BME 15-2004, f. & cert. ef. 7-13-04; BME 8-2005, f. & cert. ef. 7-20-05; BME 4-2006(Temp), f. & cert. ef. 2-8-06 thru 7-7-06; BME 10-2006, f. & cert. ef. 5-8-06; BME 20-2007, f. & cert. ef. 10-24-07; BME 4-2009, f. & cert. ef. 1-22-09

Rule Caption: Establishes criteria to determine clinical competency for time out of practice of applicants for licensure.

Adm. Order No.: BME 5-2009

Filed with Sec. of State: 1-22-2009

Certified to be Effective: 1-22-09

Notice Publication Date: 12-1-2008

Rules Amended: 847-070-0019, 847-070-0020, 847-070-0045

Subject: The proposed rule amendments increase the allowable amount of time out of practice after which the Board may require the applicant/licensee to demonstrate current clinical competency, and establish a minimum of a 20-hour mentorship as one possible requirement to demonstrate current competency. Proposed amendment also clarifies that an acupuncturist who has completed a doctoral degree in Acupuncture and Oriental Medicine may identify him/herself as a "doctor of acupuncture and oriental medicine."

Rules Coordinator: Diana M. Dolstra—(971) 673-2713

847-070-0019

Interview and Examination

(1) In addition to all other requirements for licensure, an applicant may be required to appear before the Acupuncture Committee for a personal interview regarding information received in the application process. The interview shall be conducted during a regular meeting of the committee.

(2) If there is reasonable cause to question the qualifications of an applicant, or if an applicant has not practiced as an acupuncturist for a period of twenty-four (24) or more consecutive months prior to application for Oregon licensure, the Board in its discretion may require the applicant to do one or more of the following:

(a) Pass the N.C.C.A.O.M. Acupuncture Certification Examinations.

(b) Pass an evaluation which may be written, oral, practical, or any combination thereof.

(c) Provide documentation of current N.C.C.A.O.M. Acupuncture certification.

(d) Document 15 hours of continuing education acceptable to the Board for every year the applicant has ceased practice prior to application for Oregon licensure. Continuing education that meets N.C.C.A.O.M.'s recertification requirements would qualify as Board approved continuing education.

(e) As a condition of licensure, complete a mentorship of no less than 20 hours under a Board approved clinical supervisor who must individually supervise the applicant. The clinical supervisor must report the successful completion of the mentorship to the Board.

(3) An applicant shall be required to pass an open-book examination on the Medical Practice Act (ORS chapter 677) and Oregon Administrative Rules (OAR chapter 847, division 070).

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.175, 677.759

Hist.: BME 12-2005, f. & cert. ef. 10-12-05; BME 21-2006, f. & cert. ef. 10-23-06; BME 5-2009, f. & cert. ef. 1-22-09

847-070-0020

Regulation of Activities of Acupuncturists

(1) An individual other than a physician who is not authorized by the Board to engage in the practice of acupuncture shall not administer acupuncture treatment to any other individual.

(2) An acupuncturist shall report promptly to the referring physician, if requested, the method of acupuncture treatment and the results of such treatment together with such other information as the referring physician requires to maintain the records regarding acupuncture treatment.

(3) An acupuncturist must clearly indicate that he/she is an acupuncturist to individuals being treated. The acupuncturist must wear a name tag with the designation "Acupuncturist" thereon when practicing in a hospital or clinic setting where other health care providers practice. Acupuncturists are not required to wear name tags in a private practice setting.

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(4) An acupuncturist shall not represent him/herself as a physician or permit another to so represent him/her.

(5) An acupuncturist who has completed a program that leads to a doctoral degree in Acupuncture and Oriental Medicine from a school that has federally recognized accreditation may identify him/herself as a “doctor of acupuncture and oriental medicine.”

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.759

Hist.: ME 31, f. 9-9-75, ef. 10-11-75; ME 4-1979, f. & ef. 5-1-79; ME 9-1982, f. & ef. 10-27-82; ME 6-1984, f. & ef. 1-20-84; BME 16-1999, f. & cert. ef. 10-28-99; BME 5-2009, f. & cert. ef. 1-22-09

847-070-0045

Inactive Registration, and Reactivation from Inactive to Active

(1) Any acupuncturist licensed in this state and registered under ORS 677.770 who changes location to some other state or country shall be listed by the Board as inactive.

(2) If the acupuncturist wishes to resume active status, the acupuncturist shall file an affidavit with the Board describing activities during the period of inactive status.

(3) If, in the judgment of the Board, the conduct of the acupuncturist has been such, during the period of inactive registration, that the acupuncturist would have been denied a license if applying for an initial license, the Board may deny active registration.

(4) If a licensed acupuncturist in this state ceases to practice for a period of 24 or more consecutive months, the Board in its discretion may require the licensee to do one or more of the following:

(a) Pass the N.C.C.A.O.M. Acupuncture Certification Examinations.

(b) Pass an evaluation which may be written, oral, practical, or any combination thereof.

(c) Provide documentation of current N.C.C.A.O.M. Acupuncture certification.

(d) Document 15 hours of continuing education acceptable to the Board for every year the licensee has ceased practice prior to application for reactivation of Oregon licensure. Continuing education that meets N.C.C.A.O.M.’s recertification requirements would qualify as Board approved continuing education.

(e) Complete a mentorship of no less than 20 hours under a Board approved clinical supervisor who must individually supervise the licensee. The clinical supervisor must report the successful completion of the mentorship to the Board.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.175, 677.759

Hist.: ME 24-1987, f. & ef. 10-29-87; ME 6-1993, f. & cert. ef. 4-22-93; ME 10-1996, f. & cert. ef. 10-29-96; BME 16-1999, f. & cert. ef. 10-28-99; BME 12-2005, f. & cert. ef. 10-12-05; BME 5-2009, f. & cert. ef. 1-22-09

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Rulemaking to comply with federal Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008.

Adm. Order No.: PERS 1-2009

Filed with Sec. of State: 2-12-2009

Certified to be Effective: 2-12-09

Notice Publication Date: 11-1-2008

Rules Amended: 459-005-0001, 459-011-0100, 459-011-0110, 459-015-0001, 459-050-0075, 459-070-0001, 459-076-0001, 459-080-0100

Subject: The proposed rule modifications reflect the Act’s requirements regarding differential wage payments and separation from employment. These rules prescribe an effective date of January 1, 2009 so, if adopted, will apply retroactively to that date. As these rule modifications are mandated by federal law, any differential wage payments or distribution requests received in the interim would be administered in compliance with these requirements.

Housekeeping changes were made in OAR 459-015-0001(2)(b) and OAR 459-076-0001(2)(b) to update official certification titles and commissions.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-005-0001

Definitions, Generally

The words and phrases used in chapter 459, Oregon Administrative Rules, have the same meaning given them in ORS 238.005 to 238.750. Specific and additional terms used in chapter 459 generally are defined as

follows unless context of a particular division or rule within this chapter requires otherwise:

(1) “Ad hoc” means one-time for a specific purpose, case, or situation without consideration of a broader application.

(2) “After-tax” contributions means:

(a) Member contributions required or permitted by ORS 238.200 or 238.515 which a participating employer has not elected to “pick up,” assume or pay in accordance with ORS 238.205 and 238.515(b). “After-tax” contributions are included in the member’s taxable income for purposes of state or federal income taxation at the time paid to PERS. “After-tax” contributions are included in computing FAS and in computing the employer’s contributions paid to PERS.

(b) Payments made by a member to PERS for the purchase of additional benefits.

(3) “Before-tax” contributions means member contributions required or permitted by ORS 238.200 or 238.515 which a participating employer has elected to “pick up,” assume or pay in accordance with ORS 238.205 and 238.515(b). “Before-tax” contributions are not included in the member’s taxable income for purposes of state or federal income taxation at the time paid to PERS. “Before-tax” contributions are included in:

(a) Computing final average salary; and

(b) Computing the employer’s contributions paid to PERS if the employer has elected to “pick up” the member contributions.

(4) “Calendar month” means the Julian Calendar beginning with the first calendar day of a month through the last calendar day of that month.

(5) “Casual worker” means an individual engaged for incidental, occasional, irregular, or unscheduled intervals or for a period of less than six consecutive calendar months.

(6) “Contributions” means any contributions required or permitted pursuant to ORS 238.200 or 238.515.

(7) “Differential wage payment” means a payment made on or after January 1, 2009:

(a) By an employer to a member with respect to any period during which the member is performing service in the uniformed services, as defined in USERRA, while on active duty for a period of more than 30 consecutive days; and

(b) That represents all or a portion of the wages the member would have received from the employer if the member were performing service for the employer.

(8) “Effective date of withdrawal” is the later of:

(a) The first day of the calendar month in which PERS receives the completed documents required of the member who is requesting a withdrawal of the member’s regular account and variable account, if any; or

(b) The first day of the calendar month in which PERS receives the required notice of separation from the member’s former employer(s).

(9) “Effective retirement date” means:

(a) For service retirements, the date described in OAR 459-013-0260;

or

(b) For disability retirements, the date described in OAR 459-015-0015.

(10) “Elected official” means an individual who is a public official holding an elective office or an appointive office with a fixed term for the state or for a political subdivision of the state who has elected to participate in PERS pursuant to ORS 238.015(5).

(11) “Emergency worker” means an individual engaged in case of emergency, including fire, storm, earthquake, or flood.

(12) “Employee” has the same meaning as provided in ORS 238.005(7) and shall be determined in accordance with OAR 459-010-0030.

(a) For the purposes of ORS 238.005 to 238.750 the term “employee” includes public officers whether elected or appointed for a fixed term.

(b) The term “employee” does not include:

(A) A member of the governing board of a political subdivision unless the individual qualifies for membership under ORS 238.015.

(B) An individual who performs services for a public employer as a contractor in an independently established business or as an employee of that contractor in accordance with OAR 459-010-0030.

(c) An individual providing volunteer service to a public employer without compensation for hours of service as a volunteer, except for volunteer firefighters who establish membership in accordance with ORS 238.015(6).

(13) “Employer contribution account” means a record of employer contributions to the Fund, as required by ORS 238.225(1), and investment earnings attributable to those contributions, that the Board has credited to

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the account after deducting amounts required or permitted by ORS Chapter 238.

(14) "Employment" is compensated service to a participating employer as an employee whose:

(a) Period or periods of employment includes only the actual hours of compensated service with a participating employer as an employee; and

(b) Compensated service includes, but is not limited to, paid vacation, paid sick leave, or other paid leave.

(15) "Estimate" means a projection of benefits prepared by staff of a service or disability retirement allowance, a death or a refund payment. An estimate is not a guarantee or promise of actual benefits that eventually may become due and payable, and PERS is not bound by any estimates it provides. (ORS 238.455(6))

(16) "FAS" and "final average salary" have the same meaning as provided in:

(a) ORS 238.005(8) for all PERS Tier One members;

(b) ORS 238.435(2) for all PERS Tier Two members who are not employed by a local government as defined in ORS 174.116;

(c) ORS 238.435(4) for all PERS Tier Two members who are employed by a local government as defined in ORS 174.116; or

(d) ORS 238.535(2) for judge members of PERS for service as a judge.

(17) "General service member" means membership in PERS as other than a judge member, a police officer, a firefighter, or a legislator.

(18) "Good cause" means a cause beyond the reasonable control of an individual. "Good cause" exists when it is established by satisfactory evidence that factors or circumstances are beyond the reasonable control of a rational and prudent individual of normal sensitivity, exercising ordinary common sense.

(19) "Independent contractor" means an individual or business entity that is not subject to the direction and control of the employing entity as determined in accordance with OAR 459-010-0032.

(20) "Judge member" has the same meaning as provided in 238.500(3). For purposes of this chapter, active, inactive, and retired membership of a judge member shall have the same meaning as ORS 238.005(12)(b), (c), and (d), respectively.

(21) "Legislator" means an individual elected or appointed to the Oregon Legislative Assembly who has elected to participate in PERS pursuant to ORS 238.015(5) as a member of the Oregon Legislative Assembly as provided in ORS 238.068.

(22) "Member cost" means after-tax member contributions and payments made by or on behalf of a member to purchase additional benefits.

(23) "Participating employer" means a public employer who has one or more employees who are active members of PERS.

(24) "PERS" and "system" have the same meaning as the Public Employees Retirement System in ORS 238.600.

(25) "Qualifying position" has the same meaning as provided in ORS 238.005(19).

(26) "Regular account" means the account established under ORS 238.250 for each active and inactive member who has made contributions to the Fund or the account of an alternate payee of such a member.

(27) "Salary" has the same meaning as provided in ORS 238.005(21).

(a) "Salary" includes a differential wage payment, as defined in this rule.

(b) For a Tier One member, a lump sum payment for accrued vacation pay is considered salary:

(A) In determining employee and employer contributions.

(B) In determining final average salary for the purpose of calculating PERS benefits.

(c) For a Tier Two member, a lump sum payment for accrued vacation pay:

(A) Is considered salary in determining employee and employer contributions.

(B) Is not considered salary in determining final average salary for the purpose of calculating PERS benefits.

(28) "Seasonal worker" means an individual whose engagement is characterized as recurring for defined periods that are natural divisions of the employer's business cycle or services.

(29) "Staff" means the employees of the Public Employees Retirement System as provided for in ORS 238.645.

(30) "Tier One member" means a member who established membership in the system before January 1, 1996, as defined in ORS 238.430(2).

(31) "Tier Two member" means a member who established membership in the system on or after January 1, 1996, in accordance with ORS 238.430.

(32) "USERRA" means the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301-4334, as in effect on the effective date of this rule.

(33) "Vacation pay" means a lump sum payment for accrued leave in a Vacation Leave Program provided by a public employer which grants a period of exemption from work for rest and relaxation with pay, and does not include:

(a) Sick leave programs;

(b) Programs allowing the accumulation of compensatory time, holiday pay or other special leaves unless the public employer's governing body indicates by resolution, ordinance, or other legislative process, that such leave is intended to serve as additional vacation leave; and

(c) Other programs, such as a Personal Time Off (PTO) plan, which are a combination of vacation, sick, bereavement, personal and other leaves of pay as defined and described by a public employer unless the employer has a written policy that clearly indicates the percentage of the plan that represents vacation leave. If the employer's PTO has a cash option, the employer must report to PERS the amount of any lump sum pay-off for the percentage that represents vacation leave.

(34) "Variable account" and "member variable account" mean the account in the Variable Annuity Account established under ORS 238.260(2) for each active and inactive member who has elected to have amounts paid or transferred into the Variable Annuity Account.

(35) "Variable Annuity Account" means the account established in ORS 238.260(2).

(36)(a) "Volunteer" means an individual who performs a service for a public employer, and who receives no compensation for the service performed.

(b) The term "volunteer" does not include an individual whose compensation received from the same public employer for similar service within the same calendar year exceeds the reasonable market value for such service.

(37) "Year" means any period of 12 consecutive calendar months.

(38) The effective date of this rule is January 1, 2009.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 2-1998, f. & cert. ef. 3-16-98; PERS 3-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 12-2003, f. & cert. ef. 11-14-03; PERS 14-2003, f. & cert. ef. 11-20-03; PERS 15-2003, f. & cert. ef. 12-15-03; PERS 9-2004(Temp), f. 4-15-04 cert. ef. 5-21-04 thru 7-1-04; PERS 15-2004, f. & cert. ef. 6-15-04; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06; PERS 4-2006, f. & cert. ef. 4-5-06; PERS 1-2009, f. & cert. ef. 2-12-09

459-011-0100

Credit for Military Service under USERRA

(1) Purpose. The purpose of this rule is to implement ORS 238.156(1).

(2) Limitation of scope of rule. Contributions, benefits and service credit provided under this rule may not exceed contributions, benefits and service credit required under federal law for periods of military service.

(3) Definitions. For purposes of this rule:

(a) "Employee" means an individual employed by a participating public employer in a qualifying position, as defined in ORS 238.005(19) and who is not excluded from the definition of employee as set forth in ORS 238.005(7).

(b) "Employee contributions" means contributions made to the Fund.

(c) "Employer" means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the State of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(d) "Military service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

(A) Active duty;

(B) Active duty for training;

(C) Initial active duty for training;

(D) Inactive duty training;

(E) Full-time National Guard duty;

(F) A period for which an employee is absent from a position of employment for the purpose of an examination to determine the fitness of the employee to perform any of the above types of duty; or

(G) A period for which an employee is absent from employment for the purpose of performing funeral honors duty as authorized by 10 U.S.C. § 12503 or 32 U.S.C. § 115.

(e) "Salary" means the rate of pay the employee would have earned if he or she had remained employed during the period of military service, including any increases that would have been awarded the employee based on longevity of employment or seniority of position. If such rate of pay is

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not reasonably certain, the rate shall be based on the employee's average rate of pay from the employer. The average rate of pay shall be calculated for a period not to exceed the 12-month period immediately preceding the period of military service.

(f) "Uniformed services" means the following:

- (A) Armed Forces;
- (B) Army National Guard;
- (C) Air National Guard;
- (D) Commissioned corps of the Public Health Service; and
- (E) Any other category of individuals designated by the President in time of war or national emergency.

(4) Retirement credit under USERRA.

(a) Eligibility. An employee shall be eligible for the benefits of this section if:

(A) The employee leaves PERS-covered employment to perform military service;

(B) The cumulative length of the employee's absence from employment with the employer for military service does not exceed the limits set forth in USERRA § 4312;

(C) The employee initiates reemployment on or after December 12, 1994, with the same PERS-covered employer within the time limits specified in USERRA § 4312; and

(D) All other eligibility requirements for benefits under USERRA are met.

(b) Credit for military service. An employee who meets the eligibility requirements of subsection (a) of this section shall be credited with the amount of retirement credit the employee would have accrued if he or she had remained in employment with the employer during the period of military service, only to the extent that the employee contributions have been made.

(c) Termination. An employee's eligibility for the benefits of this rule terminates upon the occurrence of one of the disqualifying events listed in USERRA §4304.

(5) Employee contributions.

(a) Employee contributions shall be made upon reemployment for eligible military service in accordance with the following:

(A) Contributions to be made by the employer. If the employee was entitled to employer-paid pre-tax (EPPT) contributions as described in OAR 459-009-0200 as of the date the employee left employment to perform military service, the employer must pay, in a lump sum payment, the amount of employee contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(B) Contributions to be made by the employee. If the employee was entitled to only member-paid pre-tax (MPPT) or member-paid after-tax (MPAT) contributions as described in OAR 459-009-0200 as of the date the employee left employment to perform military service, the employee may contribute part or all of the employee contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule. Contributions made under this paragraph must be remitted to PERS by:

- (i) Payroll deduction; or
- (ii) Monthly payment of no less than one month of contributions; or
- (iii) Lump-sum payment.

(b) Any individual, agency, or organization may pay the employee contributions specified in paragraph (5)(a)(B) on behalf of the employee under the payment provisions set forth in subparagraph (5)(a)(B)(ii) or (iii).

(c) Contributions made under this section must be made during the period beginning with reemployment and whose duration is three times the period of the employee's military service, such period not to exceed five years.

(d) Any contributions made under this section shall be added to the employee's regular or variable account(s).

(e) Contributions made under this section may not include nor be credited with earnings or losses that would have been credited during the period of military service.

(f) Contributions made under this section may not exceed the amount of employee contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(A) The maximum amount of employee contributions that may be submitted under this section must be reduced by the amount of employee contributions attributable to differential wage payments received by the employee for the period of military service.

(B) Employee contributions attributable to differential wage payments received by the employee for the period of military service must be considered employee contributions under subsection (4)(b) of this rule if the employer reports to PERS that the employee is eligible for benefits pursuant to subsection (4)(a) of this rule.

(C) Employee contributions attributable to differential wage payments paid to the employee during the period of military service must be credited with earnings and losses that would have been credited during the period of military service.

(6) Employer contributions. Any employer contributions associated with credit for military service under this rule must be made as directed by PERS in accordance with ORS 238.225.

(7) The effective date of this rule is January 1, 2009.

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

Stat. Auth.: ORS 238.650 & 238.156

Stats. Implemented: ORS 238.156

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0015; PERS 2-2004, f. & cert. ef. 1-22-04; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06; PERS 16-2006, f. & cert. ef. 11-24-06; PERS 1-2009, f. & cert. ef. 2-12-09

459-011-0110

Credit for Military Service under ORS 238.156(3)

(1) Definitions. For purposes of this rule:

(a) "Armed Forces" means the:

- (A) Army;
- (B) Navy;
- (C) Air Force;
- (D) Marine Corps; and
- (E) Coast Guard.

(b) "Employee" means an individual employed by a participating public employer in a qualifying position, as defined in ORS 238.005(19) and who is not excluded from the definition of employee as set forth in ORS 238.005(7).

(c) "Employer" means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the state of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(d) "Military service" means the period during which the employee is in active duty service in the Armed Forces.

(e) "Salary" means the employee's rate of pay, for contribution and benefit calculation purposes, at the time the employee entered or reentered military service.

(2) Retirement credit under ORS 238.156(3).

(a) Eligibility. An employee shall be eligible for the benefits of this rule if:

- (A) The employee leaves employment to perform military service;
- (B) The employee returns to employment with the same employer after other than dishonorable discharge from military service and within the time limits specified in ORS 238.156(3)(b); and

(C) The employee is either not entitled to or would receive a lower benefit under the provisions of OAR 459-011-0100.

(b) Credit for military service. An employee who meets the eligibility requirements of subsection (a) of this section shall be credited with the amount of retirement credit the employee would have accrued if he or she had remained in employment with the employer during the period of military service, provided that all required contributions have been made.

(3) Contributions for the period of military service. To receive credit for the period of military service, contributions must be made to the Fund in accordance with the following:

(a) Contributions must be made in a lump sum payment as specified in ORS 238.156(3)(c);

(b) Such lump sum payment must equal six percent of the salary that would have been paid to the employee had the employee remained in employment with the employer during the period of military service based on the employee's salary rate at the time the employee entered or reentered military service;

(c) Any individual, agency, or organization may pay the amount specified in this subsection on behalf of the employee; and

(d) Any contributions made under this section shall be added to the employee's regular account and in all respects shall be considered as though made by payroll deduction.

(e) Contributions made under this rule may not include nor be credited with earnings or losses that would have been credited during the period of military service.

(f) The amount of the lump sum payment required under subsection (b) of this section must be reduced by the amount of employee contribu-

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tions attributable to differential wage payments received by the employee for the period of military service.

(A) Employee contributions attributable to differential wage payments received by the employee for the period of military service must be considered employee contributions under subsection (2)(b) of this rule if the employee submits the lump sum payment as reduced under this subsection.

(B) Employee contributions attributable to differential wage payments paid to the employee during the period of military service must be credited with earnings and losses that would have been credited during the period of military service.

(4) Employer contributions. Any employer contributions associated with credit for military service under this rule must be made as directed by PERS in accordance with ORS 238.225.

(5) The effective date of this rule is January 1, 2009.

Stat. Auth.: ORS 238.650 & 238.156

Stats. Implemented: ORS 238.156

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0155; PERS 2-2004, f. & cert. ef. 1-22-04; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06; PERS 1-2009, f. & cert. ef. 2-12-09; PERS 1-2009, f. & cert. ef. 2-12-09

459-015-0001

Definitions

The words and phrases used in this division have the same meaning given them in ORS Chapter 238 and OAR 459-005-0001. Additional terms are defined as follows unless the context requires otherwise.

(1) Any work for which qualified: A job, not necessarily the last or usual job, which the applicant for a disability retirement allowance:

(a) Is physically and psychologically capable of performing; and

(b) Has, or may obtain with reasonable training the knowledge, skills and abilities, to perform the job.

(2) Certified vocational consultant: A person who satisfies the criteria set forth under either of the following:

(a) A Master's Degree in vocational rehabilitation, and one year of experience in performing vocation evaluations or developing individualized return-to-work plans; or a Bachelor's Degree and two years of such experience. All degrees must have been earned at an accredited institution; or

(b) Accredited as a Certified Rehabilitation Counselor (CRC) by the Commission on Rehabilitation Counselor Certification; as a Certified Disability Management Specialist (CDMS) by the Certification of Disability Management Specialists Commission; or a Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment Specialist (CWA) by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.

(3) Confidential information: Information of a personal nature such that disclosure would constitute an unreasonable invasion of privacy as defined by state law.

(4) Date of disability: The later of:

(a) The day an active member ceased to work because of injury or disease;

(b) The date an inactive member separated from employment if the inactive member applies for a disability retirement allowance within five years from date of separation and the disability has been continuous from the date of separation; or

(c) The date an inactive member was disabled if such disability occurred within six months from date of separation.

(5) Date of termination: The date a member terminates from employment such that an employee/employer relationship no longer exists; the last day worked (physically on the job), the last day of paid leave, or the last day of an official leave of absence, whichever is the later.

(6) Extended duration: A period of not less than 90 consecutive calendar days, unless the disability is expected to result in the death of the disabled member in less than 90 days.

(7) Independent medical exam: An exam or exams conducted by a physician chosen by PERS for purposes other than treatment which results in the issuance of a report or reports based on those exams, giving an opinion regarding the claimed injury or disease.

(8) Material contributing cause: The efficient, dominant, and proximate cause of the disability, without which the member would not be disabled.

(9) Monthly salary: "Salary" as defined in ORS 238.005(21)(a) that is earned in the last full calendar month of employment, and includes employer payments under ORS 238.205. This includes a differential wage payment as defined in OAR 459-005-0001.

(a) Retroactive payments or payments made due to clerical errors, paid in accordance with ORS 238.005(21)(b)(C), are allocated to the period the salary was earned or should have been earned.

(b) Payments of salary paid within 31 days of separation are allocated to the period the salary was earned and should be considered as paid on the last date of employment.

(10) Monthly salary received is the greater of the salary paid, as defined in section (9) of this rule for the last full calendar month of:

(a) Employment before the date of disability; or

(b) Differential wage payments made before the date of disability.

This subsection is effective January 1, 2009.

(11) Normal retirement age: The age at which a member can retire without a reduced benefit as set forth under ORS 238.005 and 238.280.

(12) Other income: Includes, but is not limited to:

(a) Salary or wages received as an employee;

(b) Self-employment income from:

(A) Services industry;

(B) Sales;

(C) Assembly or manufacturing;

(D) Consulting;

(E) Property management;

(F) Hobby income; or

(G) Book advances.

(c) "Other income" does not include:

(A) Investment income;

(B) Rent; and

(C) Royalties.

(13) Physician: A medical doctor, a doctor of osteopathy, a doctor of oral surgery, a chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only within the purview of their license issued by the designated authority of a state.

(14) Periodic review: A review of a member receiving a disability retirement allowance to determine whether or not a continued allowance is warranted.

(15) Performance of duty: Mental or physical incapacitation arising out of and in the course of duty and is not intentionally self-inflicted. The injury or disease must be initially caused, aggravated or accelerated to cause incapacitation by the performance of the member's duties in the employment of a participating public employer. The job must be the material contributing cause of the injury or disease. Performance of duty includes whatever an employee may be directed, required or reasonably expected to do in connection with his or her employment, and not solely the duties peculiar to his or her position.

(16) Pre-existing condition: A condition that was not sustained in actual performance of duty with the current employer.

(17) Protected health information: Health information created or received by a health care provider, health plan, or health care clearinghouse, where an individual has a reasonable belief that the information can identify the individual, which relates to:

(a) The past, present, or future physical or mental health of an individual;

(b) The provision of health care to an individual; or

(c) The past, present, or future payment for the provision of health care to an individual.

(18) Qualifying position: One or more concurrent positions with a participating employer, in a participating class, which requires 600 or more hours in a calendar year.

(19) Separation from all service entitling the member to membership in the system: means the last day worked (physically on the job), the last day of paid leave, or the last day of an official leave of absence, whichever is the later.

(20) Similar in compensation: Salary or income, excluding overtime, equaling at least 80% of the monthly salary, as defined in section (9) of this rule.

(21) Similar location: A position in the same general area of the applicant's residence or last employment location.

(22) Training or vocational rehabilitation program: A comprehensive, coordinated program, usually state or federally funded, to train and assist individuals with disabilities in securing gainful employment commensurate with their abilities and capabilities.

(23) Vocational evaluation: An evaluation conducted by a certified vocational consultant, to determine the ability of an applicant to perform any work for which they are qualified.

(24) Work related stress: Conditions or disabilities resulting from, but not limited to:

(a) Change of employment duties;

(b) Conflicts with supervisors;

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- (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- (d) Relationships with supervisors, coworkers, or the public;
- (e) Specific or general job dissatisfaction;
- (f) Work load pressures;
- (g) Subjective perceptions of employment conditions or environment;
- (h) Loss of job or demotion for whatever reason;
- (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- (j) Objective or subjective stresses of employment; or
- (k) Personnel decisions.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.320 - 238.345 & 238.435(5)

Hist.: PERS 15-2005, f. & cert. ef. 10-3-05; PERS 1-2009, f. & cert. ef. 2-12-09

459-050-0075

In-Service Distribution

The purpose of this rule is to describe the types of distributions available to a participant who has not had a severance of employment. Distributions made while a participant is still employed are "in-service" distributions.

(1) De minimis distribution. A de minimis distribution is an in-service distribution of the entire balance of a small account before the date a participant has a severance of employment. A de minimis distribution may be made if all of the following conditions are satisfied:

(a) No prior de minimis distribution was made to the participant;

(b) The total balance of the participant's account does not exceed the limitations in the Internal Revenue Code Section (IRC) 457(e)(9)(A), which is \$5,000;

(c) Participant has not made any contributions to the Deferred Compensation Plan in the two-year period before the date of distribution; and

(d) Participant has submitted an application for a de minimis distribution on forms provided by, or other methods approved by the Deferred Compensation Program. No distribution will be paid unless a complete application is filed with, and approved by, the Deferred Compensation Program.

(2) Unforeseeable emergency withdrawal. An unforeseeable emergency withdrawal is an in-service distribution made to a participant due to an unforeseeable emergency. This withdrawal may be made before the date a participant has a severance of employment and as defined in OAR 459-050-0150. A participant must apply for an unforeseeable emergency withdrawal using forms provided by, or other methods approved by, the Deferred Compensation Program as provided for in OAR 459-050-0150(4).

(3) Military distribution. A participant is treated as having been severed from employment during any period the participant is performing service in the uniformed services while on active duty for a period of more than 30 days for the purposes of the limitation on in-service distributions. For purposes of this rule, "uniformed services" has the same meaning as given in OAR 459-050-0072. This section applies to distributions made on or after January 1, 2009.

(4) Funds available for in-service distribution. Only funds contributed to a deferred compensation plan, as defined in IRC 457, and earnings on those contributions may be distributed in a de minimis distribution or unforeseeable emergency withdrawal. Any funds directly transferred or rolled over to the Deferred Compensation Program from any plan other than an IRC 457 deferred compensation plan shall not be distributed for a de minimis distribution or an unforeseeable emergency withdrawal.

(5) Prohibitions on elective deferrals after an in-service distribution. A participant who receives a de minimis distribution, an unforeseeable emergency withdrawal, or a military distribution may not make elective deferrals and employee contributions to the Deferred Compensation Program for a period of 6 consecutive months from the date of distribution.

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

Stat. Auth.: ORS 243.470

Stats. Implemented: ORS 243.401 - 243.507

Hist.: PERS 13-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-28-02; PERS 9-2002, f. & cert. ef. 6-13-02; PERS 1-2009, f. & cert. ef. 2-12-09

459-070-0001

Definitions

The words and phrases used in divisions 070, 075, 076, and 080 have the same meaning given them in ORS 238A.005 unless otherwise indicated. Specific and additional terms for purposes of divisions 070, 075, 076 and 080 are defined as follows unless context requires otherwise:

(1) "Academic employee of a community college" means an instructor who teaches classes offered for college-approved credit or on a non-credit basis.

(a) Librarians, counselors, and aides in non-teaching positions, tutors, or other non-teaching faculty, and classified, professional or nonprofessional support staff are not academic employees for the purposes of section 20 of OL 2005 Ch. 332, but are subject to the membership requirements under ORS 238A.100 and OAR 459-075-0010.

(b) The governing body of a community college must determine who is an academic employee in its employ under this rule. In making that determination, a community college must consider all disciplines (academic activity) collectively when an employee's assignment includes multiple disciplines.

(2) "Calendar month" means a full month beginning on the first calendar day of a month and ending on the last calendar day of the same month.

(3) "Calendar year" means 12 calendar months beginning on January 1 and ending on December 31 following.

(4) "Employee" has the same meaning as "eligible employee" in ORS 238A.005(4).

(5) "Employee class" means a group of similarly situated employees whose positions have been designated by their employer in a policy or collective bargaining agreement as having common characteristics.

(6) "Employee contributions" means contributions made to the individual account program by an eligible employee under ORS 238A.330, or on behalf of the employee under ORS 238A.335.

(7) "Final Average Salary" (FAS) has the same meaning given the term in:

(a) ORS 238A.130(1) for OPSRP Pension Program members who are not employed by a local government as defined in ORS 174.116; or

(b) ORS 238A.130(3) for OPSRP Pension Program members who are employed by a local government as defined in ORS 174.116.

(8) "Member" has the same meaning given the term in ORS 238A.005(10).

(9) "Member account" means the account of a member of the individual account program.

(10) "Member of PERS" has the same meaning as "member" in ORS 238.005(12)(a), but does not include retired members.

(11) "OPSRP" means the Oregon Public Service Retirement Plan.

(12) "Overtime" means the salary or hours, as applicable, that an employer has designated as overtime.

(13) "Partial year of separation" means a period in the calendar year the employee separates from employment that begins on January 1 of the year and ends before the last working day of the year.

(14) "Qualifying position" means a position designated by the employer as qualifying, except:

(a) A position or concurrent positions in which an employee performs at least 600 hours of service in a calendar year is qualifying regardless of employer designation.

(b) A position in a partial year of separation is qualifying regardless of employer designation if the position is continued from an immediately preceding calendar year in which the employee performed at least 600 hours of service in the position or concurrent positions.

(c) A position with one employer in which the employee is employed for the entire calendar year and fails perform at least 600 hours of service in that position or concurrent positions in the calendar year is non-qualifying regardless of employer designation.

(15) "Salary" has the same meaning given the term in ORS 238A.005(16) and includes a differential wage payment, as defined in OAR 459-005-0001.

(16) "School employee" has the meaning given the term in ORS 238A.140(7).

(17) "Service" means a period in which an employee:

(a) Is in an employer/employee relationship, as defined in OAR 459-010-0030; and

(b) Receives a payment of "salary," as defined in ORS 238A.005(16) or similar payment from workers' compensation or disability.

(18) The effective date of this rule is January 1, 2009.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A

Hist.: PERS 4-2004, f. & cert. ef. 2-18-04; PERS 7-2005(Temp), f. & cert. ef. 2-22-05 thru 8-15-05; PERS 11-2005, f. & cert. ef. 6-16-05; PERS 25-2005, f. 12-23-05, cert. ef. 1-1-06; PERS 7-2006, f. & cert. ef. 4-5-06; PERS 17-2007, f. & cert. ef. 11-23-07; PERS 1-2009, f. & cert. ef. 2-12-09

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459-076-0001

Definitions

The words and phrases used in this division have the same meaning given them in ORS Chapter 238A and OAR 459-070-0001. Additional terms are defined as follows unless the context requires otherwise.

(1) Any work for which qualified: A job, not necessarily the last or usual job, which the applicant for disability benefits:

(a) Is physically and psychologically capable of performing; and

(b) Has, or may obtain with reasonable training, the knowledge, skills and abilities, to perform the job.

(2) Certified vocational consultant: A person who satisfies the criteria set forth under either of the following:

(a) A Master's Degree in vocational rehabilitation, and one year of experience in performing vocation evaluations or developing individualized return-to-work plans; or a Bachelor's Degree and two years of such experience. All degrees must have been earned at an accredited institution; or

(b) Accredited as a Certified Rehabilitation Counselor (CRC) by the Commission on Rehabilitation Counselor Certification; as a Certified Disability Management Specialist (CDMS) by the Certification of Disability Management Specialists Commission; or a Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment Specialist (CWA) by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.

(3) Confidential information: Information of a personal nature such that disclosure would constitute an unreasonable invasion of privacy as defined by state law.

(4) Date of disability: The day an active member ceased to work because of injury or disease.

(5) Effective date of disability benefit: The first of the month following the later of:

(a) The last day the member worked for a participating employer;

(b) The last day the member was on paid leave; or

(c) The last day the member received any salary or paid leave benefits from a participating employer, exclusive of the cash pay-off for accrued vacation or compensatory time, as long as that payment is made within the 31 days after the member separates from PERS covered employment.

(6) Extended duration: A period of not less than 90 consecutive calendar days unless the disability is expected to result in the death of the disabled member in less than 90 days.

(7) Independent medical exam: An exam or exams conducted by a physician chosen by PERS for purposes other than for treatment which results in the issuance of a report or reports based on those exams, giving an opinion regarding the claimed injury or disease.

(8) Material contributing cause: The efficient, dominant, and proximate cause of the disability, without which the member would not be disabled.

(9) Monthly salary: Salary as defined in ORS 238A.005(16) that is earned in the last full calendar month of employment and includes a differential wage payment, as defined in OAR 459-005-0001:

(a) Retroactive payments or payments made due to clerical errors, paid in accordance with ORS 238A.005(16)(b)(E), are allocated to the period the salary was earned or should have been earned;

(b) Payments of salary paid within 31 days of separation are allocated to the period the salary was earned and should be considered as paid on the last date of employment.

(10) Monthly salary received is the greater of the salary paid, as defined in section (9) of this rule for the last full calendar month of:

(a) Employment before the date of disability; or

(b) Differential wage payments made before the date of disability. This subsection is effective January 1, 2009.

(11) Normal retirement age: The age at which a member can retire without a reduced benefit as set forth under ORS 238A.160.

(12) Other income: Includes, but is not limited to:

(a) Salary or wages received as an employee;

(b) Self-employment income from:

(A) Services industry;

(B) Sales;

(C) Assembly or manufacturing;

(D) Consulting;

(E) Property management;

(F) Hobby income; or

(G) Book advances.

(c) "Other income" does not include:

(A) Investment income;

(B) Rent; and

(C) Royalties.

(13) Physician: A medical doctor, a doctor of osteopathy, a doctor of oral surgery, a chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only within the purview of their license issued by the designated authority of a state.

(14) Periodic review: A review of a member receiving a disability benefit to determine whether or not a continued benefit is warranted.

(15) Performance of duty: Mental or physical incapacitation arising out of and in the course of duty and is not intentionally self-inflicted. The injury or disease must be initially caused, aggravated or accelerated to cause incapacitation by the performance of the member's duties in the employment of a participating public employer. The job must be the material contributing cause of the injury or disease. Performance of duty includes whatever an employee may be directed, required or reasonably expected to do in connection with his or her employment, and not solely the duties peculiar to his or her position.

(16) Pre-existing condition: A condition that was not sustained in actual performance of duty with the current employer.

(17) Protected health information: Health information created or received by a health care provider, health plan, or health care clearinghouse, where an individual has a reasonable belief that the information can identify the individual, which relates to:

(a) The past, present, or future physical or mental health of an individual;

(b) The provision of health care to an individual; or

(c) The past, present, or future payment for the provision of health care to an individual.

(18) Qualifying position: One or more positions with a participating employer, in a participating class, which requires performance of 600 or more hours in a calendar year.

(19) Separation from all service: The date a member terminates from employment such that an employee/employer relationship no longer exists; the last day worked (physically on the job), the last day of paid leave, or the last day of an official leave of absence, whichever is the later.

(20) Similar in compensation: Salary or income, excluding overtime, equaling at least 80 percent of the monthly salary, as defined in section (9) of this rule.

(21) Similar location: A position in the same general area of the applicant's residence or last employment location.

(22) Vocational evaluation: An evaluation conducted by a certified vocational consultant, to determine the ability of an applicant to perform any work for which they are qualified.

(23) Work related stress: Conditions or disabilities resulting from, but not limited to:

(a) Change of employment duties;

(b) Conflicts with supervisors;

(c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;

(d) Relationships with supervisors, coworkers, or the public;

(e) Specific or general job dissatisfaction;

(f) Work load pressures;

(g) Subjective perceptions of employment conditions or environment;

(h) Loss of job or demotion for whatever reason;

(i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;

(j) Objective or subjective stresses of employment; or

(k) Personnel decisions.

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.235

Hist.: PERS 16-2005, f. & cert. ef. 10-3-05; PERS 7-2007, f. & cert. ef. 4-4-07; PERS 1-2009, f. & cert. ef. 2-12-09

459-080-0100

Credit for Military Service under USERRA

(1) Purpose. The purpose of this rule is to implement ORS 238A.415.

(2) Limitation of scope of rule. Contributions, benefits and service credit provided under this rule may not exceed contributions, benefits and service credit required under federal law for periods of military service.

(3) Definitions. For purposes of this rule:

(a) "Employee" means:

(A) An eligible employee, as defined in ORS 238A.005;

(B) An active member of PERS, as defined in ORS 238.005, on or after January 1, 2004; or

(C) An employee who is entitled to credit toward the probationary period required by ORS 238.015.

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(b) "Employer" means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the state of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(c) "Military service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

- (A) Active duty;
- (B) Active duty for training;
- (C) Initial active duty for training;
- (D) Inactive duty training;
- (E) Full-time National Guard duty;

(F) A period for which an individual is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any of the above types of duty; or

(G) A period for which an individual is absent from employment for the purpose of performing funeral honors duty as authorized by 10 U.S.C. §12503 or 32 U.S.C. § 115.

(d) "Salary" means the rate of pay the eligible employee would have earned if he or she had remained employed during the period of military service, including any increases that would have been awarded the employee based on longevity of employment or seniority of position. If such rate of pay is not reasonably certain, the rate shall be based on the employee's average rate of pay from the employer. The average rate of pay shall be calculated for a period not to exceed the 12-month period immediately preceding the period of military service.

(e) "Uniformed services" means the following:

- (A) Armed Forces;
- (B) Army National Guard;
- (C) Air National Guard;
- (D) Commissioned corps of the Public Health Service; and
- (E) Any other category of persons designated by the President in time of war or national emergency.

(4) Eligibility for retirement benefits under USERRA. An eligible employee shall be entitled to the benefits of this rule if:

(a) The employee leaves employment with a participating public employer to perform military service;

(b) The cumulative length of the employee's absence from employment with the employer for military service does not exceed the limits set forth in USERRA §4312;

(c) The employee initiates reemployment with the same participating public employer within the time limits specified in USERRA §4312;

(d) All employee contributions have been made; and

(e) All other eligibility requirements for benefits under USERRA are met.

(5) Service credit for military service under USERRA. An employee who meets the eligibility requirements of section (4) of this rule shall receive the amount of credit toward the period of employment required under ORS 238A.300 and the vesting requirements described under ORS 238A.320, the employee would have accrued if he or she had remained in employment with the employer during the period of military service.

(6) Termination. An employee's eligibility for the benefits of this rule terminates upon the occurrence of one of the disqualifying events listed in USERRA §4304.

(7) Employee contributions.

(a) Employee contributions must be made upon reemployment for eligible military service in accordance with the following:

(A) Employee contributions to be made by the employer. If the employee's employer had agreed to pay employee contributions under ORS 238A.335(2)(b) as of the date the employee left employment to perform military service, the employer must pay, in a lump sum payment, the amount of contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(B) Employee contributions to be made by the employee. If the employee's employer had not agreed to pay employee contributions, or had agreed to pay employee contributions under ORS 238A.335(2)(a) as of the date the employee left employment to perform military service, the employee may pay all or part of the contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule. Contributions made under this paragraph may be remitted to PERS by:

- (i) Payroll deduction; or
- (ii) Monthly payment of no less than one month of contributions; or
- (iii) Lump-sum payment.

(b) Any individual, agency or organization may pay the employee contributions specified in paragraph (7)(a)(B) on behalf of the employee under the payment provisions set forth in subparagraph (5)(a)(B)(ii) or (iii).

(c) Employee contributions may only be paid during the period beginning with reemployment and whose duration is three times the period of the employee's military service, such period not to exceed five years.

(d) Employee contributions shall be credited to the employee account established in ORS 238A.350(2).

(e) Employee contributions may not include nor be credited with earnings or losses that would have been credited during the period of military service.

(f) Contributions made under this section may not exceed the amount of employee contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(A) The maximum amount of contributions that may be submitted under this section must be reduced by the amount of employee contributions attributable to differential wage payments received by the employee for the period of military service.

(B) Employee contributions attributable to differential wage payments paid to the employee during the period of military service must be credited with earnings and losses that would have been credited during the period of military service.

(8) Employer contributions.

(a) If the employee's employer had agreed to make employer contributions under ORS 238A.340 as of the date the employee left employment to perform military service, the employer must pay, in a lump sum payment, the amount of contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(b) Any contributions made under this section shall be added to the employee's employer account established in ORS 238A.350(3).

(c) Contributions made under this section may not include nor be credited with earnings or losses that would have been credited during the period of military service.

(d) Contributions made under this section may not exceed the amount of employer contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(e) The amount of contributions that must be submitted under this section must be reduced by the amount of employer contributions attributable to differential wage payments received by the employee for the period of military service.

(f) Employer contributions attributable to differential wage payments paid to the employee during the period of military service must be credited with earnings or losses that would have been credited during the period of military service.

(9) Military service that includes January 1, 2004. If an employee as defined in section (3)(a)(B) or (C) of this rule performs military service over a period including January 1, 2004:

(a) Retirement credit and contributions for military service before January 1, 2004, shall be determined in accordance with OAR 459-011-0100.

(b) Retirement credit and contributions for military service on or after January 1, 2004, shall be determined in accordance with this rule and OAR 459-011-0100.

(10) The effective date of this rule is January 1, 2009.

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

Stat. Auth.: ORS 238A.450 & 238A.415

Stats. Implemented: ORS 238A.415

Hist.: PERS 3-2004, f. & cert. ef. 1-22-04; PERS 16-2006, f. & cert. ef. 11-24-06; PERS 1-2009, f. & cert. ef. 2-12-09

Rule Caption: Changes timing and standards of ETOB review by the PERS board.

Adm. Order No.: PERS 2-2009

Filed with Sec. of State: 2-12-2009

Certified to be Effective: 2-12-09

Notice Publication Date: 8-1-2008

Rules Amended: 459-030-0011, 459-030-0025, 459-030-0030

Subject: HB 2280 (2007 Session) eliminated the requirement that the PERS Board conduct an ETOB study every two years. This bill also set the comparative benchmark for the ETOB study to the PERS benefits that were in effect at the time the police officer of firefighter was hired. The modifications to these rules change the timing of an

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the standard by which the PERS Board will review the non-PERS sponsored benefit plans of those police officer and firefighters employed by public employers to ensure that they are equal to or better than (ETOB) pension benefits offered by PERS. These changes eliminate the requirements that the Board schedule an ETOB review every two years and replace it with a new method by which the study will be engaged by the Board. Staff, in collaboration with the PERS actuary, identified the categories of methods and assumptions needed to conduct an ETOB study that complies with actuarial standards and allows a reasonable comparison based on the statutory standard. The rules provide that the PERS Board, or its delegate, make a determination of whether an ETOB exemption should continue whenever a change to the ETOB plan or PERS plan is implemented after the previous exemption was granted, but in any case not less frequently than at least every 12 years. Because the level of scrutiny required to make the determination will vary with the nature of the change, staff also recommends that the determination be delegated to the PERS Executive Director.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-030-0011

“Equal To or Better Than” Exemption

(1) A public employer that provides retirement benefits to its police officers and firefighters pursuant to ORS 237.620(2) is exempt from participation in PERS for such employees.

(2) An exemption under this division will continue until the Board, upon review of the public employer’s retirement plan, determines that the plan no longer meets the required standard.

(3) Whenever a change in benefits in the public employer’s retirement plan is adopted, the public employer must petition the Board for review of the employer’s plan within 60 days.

(4) Whenever a change in benefits in the PERS Plan is adopted, the Board will determine if the change increases benefits such that the public employer’s retirement plan must be reviewed.

(5) In any event, at least once every 12 years the Board will determine, pursuant to section (2) of this rule, whether an employer’s exemption should continue.

(6) The Board may delegate the determination of whether such an employer’s plan qualifies for an exemption to the PERS Executive Director.

Stat. Auth.: ORS 238.650

Stat. Implemented: ORS 237.620, 237.635 & 237.637

Hist.: PER 4-1978, f. & ef. 11-2-78; PERS 1-1989, f. & cert. ef. 12-4-89; Renumbered from 459-030-0020; PERS 9-2005, f. & cert. ef. 2-22-05; PERS 2-2009, f. & cert. ef. 2-12-09

459-030-0025

Standards for Review of Police Officers and Firefighters Retirement Plans

(1) A determination whether a public employer provides retirement benefits to its police officers and firefighters that are equal to or better than the benefits that would be provided to them by PERS will be made as of the valuation date. The “valuation date” is the date set by the Board as of which the retirement benefits under the public employer’s retirement plan and the retirement benefits under the PERS Plan shall be compared.

(2) The Board will consider the aggregate total actuarial present value of all retirement benefits accrued up to the valuation date and projected to be accrued thereafter by the group of police officers and firefighters employed on the valuation date by the public employer. The Board will compare the retirement benefits provided under the public employer’s retirement plan for each of the following classes of employees to the retirement benefits provided to the equivalent class of employees participating in the PERS Plan:

(a) Police officers or firefighters who would have established membership in the system before January 1, 1996, as described in ORS 238.430(2), and would have been entitled to receive benefits under the PERS Plan;

(b) Police officers or firefighters who would have established membership in the system on or after January 1, 1996, as described in ORS 238.430, and before August 29, 2003, as described in ORS 238A.025, and would have been entitled to receive benefits under the PERS Plan; and

(c) Police officers or firefighters who would have established membership in the system on or after August 29, 2003, and would have been entitled to benefits under the PERS Plan.

(d) For each class of employees, the aggregate total retirement benefits provided by the public employer must be equal to or better than those provided by PERS to the equivalent class of employees.

(e) The retirement benefit for each individual employee need not be equal to or better than the particular benefit that employee would have received as a member of that employee’s equivalent class in PERS.

(f) The public employer’s retirement plan or plans must provide at least eighty percent (80%) of the actuarial present value of projected retirement benefits in each of the major categories of retirement benefits available under PERS, namely: a service retirement benefit, including post retirement health care and a disability retirement benefit, also including post retirement health care.

(3) In adopting the following methods and assumptions, to be used in conducting an actuarial review of a public employer’s retirement plan, preference has been given to the simplest, least expensive methodology consistent with ORS 237.610 to 237.620 and applicable actuarial standards:

(a) Only employer funded benefits shall be used as the basis for the test comparison.

(b) The Full Formula, Money Match, Formula Plus Annuity, and OPSRP Pension benefit formulas shall be used as the basis for valuing PERS benefits.

(c) Prior service benefits that depend on earnings shall be valued using a risk-free earnings rate, taking into consideration guaranteed plan returns.

(d) Future service benefits that depend on earnings shall be valued using a risk-free earnings rate, taking into consideration guaranteed plan returns.

(e) Lump sum/annuity conversions shall be valued using a risk-free earnings rate.

(f) Benefit comparisons shall use a hypothetical PERS member data standard for each demographic group.

(4) In conducting an actuarial review of the public employer’s retirement plan, the actuary retained by the Board will use its current actuarial assumptions for police officers and firefighters of public employers participating in PERS for those employees.

(5) The Board will consider the cost of the benefits to be provided and the proportion of the cost being paid by the public employer and the participating police officers and firefighters. Whether the benefits are provided by contract, trust, insurance, or a combination thereof shall have no effect on the Board’s determination.

(6) In considering a public employer’s retirement plan provisions, the Board may not value portability of pension credits, tax advantages, Social Security benefits or participation, any worker’s compensation component of a public employer’s retirement plan as determined by the employer or any portion of a benefit funded by the member.

(7) The Board may not consider benefits provided by the PERS Plan under ORS 238.375–238.387 or benefits provided by the employer’s retirement plan under 237.635–237.637. The employer must identify benefits paid to comply with 237.635–237.637.

(8) Additional actuarial assumptions needed to evaluate the public employer’s retirement plan may be considered by the Board’s actuary to be consistent with assumptions specified in these rules. Any disputes as to the appropriateness of additional actuarial assumptions may be resolved by the Board in its sole discretion.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 237.620

Hist.: PER 4-1978, f. & ef. 11-2-78; PER 15-1981, f. & ef. 11-23-81; PERS 1-1989, f. & cert. ef. 12-4-89; PERS 9-2005, f. & cert. ef. 2-22-05; PERS 2-2009, f. & cert. ef. 2-12-09

459-030-0030

Board Action on Petition and Review of Order

(1) The actuary will issue a written report that concludes whether a public employer’s plan meets the standards for receiving an exemption under OAR 459-030-0025. After receipt of the written actuarial review report and recommendations of staff, the Board will issue an order granting or denying the petition for exemption. No order denying a petition for exemption will be issued until at least 90 days after the actuary had delivered its report to the Board. During that period, the public employer may amend its plan to comply retroactive to the valuation date or file a written request for an extension. Upon filing of that request, the Board will not enter an order denying a petition for exemption for an additional 60 days after receiving the request. If a public employer submits an amended plan before the Board adopts an order denying the exemption, the actuary will submit a supplemental report on whether the amended plan meets the required standards under 459-030-0025. The Board may adopt an order at any time after receiving the supplemental report.

(2) Within 60 days of the effective date of any order issued under this rule, the public employer, the affected public employees, or their labor

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representative may file a petition for rehearing or reconsideration pursuant to OAR 459-001-0010 and 459-001-0040.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 237.620, 237.635 & 237.637
Hist.: PER 4-1978, f. & ef. 11-2-78; PERS 1-1989, f. & cert. ef. 12-4-89; PERS 9-2005, f. & cert. ef. 2-22-05; PERS 2-2009, f. & cert. ef. 2-12-09

Oregon State Lottery Chapter 177

Rule Caption: Amendments update Lottery requirements for Video LotterySM retailers.

Adm. Order No.: LOTT 1-2009

Filed with Sec. of State: 1-30-2009

Certified to be Effective: 2-1-09

Notice Publication Date: 12-1-2008

Rules Amended: 177-040-0017, 177-040-0061

Rules Repealed: 177-040-0017(T), 177-040-0061(T)

Subject: The Oregon Lottery[®] amended these administrative rules to clarify Lottery's standards for determining if an establishment is operating or will be operating as a casino.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0017

Additional Video LotterySM Retailer Business Operation Criteria and Requirements

(1) **Placement of Video LotterySM Terminals:** The Lottery will not place Video LotterySM terminals in a business or at a premises:

(a) That has operated or will operate primarily as a grocery or convenience store. This subsection shall not apply to any existing Video LotterySM retailer who the Director determines was not in accordance with this subsection as of October 14, 1993;

(b) That operates as a laundromat, movie theater, car dealership, beauty salon, bed and breakfast lodging, hardware store, dry goods store, clothing store, liquor store, or other business not normally associated with the on-premise consumption of food and alcoholic beverages.

(2) **Grocery Store:** For purposes of this rule, a grocery store means a retail business at which food and foodstuffs are regularly and customarily sold in a bona fide manner for consumption off the premises, and shall include supermarkets and one-stop shopping centers which contain a grocery section in addition to offering other wares, goods, and services.

(3) **Convenience Store:** For purposes of this rule, a convenience store means a retail business which offers a relatively limited line of high-volume products, and the majority of the products are for consumption off the premises.

Stat. Auth.: ORS 461
Stats. Implemented: ORS 461.215 & 461.217
Hist.: LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00; LOTT 9-2005(Temp), f. & cert. ef. 9-7-05 thru 3-5-06; LOTT 20-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 1-2007, f. 1-21-07, cert. ef. 2-1-07; LOTT 6-2008(Temp), f. 10-29-08, cert. ef. 11-1-08 thru 4-28-09; LOTT 1-2009, f. 1-30-09, cert. ef. 2-1-09

177-040-0061

Casino Prohibition

(1) **General:** The operation of a casino is constitutionally prohibited in the state of Oregon. It is the policy of the Oregon State Lottery to place Video LotterySM terminals only in an establishment that does not operate as a casino. The purpose of this rule is to provide a framework and a process for determining when an establishment is operating or may operate as a casino. This framework and process are in addition to other methods the Oregon State Lottery uses to prevent Video LotterySM retailers from operating an establishment as a casino. Other methods include, but are not limited to:

(a) A limit on the number of Video LotterySM terminals in any establishment;

(b) Limiting public view of Video LotterySM terminals;

(c) A limitation on certain advertising and promotional activities by retailers; and

(d) Considering the sale of Lottery tickets and shares by retailers an adjunct to their businesses.

(2) **Definitions:** For purposes of this rule:

(a) **"Establishment"** means any single location in which Video LotterySM games are operated or which is identified in a Video LotterySM Retailer Application as the proposed site for such activity. An establishment must be owned or operated by a person licensed to sell alcoholic beverages for consumption in a specific age-controlled area of the establishment. The

final determination of what constitutes an establishment shall be made by the Director.

(b) **"Total Annual Lottery Compensation"** means the actual, or in the case of an applicant, the reasonably projected total annual compensation received from the Lottery for the sale of all Lottery tickets and shares at the establishment over a selected twelve-month period, including, but not limited to, compensation resulting from participation in Lottery incentive and bonus programs, as described in the Retailer Contract, other than those programs awarding bonuses on the basis of the sale of winning and validated Scratch-itSM or On-Line tickets for which a prize of \$10,000 or more is paid.

(c) **"Annual Non-Lottery Sales"** means the actual, or in the case of an applicant, the reasonably projected revenue from the sale of products or services other than Lottery tickets and shares to retail customers at the establishment over a selected twelve-month period. Projected sales will only be deemed reasonable if they are based on a detailed business plan which is fact and evidence based or meets industry standards for business plans. Only the sale of products or services to retail customers in return for which the establishment receives cash or any instrument evidencing cash consideration shall be included in the calculation of annual non-Lottery sales. Examples of products and services not considered for annual non-Lottery sales for purposes of this rule include, but are not limited to:

(A) The sale of products or services which are not usually sold by or associated with the type of retail establishment being reviewed. For example, the sale of a car by a tavern would not be included;

(B) The wholesale sale of products. **"Wholesale"** means the sale of goods in quantity, as to retailers or jobbers, for resale to the public. This includes the sale or transfer of cigarettes or other products between two or more establishments operated by the same retailer;

(C) The gifting of complimentary or promotional products; or the value of promotional discounts/coupons;

(D) The retail sale of products or services sold or rendered outside of the establishment (such as catering) unless the work is substantially completed at the establishment and the services are provided substantially by employees of the establishment;

(E) The sale of products or services for which the retailer receives a commission, except that the amount of the commission received may be considered; and

(F) Income from other than the sale of a product or service (such as a cover charge) will not be included in the calculation of annual non-Lottery sales.

(3) **Director's Casino Determination:** The Director shall determine whether an establishment is operating or may operate as a casino before entering into a Video LotterySM contract for that establishment. The Director may also initiate a review of an existing Video LotterySM retailer whenever the Director has reason to believe that an establishment is operating as a casino, or may operate as a casino. The Director may rely on whatever resources and information are available in deciding to initiate a review of an existing Video LotterySM retailer. A Video LotterySM retailer, or person applying to become a Video LotterySM retailer, has the burden of proof to show to the satisfaction of the Director that an establishment is not operating, or will not be operating, as a casino. The Director's determination is final.

(4) **Conclusive Evidence that an Establishment Is Not a Casino:** The following establishments are not casinos for purposes of this rule:

(a) An establishment whose annual non-Lottery sales are at least 50% of the establishment's total income as defined in section (5) of this rule. This subsection does not apply if the Director determines that the establishment is a convenience store or a business not normally associated with the on-premise consumption of food and alcoholic beverages as described in OAR 177-040-0017.

(b) A private club as described in ORS 471.175 so long as the private club is not engaged exclusively in the business of selling Lottery tickets and shares.

(5) **Income Analysis:** In determining whether an establishment meets the criteria set forth in section (4)(a) of this rule, the Director shall conduct an income analysis as set forth below.

(a) **General:** The Director shall conduct a review of the establishment's total income which, for the purpose of this rule, shall equal the sum of the establishment's total annual Lottery compensation and the establishment's annual non-Lottery sales. For a person applying to become a Video LotterySM retailer, the Director shall conduct a review of the establishment's projected total income which, for the purposes of this rule, shall equal the sum of the establishment's projected total annual Lottery compensation and the establishment's reasonably projected annual non-Lottery

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sales. If the review of an establishment's total income shows that the establishment's annual non-Lottery sales are less than 50% of total income or projected total income, and there is no conclusive evidence that the establishment is not a casino as explained in section (4) above, the Director shall consider other factors as set forth in section (6) below in determining whether the establishment is operating or may operate as a casino. The twelve-month period selected for the review will be chosen by Lottery staff. The ratio of an establishment's total annual Lottery compensation to its total income shall be determined by dividing the establishment's total annual Lottery compensation by the sum of:

(A) The establishment's actual, or in the case of an applicant, reasonably projected annual non-Lottery sales; and

(B) The establishment's actual or projected total annual Lottery compensation.

(b) **CPA Review:** The retailer or applicant may request that a Certified Public Accountant (CPA), engaged and paid for by the retailer or the applicant, verify the accuracy of the Lottery's calculation of the retailer's annual non-Lottery sales or the applicant's reasonably projected annual non-Lottery sales. The CPA must use procedures specified by the Lottery and document his or her analysis as required by the Lottery. The Director may consider the CPA's analysis in making the final determination.

(c) **Director's Determination:** The final determination of the ratio of an establishment's actual or projected total annual Lottery compensation to the establishment's actual or projected total income shall be made by the Director.

(d) **Business Records:** For the purposes of this rule, a Lottery retailer must acquire, compile, retain, and make readily available to the Lottery all business sales and expense records that are pertinent to the calculation and determination of the establishment's total income for a period of 24 months. Required records of the gross non-Lottery sales must be detailed and correct including, but not limited to, records of the cost, price and amount of goods sold, bank statements, records of daily sales, and other relevant sales records. Lottery staff shall be allowed to perform examinations of these records, and make any copies necessary to complete the review. Records and accounting information must be provided, at the retailer's expense, in any form or format reasonably requested by Lottery staff. Retailers operating multiple establishments must maintain separate and complete records as specified in this paragraph for each establishment they operate. In the absence of adequate records, Lottery staff will make a reasonable estimate of annual non-Lottery sales based on available records and information. In making a reasonable estimate, the Lottery will only rely on records and information that the Director concludes are credible and accurate.

(6) **Factors to Consider:** If the income analysis indicates that the establishment's annual non-Lottery sales are less than 50% of total income or projected total income, and there is no conclusive evidence that the establishment is not a casino as explained in section (4) above, the Director shall consider additional relevant factors such as those described below to make a final determination whether the establishment, taken as a whole, is operating as a casino or may operate as a casino. Such factors include, but are not limited to:

(a) **History:** The history of the establishment's operation, or lack of history. If, for example, an establishment has a longstanding history as a neighborhood pub or a family restaurant, this factor may demonstrate that the establishment is not operating as a casino.

(b) **Appearance:** The appearance of the premises, as perceived by a reasonable person and determined by the Director, as it relates to the type of establishment. If, for example, a reasonable person, as determined by the Director, would perceive the establishment to be a place to eat, drink, socialize, and engage in a variety of activities or forms of entertainment, this factor may demonstrate that the establishment is not operating as a casino.

(c) **Floor Space:** The ratio of floor space dedicated for the use of Video LotterySM games to the total floor space of the establishment. Any space or portion of an establishment which is designated as a common area, is shared with other establishments or businesses, or is not contiguous with the area(s) where the Video LotterySM terminals are located or are proposed to be located, shall not be considered as part of an establishment's total floor space. Any areas of the establishment not normally open to patrons shall not be considered as part of an establishment's total floor space. For purposes of this rule, 24 square feet per Video LotterySM terminal shall be used to compute such a ratio. If the amount of floor space dedicated for the use of Video LotterySM games is 20% or less of the establishment's total floor space, this factor may demonstrate that the establishment is not operating as a casino.

(d) **Food Service Accoutrements:** The availability of menus, dining tables and chairs, tableware for the consumption of food and beverages, and other accoutrements intended specifically for use by patrons for eating and drinking. For example, an ample number of tables and chairs, proportionate to the size of the area, that are set up with napkins, salt and pepper, etc., and are available to patrons for eating and drinking, combined with the availability of food and beverages, the staff and means to cook, prepare and serve food and beverages, the availability of tableware, a menu or reader board, may demonstrate that the establishment is not operating as a casino.

(e) **Meals and Menus:** The number and variety of meals and menu items available on a daily basis. For example, serving two meals per day, such as lunch and dinner, and a variety of entrees and side dishes for each meal, as opposed to serving only one or two items, or only a variety of sandwiches, throughout the day, may demonstrate that the establishment is not operating as a casino.

(f) **Non-Lottery Products and Entertainment:** The number and variety of non-Lottery products and forms of entertainment available. If, for example, an establishment offers snacks, gum, and cigarettes for sale, and has pool, darts, and live music and dancing, as opposed to only one or two products or services, this factor may demonstrate that the establishment does not operate as a casino. This factor acknowledges that a retailer's efforts to sell or serve non-Lottery products or services are not always successful. The mere fact that the non-Lottery products or services are readily available, as evidenced by observation and records, is a factor.

(g) **Business Name:** The name of the business. For example, if the business name does not contain words, references or allusions to gambling or gambling related objects or activities, good luck or good fortune, or winning, directly or indirectly, this factor may demonstrate that the establishment does not operate as a casino.

(h) **Advertising:** Advertising and promotional activities. If, for example, the retailer advertises food and other non-Lottery products, services or forms of entertainment at least equivalent to advertising for Lottery products; and, if the retailer offers promotions, such as discount coupons for food and other non-Lottery products at least equivalent to promotional activities related to Lottery products, this factor may demonstrate that the establishment does not operate as a casino.

(i) **Records:** The retailer's financial records. If the retailer's financial records, including expenses, show that the volume of non-Lottery products and services sold, and the number and variety of non-Lottery forms of entertainment made available to patrons is greater than indicated by the establishment's annual non-Lottery sales, this factor may demonstrate that the establishment does not operate as a casino.

(j) **Atmosphere:** The general atmosphere of the establishment and the attitude and approach of the retailer. If the retailer, and the retailer's employees encourage and promote food and beverage service; if the general environment is clean and inviting to patrons for purposes of dining or engaging in entertainment activities; if the retailer and the retailer's employees are equally courteous and accommodating to non-Lottery playing patrons as they are to those playing Lottery games; and if the retailer demonstrates cooperation with the Lottery and approaches this matter with a demonstrated willingness to keep the establishment in compliance, this factor may demonstrate that the establishment does not operate as a casino.

(7) Compliance Plan:

(a) **General:** For purposes of selling Video LotterySM tickets and shares, the Lottery Director shall determine whether a Lottery retailer is operating an establishment as a casino, or in the case of an applicant, will be operating as a casino in violation of this rule. When the Director determines that an existing Video LotterySM establishment is operating as a casino pursuant to review under section (6) of this rule, the Director shall notify the retailer of the determination in writing, and set forth the reasons for the determination. The Director shall provide the retailer the opportunity to develop and implement a plan to bring the establishment into compliance with this rule within six months from the date of this written notification. The plan must be submitted within 30 days from the date the notification is issued by the Lottery. The plan shall include an analysis of the retailer's business operation to show that the retailer has made a reasonable determination of what changes need to be made and the steps the retailer intends to take to bring the establishment into compliance. A retailer may not restrict access to any Lottery game to achieve compliance with this rule without prior written approval from the Director. The retailer's submission of the plan is for the purpose of demonstrating to the Lottery that the retailer seeks to bring the establishment into compliance. The Lottery will review the retailer's plan and may offer guidance to help the retailer bring the establishment into compliance. The retailer is solely responsible for implementing the plan and for its success or failure during the six month period.

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(b) **Four Month Review:** At the end of the first four months of the six-month period, the Lottery will review the retailer's progress toward compliance, and may provide the retailer with factual information, analysis, or recommendations if it appears to Lottery staff that doing so will assist the retailer in bringing the establishment into compliance.

(c) **Determination at End of Six-Month Period:** At the end of the six-month period, the Director shall determine whether the establishment is in compliance. A retailer shall be deemed to be in compliance if either:

(A) The establishment's total Lottery compensation was not more than 50% of the establishment's total income, as set forth in section (5) of this rule, over the entire six-month period; or

(B) Based upon an analysis of some or all of the factors set forth in section (6) of this rule, or other additional factors, the Director determines that the establishment is not operating as a casino.

(d) **Sixth Month:** If the establishment's total Lottery compensation was not more than 50% of the establishment's total income, as set forth in section (5) of this rule, for the sixth month of the plan (but not the entire six months), the Director may extend the original six month period of the compliance plan up to three additional months if, in the opinion of the Director, the retailer will become compliant within that time. At the end of the additional time period, the Director shall determine whether the establishment is in compliance based upon subsection (7)(c) of this rule.

(e) **Termination:** If, at the end of the compliance period, the Director determines that the establishment continues to operate as a casino, the retailer's contract to sell Video LotterySM tickets and shares shall be immediately terminated.

(f) **One Year Review:** If, at the end of the compliance period, the Director determines that the establishment is no longer operating as a casino, the Director shall send a notice of compliance to the retailer. At the end of one year commencing on the first day of the month following notification of compliance, the Lottery will conduct another compliance review as set forth in this rule. If the Director determines that the establishment is again operating as a casino, the retailer's contract to sell Video LotterySM tickets and shares shall be immediately terminated. The retailer shall not be given the opportunity to implement a compliance plan as described in subsections (7)(a), (b), (c), and (d) of this rule in these circumstances. Nothing in this subsection prohibits the Director from initiating another review at any time as set forth in section (3) of this rule.

(g) **Application Denial:** If a person applying to become a Video LotterySM retailer is projected by the Lottery not to be in compliance with the requirements of this rule, the Director shall deny the application.

(8) **Re-Application:** Any Video LotterySM retailer whose contract to sell Video LotterySM tickets and shares is terminated, or any person applying to become a Video LotterySM retailer whose application is denied, shall not be eligible to reapply for a Lottery contract for the terminated or denied establishment for one year from the date of termination or application denial. After one year, the application shall only be accepted upon a showing by the applicant that a substantial change in conditions at the establishment has taken place. Upon acceptance of an application, the Director shall determine whether the establishment will be operated as a casino as set forth in this rule. In the case of a person applying to become a Video LotterySM retailer whose application is denied, the Director may, in the Director's sole discretion, waive up to six months of the one-year waiting period based upon a showing of good cause by the applicant.

Stat. Auth.: ORS 461

Stats. Implemented: OR Const. Art. XV, § 4(4), ORS 461.215 & 461.217

Hist.: LC 10-1994, f. 11-23-94, cert. ef. 12-1-94; LC 2-1997, f. 2-27-97, cert. ef. 3-1-97, Renumbered from 177-100-0015; LOTT 4-1998, f. & cert. ef. 6-26-98, Renumbered from 177-040-0060; LOTT 5-1998(Temp), f. & cert. ef. 7-7-98 thru 12-31-98; LOTT 1-1999, f. & cert. ef. 2-1-99; LOTT 8-1999, f. 5-27-99, cert. ef. 5-30-99; LOTT 6-2000, f. 7-26-00, cert. ef. 8-1-00, Renumbered from 177-100-0155; LOTT 1-2007, f. 1-21-07, cert. ef. 2-1-07; LOTT 6-2008(Temp), f. 10-29-08, cert. ef. 11-1-08 thru 4-28-09; LOTT 1-2009, f. 1-30-09, cert. ef. 2-1-09

Oregon University System Chapter 580

Rule Caption: To establish 2009 summer session tuition and fee rates, including room and board.

Adm. Order No.: OSSHE 1-2009

Filed with Sec. of State: 1-22-2009

Certified to be Effective: 1-22-09

Notice Publication Date: 12-1-2008

Rules Amended: 580-040-0035

Subject: To establish tuition and fees for the summer session 2009, including room and board rates.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-040-0035

Summer Session Fee Book

The document entitled "Summer Session Fee Book" dated January 09, 2009, is hereby amended by reference as a permanent rule. All prior adoptions of summer session fee documents are hereby repealed except as to rights and obligations previously acquired or incurred thereunder.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 2-1978, f. & ef. 5-16-78; HEB 3-1979, f. & ef. 4-27-79; HEB 4-1980, f. & ef. 4-18-80; HEB 3-1981, f. & ef. 6-4-81; HEB 3-1982, f. & ef. 4-20-82; HEB 2-1983, f. & ef. 2-11-83; HEB 2-1984, f. & ef. 3-21-84; HEB 3-1985, f. & ef. 3-4-85; HEB 9-1986, f. & ef. 4-7-86; HEB 3-1987, f. & ef. 3-9-87; HEB 3-1988, f. & cert. ef. 3-16-88; HEB 2-1989, f. & cert. ef. 2-14-89; HEB 3-1990, f. & cert. ef. 2-13-90; HEB 2-1991, f. & cert. ef. 3-12-91; HEB 1-1992, f. & cert. ef. 2-12-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 2-1994, f. 2-9-94, cert. ef. 2-15-94; HEB 1-1995, f. & cert. ef. 2-23-95; HEB 1-1996, f. & cert. ef. 2-5-96; HEB 1-1997, f. & cert. ef. 1-28-97; OSSHE 1-1998, f. & cert. ef. 1-27-98; OSSHE 7-1998, f. & cert. ef. 12-23-98; OSSHE 7-1999, f. & cert. ef. 12-22-99; OSSHE 5-2000, f. & cert. ef. 12-21-00; OSSHE 1-2002, f. & cert. ef. 1-2-02; OSSHE 6-2003, f. & cert. ef. 12-24-03; OSSHE 2-2005, f. & cert. ef. 2-15-05; OSSHE 2-2007, f. & cert. ef. 1-11-07; OSSHE 1-2008, f. & cert. ef. 1-14-08; OSSHE 1-2009, f. & cert. ef. 1-22-09

Oregon University System, Western Oregon University Chapter 574

Rule Caption: Revisions to special course fees and general services fees.

Adm. Order No.: WOU 1-2009

Filed with Sec. of State: 2-13-2009

Certified to be Effective: 2-13-09

Notice Publication Date: 1-1-2009

Rules Amended: 574-050-0005

Subject: Amendments will allow for increases, additions, and revisions of special course fees and general services fees.

Rules Coordinator: Debra L. Charlton—(503) 838-8175

574-050-0005

Special Fees for Selected Courses and Some General Services

The Schedule of Fees for Selected Courses and General Services for Western Oregon University are hereby adopted by reference.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the Vice President for Finance and Administration at Western Oregon University.]

Stat. Auth.: ORS 351.070 & 351.072

Stats. Implemented: ORS 351.070 & 351.072

Hist.: OCE 1, f. & ef. 7-12-76; OCE 1-1978, f. & ef. 10-27-78; OCE 2-1980, f. & ef. 11-5-80; OCE 1-1981, f. & ef. 1-7-81; OCE 3-1981, f. & ef. 8-7-81; OCE 4-1981, f. & ef. 11-2-81; WOSC 2-1982, f. & ef. 9-17-82; WOSC 1-1983, f. & ef. 10-11-83; WOSC 1-1985, f. & ef. 10-4-85; WOSC 1-1986, f. & ef. 10-15-86; WOSC 1-1987, f. 4-1-87, ef. 9-23-87; WOSC 2-1988, f. & cert. ef. 9-19-88; WOSC 1-1989, f. & cert. ef. 4-18-89; WOSC 2-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 5-1989, f. & cert. ef. 9-7-89; WOSC 1-1990, f. & cert. ef. 4-18-90; WOSC 2-1990, f. & cert. ef. 9-24-90; WOSC 1-1991, f. & cert. ef. 1-30-91; WOSC 2-1991, f. & cert. ef. 3-22-91; WOSC 4-1991, f. & cert. ef. 5-21-91; WOSC 7-1991, f. & cert. ef. 7-22-91; WOSC 2-1992, f. & cert. ef. 6-16-92; WOSC 3-1992, f. & cert. ef. 8-14-92; WOSC 1-1993, f. & cert. ef. 1-15-93; WOSC 2-1993, f. & cert. ef. 6-18-93; WOSC 3-1993, f. & cert. ef. 7-16-93; WOSC 5-1993, f. & cert. ef. 10-21-93; WOSC 1-1994, f. & cert. ef. 8-12-94; WOSC 1-1995, f. & cert. ef. 8-11-95; WOSC 1-1996, f. & cert. ef. 10-16-96; WOSC 1-1997, f. & cert. ef. 2-27-97; WOU 3-1997, f. & cert. ef. 10-7-97; WOU 1-1998, f. & cert. ef. 1-26-98; WOU 2-1998, f. & cert. ef. 7-24-98; WOU 1-1999, f. & cert. ef. 2-25-99; WOU 2-1999, f. & cert. ef. 7-27-99; WOU 1-2000, f. & cert. ef. 3-16-00; WOU 2-2000, f. & cert. ef. 6-28-00; WOU 1-2001, f. & cert. ef. 3-5-01; WOU 2-2001, f. & cert. ef. 7-30-01; WOU 1-2002, f. 3-12-02, cert. ef. 3-15-02; WOU 2-2002, f. 8-2-02, cert. ef. 8-15-02; WOU 3-2002, f. 10-7-02, cert. ef. 10-15-02; WOU 1-2003, f. & cert. ef. 4-2-03; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 1-2004, f. & cert. ef. 3-24-04; WOU 2-2004, f. & cert. ef. 8-4-04; WOU 1-2005, f. & cert. ef. 3-8-05; WOU 2-2005, f. & cert. ef. 8-4-05; WOU 3-2005, f. & cert. ef. 8-12-05; WOU 1-2006, f. & cert. ef. 3-2-06; WOU 2-2006, f. & cert. ef. 8-7-06; WOU 1-2007, f. & cert. ef. 3-5-07; WOU 2-2007, f. & cert. ef. 7-31-07; WOU 4-2007, f. & cert. ef. 11-1-07; WOU 1-2008, f. & cert. ef. 2-1-08; WOU 2-2008, f. & cert. ef. 9-3-08; WOU 1-2009, f. & cert. ef. 2-13-09

Oregon Youth Authority Chapter 416

Rule Caption: Standards for the Foster Home.

Adm. Order No.: OYA 1-2009

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

Certified to be Effective: 2-2-09

Notice Publication Date: 1-1-2009

Rules Amended: 416-530-0070

Subject: The rule modifications allow for the assignment of two juvenile sex offenders to one foster home bedroom with proper authorization.

Rules Coordinator: Winifred Skinner—(503) 373-7570

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416-530-0070

Standards for the Foster Home

(1) General:

(a) Schools, recreation, churches, medical care, and community facilities must be accessible from the foster home. The foster home and its premises must be comparable in appearance to other homes in the community in which it is located.

(b) If care is to be provided to one or more developmentally disabled or physically impaired youth offenders, the OYA must consult with the relevant professionals to identify necessary accommodations to the foster home and ask the foster parent to implement the necessary accommodations prior to placement.

(A) OYA will coordinate the accommodations to the foster home.

(B) If the foster parent refuses to make the necessary accommodations the youth offender will not be placed into the foster home

(c) Foster homes must have a working telephone with service. Foster parents must secure an alternative phone service within 24 hours of any disruption of existing phone service and communicate the new telephone number to the Foster Home Certifier.

(2) Kitchen:

(a) Foster homes must have the equipment necessary for the safe preparation, storage, serving and cleanup of meals.

(b) Foster parents must ensure that all cooking and refrigeration equipment is sanitary and in working condition.

(c) Foster parents must ensure that meals are prepared and served in a safe and sanitary manner minimizing the possibility of food poisoning or food contamination.

(3) Living areas:

(a) The foster home must have sufficient living or family room space that is comfortably furnished and accessible to all members of the household, including youth offenders.

(b) Foster homes must be well-heated and well-ventilated.

(4) Bedrooms:

(a) Bedrooms occupied by youth offenders must:

(A) Be safe and have adequate living space for each youth offender.

(B) Have windows that open and provide sufficient natural light and ventilation.

(C) Have a bed for each youth offender and clean bed linens, blankets (as appropriate to the season) and pillows.

(D) Have a functioning smoke alarm.

(b) Youth offender(s) age 18 or older may not share a bedroom with a youth offender under age 18 without the approval of the OYA Foster Care Manager or OYA Community Resources Manager.

(c) Children of foster parents are prohibited from sharing a bedroom with a youth offender.

(d) In no event will more than three youth offenders sleep in one bedroom.

(e) Each youth offender must be provided with adequate storage space in or near the bedroom he or she occupies for personal belongings and a designated space for hanging clothes.

(f) Flexibility in the decoration of sleeping areas must be allowed to accommodate the personal tastes and expressions of the youth offenders in care.

(g) Bedroom doors must not have locks.

(h) Youth offenders with a history of inappropriate sexual behavior or adjudicated for a sexual offense may not share a bedroom with non-sex offenders. Sex offenders preferably will occupy a bedroom either individually, or in a group of three sex offenders. The assignment of two sex offenders to one bedroom must be authorized by the Foster Care Manager, in consultation with OYA field services staff.

(i) Bedrooms used by youth offenders that are located in basements or above the ground floor must have safe and direct emergency exits to the ground.

(5) Domestic animals:

(a) Foster parents must restrict access to potentially dangerous animals.

(b) Only domestic animals allowed by local ordinances may be kept as pets.

(c) Domestic animals must be properly cared for, supervised, and otherwise maintained in compliance with local ordinances.

(d) Rabies vaccination for pets must be kept current as required by law. Proof of rabies vaccination must be available to the OYA upon request.

(6) Firearms:

(a) Foster parents must immediately notify the OYA Foster Home Certifier any time a firearm is brought to the foster home.

(b) Any foster parent or member of the household who possesses a concealed weapon permit must:

(A) Give the OYA a copy of the permit;

(B) Give the OYA a written plan regarding how the foster parent or member of the household will keep concealed weapons secure from youth offenders.

(c) Firearms must remain unloaded and stored in a locked compartment that prohibits access and is not visible to youth offenders. Ammunition must be stored in a separate locked compartment. Trigger locks alone are not considered adequate.

(d) With the exception of law enforcement personnel, no person in any vehicle transporting a youth offender may carry a loaded firearm.

(7) Deadly weapons: Foster parents must immediately notify the Foster Home Certifier any time a deadly weapon is brought to the foster home.

(a) Deadly weapons must be stored in a locked compartment that prohibits access and is not visible to youth offenders.

(8) Safety:

(a) Swimming pools and hot tubs must be maintained in a safe and clean condition, and must comply with local safety regulations and ordinances.

(b) Any safety hazard identified by OYA staff or qualified trade service provider must immediately be remedied by the foster parent.

(c) An emergency access must be available to any room that has a lock.

(d) Stairways must be equipped with handrails.

(e) All medications, hazardous chemicals, and solvents must be stored in locked storage sufficient to prevent unauthorized access.

(f) Cleaning materials classified as poisonous and flammable must be stored in locked storage sufficient to prevent unauthorized access.

(g) At least one working smoke alarm must be placed on each floor of the foster home. In addition, there must be a working smoke alarm in each bedroom in which a youth offender sleeps.

(h) At least one unexpired and operable class 2-A-10BC or higher rated fire extinguisher must be available and maintained in each foster home.

(i) Outdoor tools and equipment, machinery, chemicals, flammable or combustibles must be stored in locked storage sufficient to prevent unauthorized access.

(j) A written home evacuation plan must be available to all youth offenders.

(A) The evacuation plan must be practiced with each youth offender at the time of placement and at least once a year to ensure all youth offenders understand the procedures.

(B) The evacuation plan, including evacuation diagram, must be posted in a clearly visible and conspicuous location.

(k) The use of space heaters is limited to electric space heaters equipped with tip-over protection. No extension cords may be used with such heaters or in place of permanent wiring. No propane space heaters without approved venting are to be used in the foster home. Kerosene space heaters are not allowed.

(l) Foster homes must have two unrestricted emergency exits in case of fire.

(A) A sliding door or window that can be used to evacuate youth offenders may be considered a usable emergency exit.

(B) Barred windows used as possible emergency exit in case of fire must be fitted with operable quick release mechanisms.

(9) Sanitation and health:

(a) The foster home must be kept clean and free of hazards to the health and physical well being of the family.

(b) Measures must be taken to keep the house and premises free of vermin.

(c) First aid supplies must be stored in an easily accessible place.

(d) A continuous supply of safe, clean drinking water must be available.

(A) Private water sources and septic tank systems must be kept safe and functioning properly.

(B) Private water sources must be tested and approved by an appropriate official upon OYA request.

(e) Only pasteurized milk, juices, or powdered milk must be used for youth offender consumption.

(f) All plumbing must be kept in working order, and an adequate supply of hot water for bathing and dish washing must be available.

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(g) Water heaters must be accessible for inspection and equipped with a safety release valve and an overflow pipe that directs water to the floor or to another approved location.

(h) The foster home must have a minimum of one flush toilet, one washbasin with running water, and one bath or shower with hot and cold water.

(i) Pending weekly removal, garbage/refuse must be stored appropriately, with no accumulation of garbage, debris, or rubbish that emits offensive odors.

(j) Youth offenders in the foster home will not be subjected to second hand smoke.

(10) Transportation safety:

(a) All vehicles used to transport youth offenders must have, at a minimum, liability insurance coverage in accordance with Oregon law.

(b) Only foster parents and other members of the household that are licensed and insured drivers, 21 years of age or older, that possess a current and valid driver's license, may transport youth offenders.

(c) At least one member of the household must possess a valid license to drive.

(d) The driver must ensure that all passengers use seat belts during the transport.

(e) Youth offenders are prohibited from operating vehicles owned by foster parents, any member of the household, or volunteer that requires a state license to be operated on public roads.

(f) Youth offenders may engage in driver's education provided by public school or driver training delivered by a licensed provider in accordance with the youth offender's case plan.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.888 - 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 15-2004, f. & cert. ef. 11-12-04; OYA 2-2007, f. & cert. ef. 7-13-07; OYA 1-2009, f. & cert. ef. 2-2-09

Parks and Recreation Department Chapter 736

Rule Caption: The Administrative Rules dealing with Rates for services at OPRD are being amended.

Adm. Order No.: PRD 2-2009

Filed with Sec. of State: 2-10-2009

Certified to be Effective: 2-10-09

Notice Publication Date: 11-1-2008

Rules Amended: 736-015-0020, 736-015-0040

Subject: The rules are being amended to include:

(1) A pilot project approved by Department of Administrative Services for a fee for having up to two pets in a yurt overnight;

(2) A housekeeping issue to include established rates for yurts, cabins, tepees, and wagons inadvertently dropped from the rule in a previous revision; and

(3) Other housekeeping corrections as necessary.

Rules Coordinator: Joyce Merritt—(503) 986-0756

736-015-0020

Overnight Rentals

The director may designate a Type I campsite rental schedule at selected high use campgrounds. All remaining campgrounds will be set at the Type II campsite rental schedule. The director is authorized by the commission to include transient lodging taxes in the nightly rental rate and to increase the rental rate to the nearest whole dollar. The department shall retain the additional revenue. Campsite Rental rates (per night per site before tax):

(1) Full Hookup Campsite: Provides campsite with individual water supply, electrical and sewage hookups, table, stove, and access to a restroom.

(a) Type I: \$20.

(b) Type II: \$16.

(2) Electrical Hookup Campsite: Provides campsite with individual water supply and electrical hookups, table, stove, and access to a restroom.

(a) Type I: \$20.

(b) Type II: \$16.

(3) Tent Campsite: Provides campsite with water supply nearby but does not have electricity or sewage hookup. Provides table, stove, and access to a restroom.

(a) Type I: \$16.

(b) Type II: \$14.

(4) Primitive Campsite: Provides campsite with table and stove; water and sanitary facilities may be some distance away. All primitive campsites: \$8.

(5) Yurt: Rustic units provide a temporary tent structure, covered deck, heat, lights and beds along with outdoor picnic facilities. Deluxe units add kitchen facilities, bathrooms and showers.

(a) Rustic: \$27.

(b) Deluxe: \$65.

(6) Cabin: Rustic units provide a hard-walled wooden structure, covered deck, heat, lights and beds along with outdoor picnic facilities. Totem units are primitive log units. Deluxe 1 units add kitchen facilities, bathrooms and showers. Deluxe 2 units add additional rooms.

(a) Totem: \$20.

(b) Rustic: \$35.

(c) Deluxe 1: \$65.

(d) Deluxe 2: \$75.

(7) Tepee: Tepee replica units vary in diameter from 18' to 26' and provide heat, lights and beds along with outdoor picnic facilities. All tepees: \$27.

(8) Wagon: Covered wagon replica units vary in size and provide heat, lights and beds along with outdoor picnic facilities. All wagons: \$27.

(9) Hikers/Bicyclist Campsite: Provides cleared area for camping; water and sanitary facilities may be some distance away. All hiker/bicyclist campsites: \$4 per camper per night.

(10) Extra Vehicle in Campground: An additional rental rate of \$5 per vehicle is charged when an extra vehicle is driven into the campground and remains overnight.

(11) Extra Motorcycle in Campground: If the initial campsite rental is to a person riding a motorcycle, and the first extra vehicle is a motorcycle, the second motorcycle will not be charged. Each additional motorcycle will be charged \$5 as an extra vehicle.

(12) Express Check-In (where available): The department allows a person with a reservation that has prepaid in full for the duration of their stay for individual tent, electrical or full hook-up campsites to expedite the check-in process upon arrival at the park area.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121, 390.124, 183.310 - 183.550

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23(Temp), f. 2-19-74; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 86(Temp), f. 7-21-77, ef. 7-25-77; 1 OTC 90, f. & ef. 9-26-77; 1 OTC 1-1978, f. & ef. 2-23-78; 1 OTC 4-1979, f. & ef. 2-9-79; 1 OTC 6-1979, f. & ef. 3-29-79; 1 OTC 8-1979 (Temp), f. & ef. 5-17-79; 1 OTC 14-1979(Temp), f. & ef. 6-21-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 1-1981(Temp), f. 1-8-81, ef. 1-12-81; PR 9-1981, f. & ef. 4-6-81; PR 14-1981, f. & ef. 10-23-81; PR 5-1983, f. & ef. 3-30-83; PR 3-1984, f. & ef. 3-5-84; PR 11-1986, f. & ef. 7-9-86; PR 2-1987, f. & ef. 3-27-87; PR 1-1988, f. & cert. ef. 3-25-88; PR 6-1989(Temp), f. 12-29-89, cert. ef. 1-8-90; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 1-1992, f. & cert. ef. 2-14-92; PR 16-1992, f. & cert. ef. 12-1-92; PR 2-1994, f. & cert. 2-9-94; PR 6-1995, f. & cert. ef. 7-14-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0100, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2009, f. & cert. ef. 2-10-09

736-015-0040

Miscellaneous Rentals and Products

(1) Firewood: Where conditions permit, firewood will be sold.

(2) Boat Moorage Facilities — \$7 per day per boat: Where boat moorage facilities are provided they may only be reserved with other campsite reservations.

(3) Showers — \$2 per person: Charged where showers are available to non-campers in a campground.

(4) Horse Camping Area:

(a) Type I: \$16 per day per camper unit.

(b) Type II: \$14 per day per camper unit.

(c) A camper unit consists of a motor home, trailer, tent or camper.

(5) Group Camps: \$60 per group area per night. Small group areas are available in some park areas and are designed to accommodate approximately 25 people. Water and toilet facilities are provided nearby, but shower facilities may be some distance away.

(6) Pets Staying Overnight in Facilities (Yurts, Cabins, Tepees): Not more than two pets (cat or dog only) staying overnight in facilities: \$10 per night.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0125, PRD 4-2005, f. & cert. ef. 5-5-05; PRD 2-2009, f. & cert. ef. 2-10-09

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Public Utility Commission Chapter 860

Rule Caption: In the Matter of a Rulemaking Regarding Integrated Resource Planning Guidelines for Energy Utilities.

Adm. Order No.: PUC 1-2009

Filed with Sec. of State: 2-5-2009

Certified to be Effective: 2-5-09

Notice Publication Date: 12-1-2008

Rules Adopted: 860-027-0400

Subject: In its docket UM 1056, the Commission ordered that rulemaking be initiated to implement Guideline 3 adopted in its Order No. 07-002, as amended by Order No. 07-047. This rule sets guidelines applicable to investor-owned energy utilities for the filing, reviewing and updating of Integrated Resource Plans. The rule also clarifies the expectations of the Commission when, in its annual update to the Commission, a utility seeks acknowledgment of changes to its previously filed Integrated Resources Plan Action Plan.

Rules Coordinator: Diane Davis—(503) 378-4372

860-027-0400

Integrated Resource Plan Filing, Review, and Update.

(1) Scope and Applicability: This rule applies to investor-owned energy utilities. Upon application by an entity subject to this rule and for good cause shown, the Commission may relieve it of any obligation under this rule.

(2) As used in this rule, “Integrated Resource Plan” or “IRP” means the energy utility’s written plan satisfying the requirements of Commission Order Nos. 07-002, 07-047 and 08-339, detailing its determination of future long-term resource needs, its analysis of the expected costs and associated risks of the alternatives to meet those needs, and its action plan to select the best portfolio of resources to meet those needs.

(3) An energy utility must file an IRP within two years of its previous IRP acknowledgment order or as otherwise directed by the Commission. If the energy utility does not intend to take any significant resource action for at least two years after its next IRP is due, the energy utility may request an extension of its filing date from the Commission.

(4) The energy utility must present the results of its filed IRP to the Commission at a public meeting prior to the deadline for written public comment.

(5) Commission staff and parties must file their comments and recommendations within six months of IRP filing.

(6) The Commission must consider comments and recommendations on an energy utility’s IRP at a public meeting before issuing an order on acknowledgment. The Commission may provide the energy utility an opportunity to revise the IRP before issuing an acknowledgment order.

(7) The Commission may provide direction to an energy utility regarding any additional analyses or actions that the energy utility should undertake in its next IRP.

(8) Each energy utility must submit an annual update on its most recently acknowledged IRP. The update is due on or before the acknowledgment order anniversary date. The energy utility must summarize the annual update at a Commission public meeting. The energy utility may request acknowledgment of changes, identified in its update, to the IRP action plan. The annual update is an informational filing that:

(a) Describes what actions the energy utility has taken to implement the action plan to select best portfolio of resources contained in its acknowledged IRP;

(b) Provides an assessment of what has changed since the acknowledgment order that affects the action plan to select best portfolio of resources, including changes in such factors as load, expiration of resource contracts, supply-side and demand-side resource acquisitions, resource costs, and transmission availability; and

(c) Justifies any deviations from the action plan contained in its acknowledged IRP.

(9) As soon as an energy utility anticipates a significant deviation from its acknowledged IRP, it must file an update with the Commission, unless the energy utility is within six months of filing its next IRP. This update must meet the requirements set forth in section (8) of this rule.

(10) If the energy utility requests Commission acknowledgement of its proposed changes to the action plan contained in its acknowledged IRP:

(a) The energy utility must file its proposed changes with the Commission and present the results of its proposed changes to the

Commission at a public meeting prior to the deadline for written public comment;

(b) Commission staff and parties must file any comments and recommendations with the Commission and present such comments and recommendations to the Commission at a public meeting within six months of the energy utility’s filing of its request for acknowledgement of proposed changes;

(c) The Commission may provide direction to an energy utility regarding any additional analyses or actions that the utility should undertake in its next IRP.

Stat. Auth.: ORS 183, 756.040 & 757.262

Stats. Implemented: ORS 756.040 & 757.262

Hist.: PUC 1-2009, f. & cert. ef. 2-5-09

Public Utility Commission, Board of Maritime Pilots Chapter 856

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

Adm. Order No.: BMP 1-2009(Temp)

Filed with Sec. of State: 2-10-2009

Certified to be Effective: 2-10-09 thru 8-7-09

Notice Publication Date:

Rules Amended: 856-010-0015

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

Rules Coordinator: Susan Johnson—(971) 673-1530

856-010-0015

Renewal of License

(1) Application for renewal of license shall be made on a form provided by the board, signed by the applicant, accompanied by the physical examination form provided by the board and presented to the administrator of the board at least thirty (30) days prior to expiration of license.

(2) All state-licensed pilots shall be required to have an annual physical examination by an Oregon or Washington licensed physician within ninety (90) days prior to expiration of their license, the physical requirements for which are the same as for the original license as specified in OAR 856-010-0010(2), except for drug testing.

(3) All state-licensed pilots shall, within six months prior to the expiration of their license, submit to a test indicating licensee is free of illegal substance abuse. Testing will be for the presence of Cocaine, Opiates, Marijuana (THC), Amphetamines and PCP (phencyclidine). Testing will be in accordance with the Department of Transportation (Coast Guard) guidelines outlined in the Code of Federal Regulations 46, CFR § 16 (2006). Urine specimens are to be analyzed by a laboratory that meets DHHS regulations set forth by the National Institute of Drug Abuse (NIDA); or provide proof to the board that licensee is participating in a US Coast Guard approved random drug testing program;

(4) All applicants for renewal of licenses shall submit a photocopy of their currently applicable United States government license with radar endorsement issued by the United States Coast Guard.

(5) Failure of a licensed pilot to comply with all requirements for renewal of license shall constitute the failure to submit a complete application for renewal and will result in the withholding of the renewal license.

(6) Every applicant for renewal of an unlimited license shall certify that, during the sixty-three (63) months prior to the expiration date of their license, the applicant completed continuing professional development courses in bridge resource management for pilots, manned model simulated ship handling and electronic navigation systems. An applicant who is unable to complete these requirements within the time allowed due to unexpected, emergency circumstances may request a waiver and the Board may, upon good cause shown, permit a license renewal for one year without these requirements being met, provided that all required certifications must be made by the applicant at the time application for renewal is made the following year.

(7) Each license issued is valid for one year and only the unlimited state license may be renewed.

(8) Notwithstanding subsection (4) of this section, if a pilot has submitted an application for renewal of the pilot’s federal license at least 60

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days prior to the expiration date of his federal license, but the United States Coast Guard has not completed its renewal process by the expiration date for the federal license and the pilot has, for that reason, no currently applicable federal license at the time of renewing his state license, then the board may issue a provisionally renewed state license. Any pilot to whom a provisionally renewed state license is issued must report to the board every 30 days regarding the status of the pilot's federal license renewal. If the United States Coast Guard completes its processing for the federal license but declines to renew the federal license, the board may treat the refusal to renew the federal license as a suspension or revocation of the federal license.

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

Stat. Auth.: ORS 776

Stats. Implemented: ORS 776.115 & 776.345

Hist.: PC 1, f. 10-29-57, ef. 7-1-57; MP 2-1984, f. & ef. 10-4-84; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 1-1995, f. & cert. ef. 5-9-96; BMOP 1-2000, f. & cert. ef. 12-6-00; BMP 4-2006, f. 9-28-06, cert. ef. 10-6-06; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07; BMP 4-2008, f. & cert. ef. 1-24-08; BMP 1-2009(Temp), f. & cert. ef. 2-10-09 thru 8-7-09

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170-061-0015	12-29-2008	Amend	2-1-2009	259-020-0010	2-2-2009	Amend	3-1-2009
170-061-0020	12-29-2008	Amend	2-1-2009	259-020-0010(T)	2-2-2009	Repeal	3-1-2009
170-061-0100	12-29-2008	Amend	2-1-2009	259-020-0015	2-2-2009	Amend	3-1-2009
170-061-0200	12-29-2008	Amend	2-1-2009	259-020-0020	2-2-2009	Amend	3-1-2009
170-061-0300	12-29-2008	Adopt	2-1-2009	259-020-0025	2-2-2009	Amend	3-1-2009
170-061-0400	12-29-2008	Adopt	2-1-2009	291-022-0115	11-25-2008	Amend(T)	1-1-2009
170-062-0000	12-29-2008	Amend	2-1-2009	291-022-0160	11-25-2008	Amend(T)	1-1-2009
170-063-0000	12-29-2008	Amend	2-1-2009	291-022-0161	11-25-2008	Adopt(T)	1-1-2009
170-071-0005	12-29-2008	Amend	2-1-2009	291-022-0162	11-25-2008	Adopt(T)	1-1-2009
177-040-0001	1-1-2009	Amend	2-1-2009	291-039-0010	12-16-2008	Amend(T)	2-1-2009
177-040-0005	1-1-2009	Amend	2-1-2009	291-039-0015	12-16-2008	Amend(T)	2-1-2009
177-040-0017	2-1-2009	Amend	3-1-2009	291-042-0005	1-22-2009	Amend	3-1-2009
177-040-0017(T)	2-1-2009	Repeal	3-1-2009	291-042-0010	1-22-2009	Amend	3-1-2009
177-040-0030	1-1-2009	Amend	2-1-2009	291-042-0011	1-22-2009	Amend	3-1-2009
177-040-0050	1-1-2009	Amend	2-1-2009	291-042-0015	1-22-2009	Amend	3-1-2009
177-040-0052	1-1-2009	Amend	2-1-2009	291-042-0025	1-22-2009	Amend	3-1-2009
177-040-0061	2-1-2009	Amend	3-1-2009	291-042-0035	1-22-2009	Amend	3-1-2009
177-040-0061(T)	2-1-2009	Repeal	3-1-2009	291-042-0045	1-22-2009	Repeal	3-1-2009
177-045-0000	1-1-2009	Amend	2-1-2009	291-070-0120	12-16-2008	Amend(T)	2-1-2009
177-045-0010	1-1-2009	Amend	2-1-2009	291-127-0260	12-16-2008	Amend(T)	2-1-2009
177-045-0030	1-1-2009	Amend	2-1-2009	291-158-0005	12-26-2008	Amend	2-1-2009
177-045-0040	1-1-2009	Repeal	2-1-2009	291-158-0010	12-26-2008	Amend	2-1-2009
177-046-0020	11-23-2008	Amend(T)	1-1-2009	291-158-0015	12-26-2008	Amend	2-1-2009
177-046-0150	12-1-2008	Repeal	1-1-2009	291-158-0025	12-26-2008	Amend	2-1-2009
177-050-0025	12-1-2008	Amend	1-1-2009	291-158-0035	12-26-2008	Amend	2-1-2009
177-050-0027	12-1-2008	Amend	1-1-2009	291-158-0045	12-26-2008	Amend	2-1-2009
177-050-0100	12-1-2008	Adopt	1-1-2009	291-158-0055	12-26-2008	Amend	2-1-2009
177-069-0000	12-1-2008	Adopt	1-1-2009	291-158-0065	12-26-2008	Amend	2-1-2009
177-069-0010	12-1-2008	Adopt	1-1-2009	291-158-0075	12-26-2008	Amend	2-1-2009
177-069-0020	12-1-2008	Adopt	1-1-2009	309-114-0005	1-23-2009	Amend(T)	3-1-2009
177-069-0030	12-1-2008	Adopt	1-1-2009	309-114-0010	1-23-2009	Amend(T)	3-1-2009
177-069-0040	12-1-2008	Adopt	1-1-2009	309-114-0020	1-23-2009	Amend(T)	3-1-2009
177-069-0050	12-1-2008	Adopt	1-1-2009	330-061-0005	12-5-2008	Amend	1-1-2009
177-075-0010	11-23-2008	Amend(T)	1-1-2009	330-061-0025	12-5-2008	Amend	1-1-2009
177-081-0020	11-23-2008	Amend(T)	1-1-2009	330-061-0030	12-5-2008	Amend	1-1-2009
177-083-0020	11-23-2008	Amend(T)	1-1-2009	331-030-0000	12-1-2008	Amend(T)	1-1-2009
177-083-0030	11-23-2008	Amend(T)	1-1-2009	331-030-0005	12-1-2008	Adopt(T)	1-1-2009
177-083-0040	11-23-2008	Amend(T)	1-1-2009	331-030-0010	12-1-2008	Amend(T)	1-1-2009
177-085-0000	1-4-2009	Amend	1-1-2009	331-810-0038	12-1-2008	Adopt	1-1-2009
177-085-0005	1-4-2009	Amend	1-1-2009	333-010-0200	2-13-2009	Adopt	3-1-2009
177-085-0010	1-4-2009	Amend	1-1-2009	333-010-0205	2-13-2009	Adopt	3-1-2009
177-085-0015	11-23-2008	Amend(T)	1-1-2009	333-010-0210	2-13-2009	Adopt	3-1-2009
177-085-0015	1-4-2009	Amend	1-1-2009	333-010-0215	2-13-2009	Adopt	3-1-2009
177-085-0020	1-4-2009	Amend	1-1-2009	333-010-0220	2-13-2009	Adopt	3-1-2009
177-085-0025	1-4-2009	Amend	1-1-2009	333-010-0225	2-13-2009	Adopt	3-1-2009
177-085-0030	1-4-2009	Amend	1-1-2009	333-010-0230	2-13-2009	Adopt	3-1-2009
177-085-0035	1-4-2009	Amend	1-1-2009	333-010-0235	2-13-2009	Adopt	3-1-2009
177-085-0040	1-4-2009	Amend	1-1-2009	333-010-0240	2-13-2009	Adopt	3-1-2009
177-085-0045	1-4-2009	Amend	1-1-2009	333-010-0245	2-13-2009	Adopt	3-1-2009
177-085-0050	1-4-2009	Amend	1-1-2009	333-010-0250	2-13-2009	Adopt	3-1-2009
177-085-0065	1-4-2009	Amend	1-1-2009	333-010-0255	2-13-2009	Adopt	3-1-2009
177-094-0020	11-23-2008	Amend(T)	1-1-2009	333-010-0260	2-13-2009	Adopt	3-1-2009
213-017-0006	1-1-2009	Amend(T)	2-1-2009	333-010-0265	2-13-2009	Adopt	3-1-2009
259-008-0010	1-1-2009	Amend	1-1-2009	333-010-0270	2-13-2009	Adopt	3-1-2009
259-008-0011	1-1-2009	Amend	1-1-2009	333-010-0275	2-13-2009	Adopt	3-1-2009

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333-010-0285	2-13-2009	Adopt	3-1-2009	340-228-0608	12-31-2008	Repeal	2-1-2009
333-010-0290	2-13-2009	Adopt	3-1-2009	340-228-0609	12-31-2008	Adopt	2-1-2009
333-565-0000	1-1-2009	Amend	2-1-2009	340-228-0610	12-31-2008	Repeal	2-1-2009
333-675-0050	1-1-2009	Amend	2-1-2009	340-228-0611	12-31-2008	Adopt	2-1-2009
334-001-0000	3-1-2009	Amend	3-1-2009	340-228-0612	12-31-2008	Repeal	2-1-2009
334-001-0035	3-1-2009	Amend	3-1-2009	340-228-0613	12-31-2008	Adopt	2-1-2009
334-001-0045	3-1-2009	Amend	3-1-2009	340-228-0614	12-31-2008	Repeal	2-1-2009
334-001-0060	3-1-2009	Amend	3-1-2009	340-228-0615	12-31-2008	Adopt	2-1-2009
334-010-0005	3-1-2009	Amend	3-1-2009	340-228-0616	12-31-2008	Repeal	2-1-2009
334-010-0010	3-1-2009	Amend	3-1-2009	340-228-0617	12-31-2008	Adopt	2-1-2009
334-010-0012	3-1-2009	Amend	3-1-2009	340-228-0618	12-31-2008	Repeal	2-1-2009
334-010-0015	3-1-2009	Amend	3-1-2009	340-228-0619	12-31-2008	Adopt	2-1-2009
334-010-0016	3-1-2009	Repeal	3-1-2009	340-228-0620	12-31-2008	Repeal	2-1-2009
334-010-0017	3-1-2009	Amend	3-1-2009	340-228-0621	12-31-2008	Adopt	2-1-2009
334-010-0025	3-1-2009	Amend	3-1-2009	340-228-0622	12-31-2008	Repeal	2-1-2009
334-010-0031	3-1-2009	Repeal	3-1-2009	340-228-0623	12-31-2008	Adopt	2-1-2009
334-010-0033	3-1-2009	Amend	3-1-2009	340-228-0624	12-31-2008	Repeal	2-1-2009
334-010-0041	3-1-2009	Am. & Ren.	3-1-2009	340-228-0625	12-31-2008	Adopt	2-1-2009
334-010-0046	3-1-2009	Amend	3-1-2009	340-228-0626	12-31-2008	Repeal	2-1-2009
334-010-0047	3-1-2009	Amend	3-1-2009	340-228-0627	12-31-2008	Adopt	2-1-2009
334-010-0050	3-1-2009	Amend	3-1-2009	340-228-0628	12-31-2008	Repeal	2-1-2009
334-020-0005	3-1-2009	Amend	3-1-2009	340-228-0629	12-31-2008	Adopt	2-1-2009
334-020-0015	3-1-2009	Amend	3-1-2009	340-228-0630	12-31-2008	Repeal	2-1-2009
334-020-0020	3-1-2009	Repeal	3-1-2009	340-228-0631	12-31-2008	Adopt	2-1-2009
334-020-0025	3-1-2009	Repeal	3-1-2009	340-228-0632	12-31-2008	Repeal	2-1-2009
334-020-0030	3-1-2009	Repeal	3-1-2009	340-228-0633	12-31-2008	Adopt	2-1-2009
334-020-0035	3-1-2009	Repeal	3-1-2009	340-228-0634	12-31-2008	Repeal	2-1-2009
334-020-0040	3-1-2009	Repeal	3-1-2009	340-228-0635	12-31-2008	Adopt	2-1-2009
334-020-0045	3-1-2009	Repeal	3-1-2009	340-228-0636	12-31-2008	Repeal	2-1-2009
334-020-0050	3-1-2009	Amend	3-1-2009	340-228-0637	12-31-2008	Adopt	2-1-2009
334-020-0055	3-1-2009	Amend	3-1-2009	340-228-0638	12-31-2008	Repeal	2-1-2009
334-020-0060	3-1-2009	Repeal	3-1-2009	340-228-0640	12-31-2008	Repeal	2-1-2009
334-020-0065	3-1-2009	Repeal	3-1-2009	340-228-0642	12-31-2008	Repeal	2-1-2009
334-020-0070	3-1-2009	Repeal	3-1-2009	340-228-0644	12-31-2008	Repeal	2-1-2009
334-020-0075	3-1-2009	Repeal	3-1-2009	340-228-0646	12-31-2008	Repeal	2-1-2009
334-020-0080	3-1-2009	Repeal	3-1-2009	340-228-0648	12-31-2008	Repeal	2-1-2009
334-020-0085	3-1-2009	Repeal	3-1-2009	340-228-0650	12-31-2008	Repeal	2-1-2009
334-020-0090	3-1-2009	Repeal	3-1-2009	340-228-0652	12-31-2008	Repeal	2-1-2009
334-030-0001	3-1-2009	Amend	3-1-2009	340-228-0654	12-31-2008	Repeal	2-1-2009
334-030-0002	3-1-2009	Repeal	3-1-2009	340-228-0656	12-31-2008	Repeal	2-1-2009
334-030-0005	3-1-2009	Amend	3-1-2009	340-228-0658	12-31-2008	Repeal	2-1-2009
334-030-0010	3-1-2009	Repeal	3-1-2009	340-228-0660	12-31-2008	Repeal	2-1-2009
334-030-0025	3-1-2009	Am. & Ren.	3-1-2009	340-228-0662	12-31-2008	Repeal	2-1-2009
334-040-0001	3-1-2009	Adopt	3-1-2009	340-228-0664	12-31-2008	Repeal	2-1-2009
339-010-0023	1-1-2009	Amend	1-1-2009	340-228-0666	12-31-2008	Repeal	2-1-2009
339-010-0035	1-1-2009	Amend	1-1-2009	340-228-0668	12-31-2008	Repeal	2-1-2009
339-010-0050	1-1-2009	Amend	1-1-2009	340-228-0670	12-31-2008	Repeal	2-1-2009
339-020-0015	1-1-2009	Adopt	1-1-2009	340-228-0671	12-31-2008	Repeal	2-1-2009
340-200-0040	12-31-2008	Amend	2-1-2009	340-228-0672	12-31-2008	Repeal	2-1-2009
340-216-0020	12-31-2008	Amend	2-1-2009	340-228-0673	12-31-2008	Repeal	2-1-2009
340-216-0060	12-31-2008	Amend	2-1-2009	340-228-0674	12-31-2008	Repeal	2-1-2009
340-228-0600	12-31-2008	Amend	2-1-2009	340-228-0676	12-31-2008	Repeal	2-1-2009
340-228-0601	12-31-2008	Adopt	2-1-2009	340-228-0678	12-31-2008	Repeal	2-1-2009
340-228-0602	12-31-2008	Amend	2-1-2009	340-230-0300	12-31-2008	Amend	2-1-2009
340-228-0603	12-31-2008	Amend	2-1-2009	340-230-0310	12-31-2008	Amend	2-1-2009
340-228-0604	12-31-2008	Repeal	2-1-2009	340-230-0320	12-31-2008	Amend	2-1-2009
340-228-0605	12-31-2008	Repeal	2-1-2009	340-230-0330	12-31-2008	Amend	2-1-2009

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340-230-0340	12-31-2008	Amend	2-1-2009	407-007-0370	1-1-2009	Amend	2-1-2009
340-230-0350	12-31-2008	Amend	2-1-2009	407-007-0380	1-1-2009	Repeal	2-1-2009
340-230-0359	12-31-2008	Adopt	2-1-2009	407-120-0300	12-27-2008	Amend	2-1-2009
340-232-0070	12-31-2008	Repeal	2-1-2009	407-120-0300(T)	12-27-2008	Repeal	2-1-2009
340-238-0040	12-31-2008	Amend	2-1-2009	407-120-0310	12-27-2008	Amend	2-1-2009
340-238-0050	12-31-2008	Repeal	2-1-2009	407-120-0310(T)	12-27-2008	Repeal	2-1-2009
340-238-0060	12-31-2008	Amend	2-1-2009	407-120-0320	12-27-2008	Amend	2-1-2009
340-238-0090	12-31-2008	Amend	2-1-2009	407-120-0320(T)	12-27-2008	Repeal	2-1-2009
340-242-0520	12-31-2008	Amend	2-1-2009	407-120-0325	12-27-2008	Adopt	2-1-2009
340-244-0020	12-31-2008	Amend	2-1-2009	407-120-0325(T)	12-27-2008	Repeal	2-1-2009
340-244-0030	12-31-2008	Amend	2-1-2009	407-120-0330	12-27-2008	Amend	2-1-2009
340-244-0100	12-31-2008	Amend	2-1-2009	407-120-0330(T)	12-27-2008	Repeal	2-1-2009
340-244-0110	12-31-2008	Repeal	2-1-2009	407-120-0340	12-27-2008	Amend	2-1-2009
340-244-0120	12-31-2008	Repeal	2-1-2009	407-120-0340(T)	12-27-2008	Repeal	2-1-2009
340-244-0130	12-31-2008	Repeal	2-1-2009	407-120-0350	12-27-2008	Amend	2-1-2009
340-244-0140	12-31-2008	Repeal	2-1-2009	407-120-0350(T)	12-27-2008	Repeal	2-1-2009
340-244-0150	12-31-2008	Repeal	2-1-2009	407-120-0360	12-27-2008	Amend	2-1-2009
340-244-0160	12-31-2008	Repeal	2-1-2009	407-120-0360(T)	12-27-2008	Repeal	2-1-2009
340-244-0170	12-31-2008	Repeal	2-1-2009	407-120-0370	12-27-2008	Amend	2-1-2009
340-244-0180	12-31-2008	Repeal	2-1-2009	407-120-0370(T)	12-27-2008	Repeal	2-1-2009
340-244-0210	12-31-2008	Amend	2-1-2009	407-120-0380	12-27-2008	Amend	2-1-2009
340-244-0220	12-31-2008	Amend	2-1-2009	407-120-0380(T)	12-27-2008	Repeal	2-1-2009
340-244-0232	12-31-2008	Adopt	2-1-2009	407-120-0400	1-12-2009	Adopt(T)	2-1-2009
340-244-0234	12-31-2008	Adopt	2-1-2009	410-120-0000	12-1-2008	Amend	1-1-2009
340-244-0236	12-31-2008	Adopt	2-1-2009	410-120-0027	1-12-2009	Adopt(T)	2-1-2009
340-244-0238	12-31-2008	Adopt	2-1-2009	410-120-0027	1-16-2009	Amend(T)	3-1-2009
340-244-0240	12-31-2008	Adopt	2-1-2009	410-120-0027(T)	1-16-2009	Suspend	3-1-2009
340-244-0242	12-31-2008	Adopt	2-1-2009	410-120-1140	12-1-2008	Amend	1-1-2009
340-244-0244	12-31-2008	Adopt	2-1-2009	410-120-1180	12-1-2008	Amend	1-1-2009
340-244-0246	12-31-2008	Adopt	2-1-2009	410-120-1195	12-1-2008	Amend	1-1-2009
340-244-0248	12-31-2008	Adopt	2-1-2009	410-120-1260	12-1-2008	Amend	1-1-2009
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340-244-0252	12-31-2008	Adopt	2-1-2009	410-120-1340	12-1-2008	Amend	1-1-2009
350-040-0020	1-14-2009	Amend(T)	2-1-2009	410-120-1340	1-1-2009	Amend	1-1-2009
350-040-0040	1-14-2009	Amend(T)	2-1-2009	410-121-0000	1-1-2009	Amend	1-1-2009
350-050-0020	1-14-2009	Amend(T)	2-1-2009	410-121-0030	1-1-2009	Amend	1-1-2009
350-050-0060	1-14-2009	Amend(T)	2-1-2009	410-121-0032	1-1-2009	Amend	1-1-2009
407-001-0000	12-5-2008	Amend	1-1-2009	410-121-0040	12-1-2008	Amend	1-1-2009
407-001-0005	12-5-2008	Amend	1-1-2009	410-121-0060	12-1-2008	Amend	1-1-2009
407-001-0010	12-5-2008	Amend	1-1-2009	410-121-0060	1-1-2009	Amend	1-1-2009
407-007-0200	1-1-2009	Amend	2-1-2009	410-121-0140	12-1-2008	Amend	1-1-2009
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407-007-0220	1-1-2009	Amend	2-1-2009	410-121-0150	12-1-2008	Amend	1-1-2009
407-007-0230	1-1-2009	Amend	2-1-2009	410-121-0157	12-1-2008	Amend	1-1-2009
407-007-0240	1-1-2009	Amend	2-1-2009	410-121-0185	1-1-2009	Amend	1-1-2009
407-007-0250	1-1-2009	Amend	2-1-2009	410-121-0200	12-1-2008	Amend	1-1-2009
407-007-0260	1-1-2009	Repeal	2-1-2009	410-121-0300	1-1-2009	Amend	1-1-2009
407-007-0270	1-1-2009	Repeal	2-1-2009	410-121-0320	12-1-2008	Amend	1-1-2009
407-007-0280	1-1-2009	Amend	2-1-2009	410-121-0625	1-1-2009	Amend	1-1-2009
407-007-0290	1-1-2009	Amend	2-1-2009	410-122-0040	12-1-2008	Amend	1-1-2009
407-007-0300	1-1-2009	Amend	2-1-2009	410-122-0182	1-1-2009	Amend	1-1-2009
407-007-0310	1-1-2009	Repeal	2-1-2009	410-122-0200	1-1-2009	Amend	1-1-2009
407-007-0320	1-1-2009	Amend	2-1-2009	410-122-0202	1-1-2009	Amend(T)	2-1-2009
407-007-0330	1-1-2009	Amend	2-1-2009	410-122-0203	1-1-2009	Amend	1-1-2009
407-007-0340	1-1-2009	Amend	2-1-2009	410-122-0204	1-1-2009	Amend	1-1-2009
407-007-0350	1-1-2009	Amend	2-1-2009	410-122-0211	1-1-2009	Adopt	1-1-2009
407-007-0355	1-1-2009	Adopt	2-1-2009	410-122-0330	1-1-2009	Amend	1-1-2009

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410-122-0365	1-1-2009	Amend	1-1-2009	410-138-0620	12-28-2008	Amend	2-1-2009
410-122-0560	1-1-2009	Amend	1-1-2009	410-138-0680	12-28-2008	Amend	2-1-2009
410-122-0580	1-1-2009	Amend	1-1-2009	410-138-0700	12-28-2008	Amend	2-1-2009
410-122-0630	1-1-2009	Amend	1-1-2009	410-138-0720	12-28-2008	Amend	2-1-2009
410-122-0655	1-1-2009	Amend	1-1-2009	410-138-0740	12-28-2008	Amend	2-1-2009
410-123-1085	1-1-2009	Amend	1-1-2009	410-138-0780	12-28-2008	Amend	2-1-2009
410-123-1160	1-1-2009	Amend	1-1-2009	410-141-0000	12-1-2008	Amend	1-1-2009
410-123-1220	1-1-2009	Amend	1-1-2009	410-141-0020	12-1-2008	Amend	1-1-2009
410-123-1230	1-1-2009	Amend	1-1-2009	410-141-0120	1-1-2009	Amend	1-1-2009
410-123-1240	1-1-2009	Amend	1-1-2009	410-141-0220	12-1-2008	Amend	1-1-2009
410-123-1260	1-1-2009	Amend	1-1-2009	410-141-0266	1-1-2009	Amend	1-1-2009
410-123-1490	1-1-2009	Amend	1-1-2009	410-141-0425	1-5-2009	Adopt(T)	2-1-2009
410-123-1620	1-1-2009	Amend	1-1-2009	410-141-0520	1-1-2009	Amend	1-1-2009
410-123-1670	1-1-2009	Amend	1-1-2009	410-141-0520	1-30-2009	Amend(T)	3-1-2009
410-125-0020	1-1-2009	Amend	1-1-2009	410-141-0520(T)	1-1-2009	Repeal	1-1-2009
410-125-0041	1-1-2009	Amend	1-1-2009	410-146-0021	12-1-2008	Amend	1-1-2009
410-125-0045	1-1-2009	Amend	1-1-2009	410-146-0040	1-1-2009	Amend	1-1-2009
410-125-0080	1-1-2009	Amend	1-1-2009	410-146-0060	12-1-2008	Amend	1-1-2009
410-125-0085	1-1-2009	Amend	1-1-2009	410-146-0080	12-1-2008	Amend	1-1-2009
410-125-0125	12-1-2008	Amend	1-1-2009	410-146-0085	12-1-2008	Amend	1-1-2009
410-125-0155	1-1-2009	Amend	1-1-2009	410-146-0086	12-1-2008	Amend	1-1-2009
410-125-0181	1-1-2009	Amend	1-1-2009	410-146-0100	12-1-2008	Amend	1-1-2009
410-125-0195	1-1-2009	Amend	1-1-2009	410-146-0120	12-1-2008	Amend	1-1-2009
410-125-0210	12-1-2008	Amend	1-1-2009	410-146-0130	12-1-2008	Amend	1-1-2009
410-125-0220	12-1-2008	Amend	1-1-2009	410-146-0140	12-1-2008	Amend	1-1-2009
410-125-0360	12-1-2008	Amend	1-1-2009	410-146-0340	12-1-2008	Amend	1-1-2009
410-125-0400	12-1-2008	Amend	1-1-2009	410-146-0380	12-1-2008	Amend	1-1-2009
410-125-0600	12-1-2008	Amend	1-1-2009	410-146-0440	12-1-2008	Amend	1-1-2009
410-125-0640	12-1-2008	Amend	1-1-2009	410-147-0020	12-1-2008	Amend	1-1-2009
410-125-0720	12-1-2008	Amend	1-1-2009	410-147-0040	1-1-2009	Amend	1-1-2009
410-125-1020	1-1-2009	Amend	1-1-2009	410-147-0060	12-1-2008	Amend	1-1-2009
410-125-1070	12-1-2008	Amend	1-1-2009	410-147-0120	12-1-2008	Amend	1-1-2009
410-127-0080	12-1-2008	Amend	1-1-2009	410-147-0125	12-1-2008	Amend	1-1-2009
410-129-0080	12-1-2008	Amend	1-1-2009	410-147-0140	12-1-2008	Amend	1-1-2009
410-130-0180	12-1-2008	Amend	1-1-2009	410-147-0160	12-1-2008	Amend	1-1-2009
410-132-0100	12-1-2008	Amend	1-1-2009	410-147-0180	12-1-2008	Amend	1-1-2009
410-133-0040	12-28-2008	Amend	2-1-2009	410-147-0200	12-1-2008	Amend	1-1-2009
410-133-0090	12-28-2008	Amend	2-1-2009	410-147-0220	12-1-2008	Amend	1-1-2009
410-133-0100	12-28-2008	Amend	2-1-2009	410-147-0320	12-1-2008	Amend	1-1-2009
410-133-0140	12-28-2008	Amend	2-1-2009	410-147-0340	12-1-2008	Amend	1-1-2009
410-133-0220	12-28-2008	Amend	2-1-2009	410-147-0360	12-1-2008	Amend	1-1-2009
410-133-0280	12-28-2008	Amend	2-1-2009	410-147-0460	12-1-2008	Amend	1-1-2009
410-136-0240	12-1-2008	Amend	1-1-2009	410-147-0480	12-1-2008	Amend	1-1-2009
410-136-0260	12-1-2008	Amend	1-1-2009	410-147-0540	12-1-2008	Amend	1-1-2009
410-136-0300	12-1-2008	Amend	1-1-2009	410-147-0560	12-1-2008	Amend	1-1-2009
410-138-0000	12-28-2008	Amend	2-1-2009	410-147-0610	12-1-2008	Amend	1-1-2009
410-138-0005	12-28-2008	Adopt	2-1-2009	410-147-0620	12-1-2008	Amend	1-1-2009
410-138-0007	12-28-2008	Adopt	2-1-2009	411-030-0002	1-1-2009	Amend	2-1-2009
410-138-0009	12-28-2008	Adopt	2-1-2009	411-030-0020	1-1-2009	Amend	2-1-2009
410-138-0020	12-28-2008	Amend	2-1-2009	411-030-0033	1-1-2009	Amend	2-1-2009
410-138-0080	12-28-2008	Amend	2-1-2009	411-030-0040	1-1-2009	Amend	2-1-2009
410-138-0300	12-28-2008	Amend	2-1-2009	411-030-0050	1-1-2009	Amend	2-1-2009
410-138-0320	12-28-2008	Amend	2-1-2009	411-030-0055	1-1-2009	Amend	2-1-2009
410-138-0380	12-28-2008	Amend	2-1-2009	411-030-0070	1-1-2009	Amend	2-1-2009
410-138-0500	12-28-2008	Amend	2-1-2009	411-030-0080	1-1-2009	Amend	2-1-2009
410-138-0520	12-28-2008	Amend	2-1-2009	411-030-0090	1-1-2009	Amend	2-1-2009
410-138-0560	12-28-2008	Amend	2-1-2009	411-030-0100	1-1-2009	Amend	2-1-2009

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411-054-0008	1-1-2009	Repeal	2-1-2009	423-001-0006	12-12-2008	Amend(T)	1-1-2009
411-054-0012	1-1-2009	Amend	2-1-2009	423-010-0023	12-12-2008	Amend	1-1-2009
411-054-0105	1-1-2009	Amend	2-1-2009	436-009-0005	1-1-2009	Amend	1-1-2009
413-120-0400	2-2-2009	Amend	3-1-2009	436-009-0008	1-1-2009	Amend	1-1-2009
413-120-0400(T)	2-2-2009	Repeal	3-1-2009	436-009-0018	1-1-2009	Adopt	1-1-2009
413-120-0410	2-2-2009	Repeal	3-1-2009	436-009-0020	1-1-2009	Amend	1-1-2009
413-120-0420	2-2-2009	Amend	3-1-2009	436-009-0022	1-1-2009	Amend	1-1-2009
413-120-0420(T)	2-2-2009	Repeal	3-1-2009	436-009-0030	1-1-2009	Amend	1-1-2009
413-120-0440	2-2-2009	Amend	3-1-2009	436-009-0035	1-1-2009	Amend	1-1-2009
413-120-0440(T)	2-2-2009	Repeal	3-1-2009	436-009-0040	1-1-2009	Amend	1-1-2009
413-120-0450	2-2-2009	Amend	3-1-2009	436-009-0070	1-1-2009	Amend	1-1-2009
413-120-0450(T)	2-2-2009	Repeal	3-1-2009	436-009-0080	1-1-2009	Amend	1-1-2009
413-120-0455	2-2-2009	Amend	3-1-2009	436-009-0090	1-1-2009	Amend	1-1-2009
413-120-0455(T)	2-2-2009	Repeal	3-1-2009	436-009-0095	1-1-2009	Adopt	1-1-2009
413-120-0460	2-2-2009	Amend	3-1-2009	436-009-0100	1-1-2009	Amend	1-1-2009
413-120-0460(T)	2-2-2009	Repeal	3-1-2009	436-015-0007	1-1-2009	Adopt	1-1-2009
413-120-0470	2-2-2009	Amend	3-1-2009	436-015-0120	1-1-2009	Amend	1-1-2009
413-120-0470(T)	2-2-2009	Repeal	3-1-2009	436-060-0005	1-1-2009	Amend	1-1-2009
413-200-0270	2-2-2009	Amend	3-1-2009	436-060-0009	1-1-2009	Amend	1-1-2009
413-200-0272	2-2-2009	Amend	3-1-2009	436-060-0010	1-1-2009	Amend	1-1-2009
413-200-0272(T)	2-2-2009	Repeal	3-1-2009	436-060-0015	1-1-2009	Amend	1-1-2009
413-200-0274	2-2-2009	Amend	3-1-2009	436-060-0017	1-1-2009	Amend	1-1-2009
413-200-0274(T)	2-2-2009	Repeal	3-1-2009	436-060-0018	1-1-2009	Amend	1-1-2009
413-200-0276	2-2-2009	Amend	3-1-2009	436-060-0020	1-1-2009	Amend	1-1-2009
413-200-0278	2-2-2009	Amend	3-1-2009	436-060-0025	1-1-2009	Amend	1-1-2009
413-200-0278(T)	2-2-2009	Repeal	3-1-2009	436-060-0035	1-1-2009	Amend	1-1-2009
413-200-0281	2-2-2009	Amend	3-1-2009	436-060-0060	1-1-2009	Amend	1-1-2009
413-200-0281(T)	2-2-2009	Repeal	3-1-2009	436-060-0105	1-1-2009	Amend	1-1-2009
413-200-0283	2-2-2009	Amend	3-1-2009	436-060-0135	1-1-2009	Amend	1-1-2009
413-200-0283(T)	2-2-2009	Repeal	3-1-2009	436-060-0137	1-1-2009	Amend	1-1-2009
413-200-0287	2-2-2009	Amend	3-1-2009	436-060-0147	1-1-2009	Amend	1-1-2009
413-200-0287(T)	2-2-2009	Repeal	3-1-2009	436-060-0150	1-1-2009	Amend	1-1-2009
413-200-0292	2-2-2009	Amend	3-1-2009	436-060-0153	1-1-2009	Adopt	1-1-2009
413-200-0292(T)	2-2-2009	Repeal	3-1-2009	436-060-0155	1-1-2009	Amend	1-1-2009
413-200-0296	2-2-2009	Amend	3-1-2009	436-060-0500	1-1-2009	Amend	1-1-2009
413-200-0301	2-2-2009	Amend	3-1-2009	437-001-0015	2-3-2009	Amend	3-1-2009
413-200-0305	2-2-2009	Amend	3-1-2009	437-001-0160	2-3-2009	Amend	3-1-2009
413-200-0306	2-2-2009	Amend	3-1-2009	437-001-0205	2-3-2009	Amend	3-1-2009
413-200-0306(T)	2-2-2009	Repeal	3-1-2009	437-001-0760	2-3-2009	Amend	3-1-2009
413-200-0308	2-2-2009	Amend	3-1-2009	437-001-1015	2-3-2009	Amend	3-1-2009
413-200-0314	2-2-2009	Amend	3-1-2009	437-001-1020	2-3-2009	Amend	3-1-2009
413-200-0314(T)	2-2-2009	Repeal	3-1-2009	437-002-0187	12-31-2008	Amend	2-1-2009
413-200-0335	2-2-2009	Amend	3-1-2009	437-004-1120	1-26-2009	Amend	3-1-2009
413-200-0354	2-2-2009	Amend	3-1-2009	441-025-0060	2-3-2009	Adopt	3-1-2009
413-200-0358	2-2-2009	Amend	3-1-2009	441-500-0020	2-3-2009	Amend	3-1-2009
413-200-0362	2-2-2009	Amend	3-1-2009	441-730-0030	2-3-2009	Amend	3-1-2009
413-200-0371	2-2-2009	Amend	3-1-2009	441-865-0025	12-10-2008	Adopt	1-1-2009
413-200-0371(T)	2-2-2009	Repeal	3-1-2009	442-001-0000	1-1-2009	Amend	2-1-2009
413-200-0379	2-2-2009	Amend	3-1-2009	442-001-0005	1-1-2009	Amend	2-1-2009
413-200-0383	2-2-2009	Amend	3-1-2009	442-001-0010	1-1-2009	Repeal	2-1-2009
413-200-0383(T)	2-2-2009	Repeal	3-1-2009	442-001-0015	1-1-2009	Repeal	2-1-2009
413-200-0386	2-2-2009	Amend	3-1-2009	442-001-0050	1-1-2009	Adopt	2-1-2009
413-200-0388	2-2-2009	Amend	3-1-2009	442-001-0060	1-1-2009	Adopt	2-1-2009
413-200-0390	2-2-2009	Amend	3-1-2009	442-001-0070	1-1-2009	Adopt	2-1-2009
413-200-0393	2-2-2009	Amend	3-1-2009	442-001-0080	1-1-2009	Adopt	2-1-2009
413-200-0395	2-2-2009	Amend	3-1-2009	442-001-0090	1-1-2009	Adopt	2-1-2009
413-200-0396	2-2-2009	Amend	3-1-2009	442-001-0100	1-1-2009	Adopt	2-1-2009

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442-001-0120	1-1-2009	Adopt	2-1-2009	461-155-0300	1-1-2009	Amend	2-1-2009
442-001-0130	1-1-2009	Adopt	2-1-2009	461-155-0320	1-1-2009	Amend	2-1-2009
442-001-0140	1-1-2009	Adopt	2-1-2009	461-155-0500	1-1-2009	Amend	2-1-2009
442-001-0150	1-1-2009	Adopt	2-1-2009	461-155-0500(T)	1-1-2009	Repeal	2-1-2009
442-001-0160	1-1-2009	Adopt	2-1-2009	461-155-0526	1-1-2009	Amend	2-1-2009
443-002-0070	2-12-2009	Amend(T)	3-1-2009	461-155-0526(T)	1-1-2009	Repeal	2-1-2009
459-005-0001	2-12-2009	Amend	3-1-2009	461-155-0600	1-1-2009	Amend	2-1-2009
459-005-0525	11-26-2008	Amend	1-1-2009	461-155-0600(T)	1-1-2009	Repeal	2-1-2009
459-005-0535	11-26-2008	Amend	1-1-2009	461-155-0610	1-1-2009	Amend	2-1-2009
459-005-0545	11-26-2008	Amend	1-1-2009	461-155-0610(T)	1-1-2009	Repeal	2-1-2009
459-010-0010	11-26-2008	Amend	1-1-2009	461-155-0700	1-1-2009	Adopt	2-1-2009
459-011-0100	2-12-2009	Amend	3-1-2009	461-155-0700(T)	1-1-2009	Repeal	2-1-2009
459-011-0110	2-12-2009	Amend	3-1-2009	461-155-0710	1-1-2009	Adopt	2-1-2009
459-013-0260	11-26-2008	Amend	1-1-2009	461-155-0710(T)	1-1-2009	Repeal	2-1-2009
459-015-0001	2-12-2009	Amend	3-1-2009	461-160-0100	1-1-2009	Amend	2-1-2009
459-030-0011	2-12-2009	Amend	3-1-2009	461-160-0410	1-1-2009	Amend	2-1-2009
459-030-0025	2-12-2009	Amend	3-1-2009	461-160-0550	1-1-2009	Amend(T)	2-1-2009
459-030-0030	2-12-2009	Amend	3-1-2009	461-160-0551	1-1-2009	Amend(T)	2-1-2009
459-050-0037	11-26-2008	Amend	1-1-2009	461-160-0580	1-1-2009	Amend	2-1-2009
459-050-0075	2-12-2009	Amend	3-1-2009	461-160-0620	1-1-2009	Amend	2-1-2009
459-070-0001	2-12-2009	Amend	3-1-2009	461-165-0030	1-1-2009	Amend	2-1-2009
459-075-0175	11-26-2008	Adopt	1-1-2009	461-170-0010	1-1-2009	Amend	2-1-2009
459-076-0001	2-12-2009	Amend	3-1-2009	461-170-0015	1-1-2009	Am. & Ren.	2-1-2009
459-080-0100	2-12-2009	Amend	3-1-2009	461-170-0020	1-1-2009	Am. & Ren.	2-1-2009
461-001-0000	1-1-2009	Amend	2-1-2009	461-170-0025	1-1-2009	Am. & Ren.	2-1-2009
461-001-0025	1-1-2009	Amend	2-1-2009	461-170-0030	1-1-2009	Am. & Ren.	2-1-2009
461-101-0010	1-1-2009	Amend	2-1-2009	461-170-0035	1-1-2009	Am. & Ren.	2-1-2009
461-110-0330	1-1-2009	Amend	2-1-2009	461-170-0100	1-1-2009	Amend	2-1-2009
461-110-0350	1-1-2009	Amend	2-1-2009	461-170-0101	1-1-2009	Amend	2-1-2009
461-115-0050	1-1-2009	Amend	2-1-2009	461-170-0102	1-1-2009	Amend	2-1-2009
461-115-0530	1-1-2009	Amend	2-1-2009	461-170-0120	1-1-2009	Amend	2-1-2009
461-120-0125	1-1-2009	Amend(T)	2-1-2009	461-170-0150	1-1-2009	Amend	2-1-2009
461-130-0335	1-1-2009	Amend	2-1-2009	461-170-0160	1-1-2009	Amend	2-1-2009
461-135-0010	1-1-2009	Amend	2-1-2009	461-170-0170	1-1-2009	Repeal	2-1-2009
461-135-0075	1-1-2009	Amend	2-1-2009	461-170-0200	1-1-2009	Amend	2-1-2009
461-135-0075(T)	1-1-2009	Repeal	2-1-2009	461-175-0220	1-1-2009	Amend	2-1-2009
461-135-0085	1-1-2009	Amend	2-1-2009	461-175-0240	1-1-2009	Amend	2-1-2009
461-135-0089	1-1-2009	Amend	2-1-2009	461-175-0270	1-1-2009	Amend	2-1-2009
461-135-0730	1-1-2009	Amend	2-1-2009	461-175-0280	1-1-2009	Amend	2-1-2009
461-135-0745	1-1-2009	Amend	2-1-2009	461-175-0305	1-1-2009	Amend	2-1-2009
461-135-0780	1-1-2009	Amend	2-1-2009	461-180-0005	1-1-2009	Amend	2-1-2009
461-135-0832	1-1-2009	Amend	2-1-2009	461-180-0090	1-1-2009	Amend	2-1-2009
461-135-1102	1-1-2009	Amend	2-1-2009	461-180-0125	1-1-2009	Amend	2-1-2009
461-135-1195	1-1-2009	Amend	2-1-2009	471-010-0025	12-1-2008	Adopt	1-1-2009
461-135-1250	1-1-2009	Amend(T)	2-1-2009	471-010-0045	12-1-2008	Adopt	1-1-2009
461-145-0380	1-1-2009	Amend	2-1-2009	471-031-0072	12-1-2008	Amend	1-1-2009
461-145-0540	1-1-2009	Amend	2-1-2009	471-031-0151	12-1-2008	Amend	1-1-2009
461-145-0820	1-1-2009	Amend	2-1-2009	471-031-0190	12-1-2008	Adopt	1-1-2009
461-145-0830	1-1-2009	Amend	2-1-2009	471-031-0195	12-1-2008	Adopt	1-1-2009
461-145-0840	1-1-2009	Repeal	2-1-2009	471-031-0200	12-1-2008	Adopt	1-1-2009
461-150-0048	1-1-2009	Repeal	2-1-2009	471-031-0205	12-1-2008	Adopt	1-1-2009
461-150-0049	1-1-2009	Amend	2-1-2009	471-031-0210	12-1-2008	Adopt	1-1-2009
461-150-0050	1-1-2009	Amend	2-1-2009	471-031-0215	12-1-2008	Adopt	1-1-2009
461-155-0180	1-27-2009	Amend	3-1-2009	471-031-0220	12-1-2008	Adopt	1-1-2009
461-155-0235	1-27-2009	Amend	3-1-2009	471-031-0225	12-1-2008	Adopt	1-1-2009
461-155-0250	1-1-2009	Amend	2-1-2009	471-031-0230	12-1-2008	Adopt	1-1-2009
461-155-0270	1-1-2009	Amend	2-1-2009	574-050-0005	2-13-2009	Amend	3-1-2009

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581-001-0100	12-19-2008	Amend	2-1-2009	629-022-0140	2-1-2009	Amend	2-1-2009
581-022-0610	12-19-2008	Amend	2-1-2009	629-022-0150	2-1-2009	Amend	2-1-2009
581-022-0711	12-19-2008	Adopt	2-1-2009	629-022-0160	2-1-2009	Amend	2-1-2009
582-001-0003	12-19-2008	Amend(T)	2-1-2009	629-022-0200	2-1-2009	Amend	2-1-2009
582-001-0005	12-19-2008	Amend(T)	2-1-2009	629-022-0210	2-1-2009	Amend	2-1-2009
582-001-0010	12-19-2008	Amend(T)	2-1-2009	629-022-0220	2-1-2009	Amend	2-1-2009
582-010-0005	2-11-2009	Suspend	3-1-2009	629-022-0230	2-1-2009	Amend	2-1-2009
582-010-0010	2-11-2009	Suspend	3-1-2009	629-022-0250	2-1-2009	Amend	2-1-2009
582-010-0015	2-11-2009	Suspend	3-1-2009	629-022-0300	2-1-2009	Amend	2-1-2009
582-010-0020	2-11-2009	Suspend	3-1-2009	629-022-0320	2-1-2009	Amend	2-1-2009
582-010-0021	2-11-2009	Suspend	3-1-2009	629-022-0380	2-1-2009	Amend	2-1-2009
582-010-0022	2-11-2009	Suspend	3-1-2009	629-022-0390	2-1-2009	Amend	2-1-2009
582-010-0025	2-11-2009	Suspend	3-1-2009	629-022-0400	2-1-2009	Amend	2-1-2009
582-010-0030	2-11-2009	Suspend	3-1-2009	629-022-0410	2-1-2009	Amend	2-1-2009
582-070-0010	2-11-2009	Amend(T)	3-1-2009	629-022-0500	2-1-2009	Repeal	2-1-2009
582-070-0020	2-11-2009	Amend(T)	3-1-2009	629-022-0600	2-1-2009	Repeal	2-1-2009
582-080-0010	2-11-2009	Amend(T)	3-1-2009	629-022-0700	2-1-2009	Repeal	2-1-2009
582-080-0020	2-11-2009	Amend(T)	3-1-2009	629-022-0800	2-1-2009	Adopt	2-1-2009
582-080-0030	2-11-2009	Amend(T)	3-1-2009	629-022-0810	2-1-2009	Adopt	2-1-2009
582-080-0040	2-11-2009	Amend(T)	3-1-2009	629-022-0820	2-1-2009	Adopt	2-1-2009
582-080-0050	2-11-2009	Amend(T)	3-1-2009	629-022-0830	2-1-2009	Adopt	2-1-2009
582-085-0004	2-11-2009	Suspend	3-1-2009	629-022-0840	2-1-2009	Adopt	2-1-2009
582-100-0040	12-19-2008	Amend(T)	2-1-2009	629-022-0850	2-1-2009	Adopt	2-1-2009
589-020-0225	12-29-2008	Amend	2-1-2009	635-001-0050	1-14-2009	Amend(T)	2-1-2009
603-052-0129	2-13-2009	Amend	3-1-2009	635-004-0014	11-21-2008	Amend	1-1-2009
603-052-0153	2-13-2009	Amend	3-1-2009	635-004-0016	1-1-2009	Amend(T)	2-1-2009
603-052-0160	2-13-2009	Amend	3-1-2009	635-004-0019	12-4-2008	Amend(T)	1-1-2009
603-052-0201	2-13-2009	Amend	3-1-2009	635-004-0019	1-5-2009	Amend(T)	2-1-2009
603-052-0265	2-13-2009	Amend	3-1-2009	635-004-0019(T)	12-4-2008	Suspend	1-1-2009
603-052-0360	2-13-2009	Amend	3-1-2009	635-004-0020	11-21-2008	Amend	1-1-2009
603-057-0500	1-23-2009	Amend(T)	3-1-2009	635-004-0027	1-1-2009	Amend(T)	2-1-2009
603-057-0502	1-23-2009	Adopt(T)	3-1-2009	635-004-0033	1-1-2009	Amend(T)	2-1-2009
603-057-0510	1-23-2009	Amend(T)	3-1-2009	635-004-0035	11-21-2008	Amend	1-1-2009
603-057-0515	1-23-2009	Suspend	3-1-2009	635-004-0048	11-21-2008	Amend	1-1-2009
603-057-0520	1-23-2009	Amend(T)	3-1-2009	635-004-0050	11-21-2008	Amend	1-1-2009
603-057-0525	1-23-2009	Amend(T)	3-1-2009	635-004-0060	11-21-2008	Amend	1-1-2009
603-057-0530	1-23-2009	Amend(T)	3-1-2009	635-004-0090	1-1-2009	Amend(T)	2-1-2009
603-057-0532	1-23-2009	Adopt(T)	3-1-2009	635-004-0135	11-21-2008	Amend	1-1-2009
603-074-0080	1-30-2009	Amend	3-1-2009	635-004-0170	11-21-2008	Amend	1-1-2009
619-005-0010	12-17-2008	Adopt	2-1-2009	635-005-0001	11-21-2008	Amend	1-1-2009
619-005-0020	12-17-2008	Adopt	2-1-2009	635-005-0005	11-21-2008	Amend	1-1-2009
619-005-0030	12-17-2008	Adopt	2-1-2009	635-005-0005	12-17-2008	Amend	2-1-2009
619-005-0040	12-17-2008	Adopt	2-1-2009	635-005-0016	11-21-2008	Amend	1-1-2009
619-005-0050	12-17-2008	Adopt	2-1-2009	635-005-0045	11-21-2008	Amend	1-1-2009
619-005-0060	12-17-2008	Adopt	2-1-2009	635-005-0047	11-21-2008	Amend	1-1-2009
620-010-0020	3-1-2009	Amend	2-1-2009	635-005-0048	11-21-2008	Amend	1-1-2009
620-010-0020(T)	3-1-2009	Repeal	2-1-2009	635-005-0055	11-21-2008	Amend	1-1-2009
629-022-0030	2-1-2009	Amend	2-1-2009	635-005-0055	12-1-2008	Amend(T)	1-1-2009
629-022-0035	2-1-2009	Adopt	2-1-2009	635-005-0064	12-17-2008	Amend	2-1-2009
629-022-0040	2-1-2009	Amend	2-1-2009	635-005-0065	11-21-2008	Amend	1-1-2009
629-022-0050	2-1-2009	Adopt	2-1-2009	635-005-0065	12-17-2008	Amend	2-1-2009
629-022-0060	2-1-2009	Adopt	2-1-2009	635-005-0067	12-17-2008	Amend	2-1-2009
629-022-0070	2-1-2009	Adopt	2-1-2009	635-005-0068	12-17-2008	Adopt	2-1-2009
629-022-0080	2-1-2009	Adopt	2-1-2009	635-005-0069	12-17-2008	Adopt	2-1-2009
629-022-0100	2-1-2009	Repeal	2-1-2009	635-005-0084	11-21-2008	Amend	1-1-2009
629-022-0110	2-1-2009	Amend	2-1-2009	635-005-0090	11-21-2008	Amend	1-1-2009
629-022-0120	2-1-2009	Amend	2-1-2009	635-005-0095	11-21-2008	Amend	1-1-2009

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635-005-0135	11-21-2008	Amend	1-1-2009	635-023-0134	1-1-2009	Amend	2-1-2009
635-005-0140	11-21-2008	Amend	1-1-2009	635-039-0080	1-1-2009	Amend	2-1-2009
635-005-0145	11-21-2008	Amend	1-1-2009	635-039-0085	1-1-2009	Amend	2-1-2009
635-005-0180	11-21-2008	Amend	1-1-2009	635-039-0090	1-1-2009	Amend	2-1-2009
635-006-0001	11-21-2008	Amend	1-1-2009	635-039-0090	2-2-2009	Amend(T)	3-1-2009
635-006-0132	11-21-2008	Amend	1-1-2009	635-041-0005	11-21-2008	Amend	1-1-2009
635-006-0133	11-21-2008	Amend	1-1-2009	635-041-0010	11-21-2008	Amend	1-1-2009
635-006-0145	11-21-2008	Amend	1-1-2009	635-041-0030	11-21-2008	Amend	1-1-2009
635-006-0150	11-21-2008	Amend	1-1-2009	635-041-0040	11-21-2008	Amend	1-1-2009
635-006-0165	11-21-2008	Amend	1-1-2009	635-041-0045	11-21-2008	Amend	1-1-2009
635-006-0200	11-21-2008	Amend	1-1-2009	635-041-0060	11-21-2008	Amend	1-1-2009
635-006-0205	11-21-2008	Amend	1-1-2009	635-041-0061	11-21-2008	Amend	1-1-2009
635-006-0207	11-21-2008	Amend	1-1-2009	635-041-0063	11-21-2008	Amend	1-1-2009
635-006-0210	11-21-2008	Amend	1-1-2009	635-041-0065	11-21-2008	Amend	1-1-2009
635-006-0211	11-21-2008	Amend	1-1-2009	635-041-0065	2-2-2009	Amend(T)	3-1-2009
635-006-0213	11-21-2008	Amend	1-1-2009	635-041-0065	2-16-2009	Amend(T)	3-1-2009
635-006-0215	11-21-2008	Amend	1-1-2009	635-041-0065(T)	2-16-2009	Suspend	3-1-2009
635-006-0225	11-21-2008	Amend	1-1-2009	635-041-0510	11-21-2008	Amend	1-1-2009
635-006-0230	11-21-2008	Amend	1-1-2009	635-041-0520	11-21-2008	Amend	1-1-2009
635-006-0232	1-13-2009	Amend	2-1-2009	635-041-0600	11-21-2008	Amend	1-1-2009
635-006-0235	11-21-2008	Amend	1-1-2009	635-042-0001	11-21-2008	Amend	1-1-2009
635-006-0412	11-21-2008	Amend	1-1-2009	635-042-0007	11-21-2008	Amend	1-1-2009
635-006-0425	11-21-2008	Amend	1-1-2009	635-042-0022	11-21-2008	Amend	1-1-2009
635-006-0810	11-21-2008	Amend	1-1-2009	635-042-0110	11-21-2008	Amend	1-1-2009
635-006-0850	12-17-2008	Amend	2-1-2009	635-042-0130	1-1-2009	Amend(T)	2-1-2009
635-006-0910	12-17-2008	Amend	2-1-2009	635-042-0135	1-1-2009	Amend(T)	2-1-2009
635-006-1035	11-21-2008	Amend	1-1-2009	635-042-0135	2-2-2009	Amend(T)	3-1-2009
635-006-1035	12-17-2008	Amend	2-1-2009	635-042-0135(T)	2-2-2009	Suspend	3-1-2009
635-006-1075	11-21-2008	Amend	1-1-2009	635-042-0145	2-15-2009	Amend(T)	3-1-2009
635-006-1085	12-17-2008	Amend	2-1-2009	635-042-0160	2-15-2009	Amend(T)	3-1-2009
635-008-0145	1-15-2009	Amend	2-1-2009	635-042-0170	2-15-2009	Amend(T)	3-1-2009
635-010-0170	12-9-2008	Amend(T)	1-1-2009	635-042-0180	2-15-2009	Amend(T)	3-1-2009
635-011-0100	1-1-2009	Amend	2-1-2009	635-045-0000	1-1-2009	Amend	2-1-2009
635-013-0003	1-1-2009	Amend	2-1-2009	635-045-0002	1-1-2009	Amend	2-1-2009
635-013-0004	1-1-2009	Amend	2-1-2009	635-049-0205	11-24-2008	Amend	1-1-2009
635-014-0080	1-1-2009	Amend	2-1-2009	635-049-0210	1-1-2009	Repeal	2-1-2009
635-014-0090	1-1-2009	Amend	2-1-2009	635-049-0235	1-1-2009	Adopt	2-1-2009
635-016-0080	1-1-2009	Amend	2-1-2009	635-055-0035	1-1-2009	Amend	2-1-2009
635-016-0090	1-1-2009	Amend	2-1-2009	635-055-0037	1-1-2009	Adopt	2-1-2009
635-017-0080	1-1-2009	Amend	2-1-2009	635-060-0000	1-1-2009	Amend	2-1-2009
635-017-0090	1-1-2009	Amend	2-1-2009	635-060-0009	1-1-2009	Amend	2-1-2009
635-017-0090	3-1-2009	Amend(T)	3-1-2009	635-060-0055	1-1-2009	Amend	2-1-2009
635-017-0095	1-1-2009	Amend	2-1-2009	635-065-0001	1-1-2009	Amend	2-1-2009
635-017-0095	1-1-2009	Amend(T)	2-1-2009	635-065-0401	1-1-2009	Amend	2-1-2009
635-018-0080	1-1-2009	Amend	2-1-2009	635-065-0625	1-1-2009	Amend	2-1-2009
635-018-0090	1-1-2009	Amend	2-1-2009	635-065-0740	1-1-2009	Amend	2-1-2009
635-019-0080	1-1-2009	Amend	2-1-2009	635-065-0760	1-1-2009	Amend	2-1-2009
635-019-0090	1-1-2009	Amend	2-1-2009	635-065-0765	1-9-2009	Amend	2-1-2009
635-021-0080	1-1-2009	Amend	2-1-2009	635-066-0000	1-1-2009	Amend	2-1-2009
635-021-0090	1-1-2009	Amend	2-1-2009	635-066-0010	1-1-2009	Amend	2-1-2009
635-023-0080	1-1-2009	Amend	2-1-2009	635-066-0020	1-1-2009	Amend	2-1-2009
635-023-0090	1-1-2009	Amend	2-1-2009	635-067-0000	1-1-2009	Amend	2-1-2009
635-023-0095	1-1-2009	Amend	2-1-2009	635-067-0004	1-1-2009	Amend	2-1-2009
635-023-0095	1-1-2009	Amend(T)	2-1-2009	635-069-0000	2-3-2009	Amend	3-1-2009
635-023-0125	1-1-2009	Amend	2-1-2009	635-072-0000	1-1-2009	Amend	2-1-2009
635-023-0125	3-1-2009	Amend(T)	3-1-2009	635-073-0000	2-3-2009	Amend	3-1-2009
635-023-0128	1-1-2009	Amend	2-1-2009	635-073-0065	2-3-2009	Amend	3-1-2009

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635-080-0050	1-1-2009	Amend	2-1-2009	736-146-0070	12-15-2008	Amend	1-1-2009
635-080-0051	1-1-2009	Amend	2-1-2009	736-146-0080	12-15-2008	Amend	1-1-2009
635-080-0062	1-1-2009	Amend	2-1-2009	736-146-0090	12-15-2008	Amend	1-1-2009
635-080-0063	1-1-2009	Amend	2-1-2009	736-146-0100	12-15-2008	Amend	1-1-2009
635-195-0000	11-24-2008	Adopt	1-1-2009	736-146-0110	12-15-2008	Amend	1-1-2009
635-195-0010	11-24-2008	Adopt	1-1-2009	736-146-0120	12-15-2008	Amend	1-1-2009
660-033-0120	1-2-2009	Amend	2-1-2009	736-146-0130	12-15-2008	Amend	1-1-2009
660-033-0130	1-2-2009	Amend	2-1-2009	736-146-0140	12-15-2008	Amend	1-1-2009
690-200-0050	1-2-2009	Amend	2-1-2009	736-147-0010	12-15-2008	Amend	1-1-2009
690-205-0200	1-2-2009	Amend	2-1-2009	736-147-0020	12-15-2008	Repeal	1-1-2009
690-205-0205	1-2-2009	Adopt	2-1-2009	736-147-0030	12-15-2008	Amend	1-1-2009
690-215-0005	1-2-2009	Amend	2-1-2009	736-147-0040	12-15-2008	Adopt	1-1-2009
690-215-0006	1-2-2009	Adopt	2-1-2009	736-147-0050	12-15-2008	Amend	1-1-2009
690-215-0025	1-2-2009	Adopt	2-1-2009	736-147-0060	12-15-2008	Amend	1-1-2009
690-215-0030	1-2-2009	Amend	2-1-2009	736-147-0070	12-15-2008	Adopt	1-1-2009
690-215-0035	1-2-2009	Adopt	2-1-2009	736-148-0010	12-15-2008	Amend	1-1-2009
690-215-0040	1-2-2009	Amend	2-1-2009	736-148-0020	12-15-2008	Amend	1-1-2009
690-220-0030	1-2-2009	Amend	2-1-2009	736-149-0010	12-15-2008	Amend	1-1-2009
690-220-0040	1-2-2009	Amend	2-1-2009	740-015-0020	12-15-2008	Amend	1-1-2009
690-220-0050	1-2-2009	Amend	2-1-2009	740-015-0040	12-15-2008	Amend	1-1-2009
690-220-0060	1-2-2009	Repeal	2-1-2009	800-010-0020	2-5-2009	Amend	3-1-2009
690-220-0070	1-2-2009	Amend	2-1-2009	800-010-0025	2-5-2009	Amend	3-1-2009
690-220-0080	1-2-2009	Amend	2-1-2009	800-010-0030	2-5-2009	Amend	3-1-2009
690-220-0115	1-2-2009	Adopt	2-1-2009	800-010-0040	2-5-2009	Amend	3-1-2009
690-240-0010	1-2-2009	Amend	2-1-2009	800-010-0041	2-5-2009	Amend	3-1-2009
690-240-0035	1-2-2009	Amend	2-1-2009	800-010-0042	2-5-2009	Amend	3-1-2009
690-240-0375	1-2-2009	Amend	2-1-2009	800-015-0005	2-5-2009	Amend	3-1-2009
690-240-0385	1-2-2009	Adopt	2-1-2009	800-015-0010	2-5-2009	Amend	3-1-2009
734-071-0010	12-15-2008	Amend	1-1-2009	800-015-0015	2-5-2009	Amend	3-1-2009
734-073-0110	12-15-2008	Amend	1-1-2009	800-015-0020	2-5-2009	Amend	3-1-2009
734-073-0120	12-15-2008	Repeal	1-1-2009	800-015-0030	2-5-2009	Amend	3-1-2009
735-010-0130	1-1-2009	Amend	1-1-2009	800-020-0015	2-5-2009	Amend	3-1-2009
735-010-0130(T)	1-1-2009	Repeal	1-1-2009	800-020-0020	2-5-2009	Amend	3-1-2009
735-062-0005	1-1-2009	Amend	1-1-2009	800-020-0025	2-5-2009	Amend	3-1-2009
735-062-0014	1-1-2009	Adopt	1-1-2009	800-020-0030	2-5-2009	Amend	3-1-2009
735-062-0014(T)	1-1-2009	Repeal	1-1-2009	800-020-0035	2-5-2009	Amend	3-1-2009
735-062-0015	1-1-2009	Amend	1-1-2009	800-025-0020	2-5-2009	Amend	3-1-2009
735-062-0015(T)	1-1-2009	Repeal	1-1-2009	800-025-0023	2-5-2009	Amend	3-1-2009
735-062-0020	1-1-2009	Amend	1-1-2009	800-025-0025	2-5-2009	Amend	3-1-2009
735-062-0020(T)	1-1-2009	Repeal	1-1-2009	800-025-0027	2-5-2009	Amend	3-1-2009
735-064-0110	12-15-2008	Amend	1-1-2009	800-025-0030	2-5-2009	Amend	3-1-2009
735-070-0043	1-26-2009	Adopt	3-1-2009	800-025-0040	2-5-2009	Amend	3-1-2009
735-070-0043(T)	1-26-2009	Repeal	3-1-2009	800-025-0050	2-5-2009	Amend	3-1-2009
736-004-0062	12-15-2008	Amend	1-1-2009	800-025-0060	2-5-2009	Amend	3-1-2009
736-010-0040	12-15-2008	Amend	1-1-2009	800-025-0070	2-5-2009	Amend	3-1-2009
736-010-0055	12-15-2008	Amend	1-1-2009	800-030-0025	2-5-2009	Amend	3-1-2009
736-015-0020	2-10-2009	Amend	3-1-2009	800-030-0050	2-5-2009	Amend	3-1-2009
736-015-0040	2-10-2009	Amend	3-1-2009	801-001-0035	1-1-2009	Amend	2-1-2009
736-018-0045	2-1-2009	Amend	2-1-2009	801-010-0010	1-1-2009	Amend	2-1-2009
736-146-0010	12-15-2008	Amend	1-1-2009	801-010-0050	1-1-2009	Amend	2-1-2009
736-146-0012	12-15-2008	Amend	1-1-2009	801-010-0115	1-1-2009	Amend	2-1-2009
736-146-0015	12-15-2008	Amend	1-1-2009	801-010-0345	1-1-2009	Amend	2-1-2009
736-146-0020	12-15-2008	Amend	1-1-2009	801-030-0020	1-1-2009	Amend	2-1-2009
736-146-0025	12-15-2008	Repeal	1-1-2009	801-040-0010	1-1-2009	Amend	2-1-2009
736-146-0030	12-15-2008	Repeal	1-1-2009	801-040-0090	1-1-2009	Amend	2-1-2009
736-146-0040	12-15-2008	Repeal	1-1-2009	806-010-0095	2-5-2009	Amend	3-1-2009
736-146-0050	12-15-2008	Amend	1-1-2009	808-002-0780	2-1-2009	Amend	3-1-2009

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811-015-0030	1-29-2009	Amend	3-1-2009	836-043-0037	1-1-2009	Repeal	1-1-2009
812-002-0060	11-20-2008	Amend	1-1-2009	836-043-0041	1-1-2009	Amend	1-1-2009
812-002-0262	2-1-2009	Adopt	3-1-2009	836-043-0044	1-1-2009	Amend	1-1-2009
812-002-0420	11-20-2008	Amend	1-1-2009	836-043-0046	1-1-2009	Amend	1-1-2009
812-003-0140	2-1-2009	Amend	3-1-2009	836-043-0048	1-1-2009	Amend	1-1-2009
812-003-0141	2-1-2009	Adopt	3-1-2009	836-043-0050	1-1-2009	Amend	1-1-2009
812-003-0450	11-20-2008	Repeal	1-1-2009	836-043-0053	1-1-2009	Amend	1-1-2009
812-005-0280	11-20-2008	Amend	1-1-2009	836-043-0060	1-1-2009	Amend	1-1-2009
812-005-0800	11-20-2008	Amend	1-1-2009	836-043-0062	1-1-2009	Amend	1-1-2009
812-005-0800	2-1-2009	Amend	3-1-2009	836-043-0064	1-1-2009	Amend	1-1-2009
812-006-0100	11-20-2008	Amend	1-1-2009	836-043-0066	1-1-2009	Amend	1-1-2009
812-006-0200	11-20-2008	Amend	1-1-2009	836-043-0068	1-1-2009	Amend	1-1-2009
812-020-0050	11-20-2008	Adopt	1-1-2009	836-043-0070	1-1-2009	Repeal	1-1-2009
812-020-0055	11-20-2008	Adopt	1-1-2009	836-043-0071	1-1-2009	Adopt	1-1-2009
812-020-0060	11-20-2008	Adopt	1-1-2009	836-043-0076	1-1-2009	Amend	1-1-2009
812-020-0062	11-20-2008	Adopt	1-1-2009	836-043-0079	1-1-2009	Amend	1-1-2009
812-020-0065	11-20-2008	Adopt	1-1-2009	836-043-0082	1-1-2009	Amend	1-1-2009
812-020-0070	11-20-2008	Adopt	1-1-2009	836-043-0086	1-1-2009	Repeal	1-1-2009
812-020-0070	2-1-2009	Amend	3-1-2009	836-043-0087	1-1-2009	Adopt	1-1-2009
812-020-0072	11-20-2008	Adopt	1-1-2009	836-043-0089	1-1-2009	Amend	1-1-2009
812-020-0080	11-20-2008	Adopt	1-1-2009	836-051-0106	12-9-2008	Amend	1-1-2009
812-020-0082	11-20-2008	Adopt	1-1-2009	836-051-0750	12-9-2008	Adopt	1-1-2009
812-020-0085	11-20-2008	Adopt	1-1-2009	836-051-0755	12-9-2008	Adopt	1-1-2009
812-020-0087	11-20-2008	Adopt	1-1-2009	836-051-0760	12-9-2008	Adopt	1-1-2009
812-020-0090	11-20-2008	Adopt	1-1-2009	836-051-0765	12-9-2008	Adopt	1-1-2009
813-110-0010	2-9-2009	Amend(T)	3-1-2009	836-051-0770	12-9-2008	Adopt	1-1-2009
817-030-0005	12-1-2008	Amend(T)	1-1-2009	836-051-0775	12-9-2008	Adopt	1-1-2009
817-030-0015	12-1-2008	Amend(T)	1-1-2009	836-072-0001	12-10-2008	Adopt	1-1-2009
817-030-0020	12-1-2008	Amend(T)	1-1-2009	836-072-0005	12-10-2008	Adopt	1-1-2009
817-030-0040	12-1-2008	Amend(T)	1-1-2009	836-072-0010	12-10-2008	Adopt	1-1-2009
817-030-0045	12-1-2008	Amend(T)	1-1-2009	836-072-0015	12-10-2008	Adopt	1-1-2009
817-030-0065	12-1-2008	Amend(T)	1-1-2009	836-072-0020	12-10-2008	Adopt	1-1-2009
817-030-0100	12-1-2008	Suspend	1-1-2009	836-072-0025	12-10-2008	Adopt	1-1-2009
817-035-0030	12-1-2008	Amend(T)	1-1-2009	836-072-0030	12-10-2008	Adopt	1-1-2009
820-010-0215	12-12-2008	Amend	1-1-2009	836-072-0035	12-10-2008	Adopt	1-1-2009
833-020-0050	12-26-2008	Amend	2-1-2009	836-072-0040	12-10-2008	Adopt	1-1-2009
833-020-0164	12-26-2008	Amend	2-1-2009	836-072-0045	12-10-2008	Adopt	1-1-2009
833-025-0050	12-26-2008	Amend	2-1-2009	837-040-0001	12-31-2008	Amend	2-1-2009
833-030-0001	12-26-2008	Amend	2-1-2009	837-040-0015	12-31-2008	Adopt	2-1-2009
833-030-0010	12-26-2008	Amend	2-1-2009	837-040-0020	12-31-2008	Amend	2-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009	839-003-0005	12-5-2008	Amend	1-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009	839-003-0010	12-5-2008	Amend	1-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009	839-003-0020	12-5-2008	Amend	1-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009	839-003-0025	12-5-2008	Amend	1-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009	839-003-0040	12-5-2008	Amend	1-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009	839-003-0045	12-5-2008	Amend	1-1-2009
833-060-0001	12-26-2008	Am. & Ren.	2-1-2009	839-003-0050	12-5-2008	Amend	1-1-2009
836-011-0000	1-29-2009	Amend	3-1-2009	839-003-0055	12-5-2008	Amend	1-1-2009
836-042-0045	1-1-2009	Amend	2-1-2009	839-003-0060	12-5-2008	Amend	1-1-2009
836-043-0005	1-1-2009	Amend	1-1-2009	839-003-0065	12-5-2008	Amend	1-1-2009
836-043-0009	1-1-2009	Amend	1-1-2009	839-003-0070	12-5-2008	Amend	1-1-2009
836-043-0017	1-1-2009	Amend	1-1-2009	839-003-0080	12-5-2008	Amend	1-1-2009
836-043-0021	1-1-2009	Amend	1-1-2009	839-003-0085	12-5-2008	Amend	1-1-2009
836-043-0024	1-1-2009	Amend	1-1-2009	839-003-0090	12-5-2008	Amend	1-1-2009
836-043-0028	1-1-2009	Amend	1-1-2009	839-003-0095	12-5-2008	Amend	1-1-2009
836-043-0032	1-1-2009	Amend	1-1-2009	839-003-0100	12-5-2008	Amend	1-1-2009
836-043-0034	1-1-2009	Adopt	1-1-2009	839-003-0200	12-5-2008	Amend	1-1-2009

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839-003-0210	12-5-2008	Amend	1-1-2009	851-050-0138	11-26-2008	Amend	1-1-2009
839-003-0215	12-5-2008	Amend	1-1-2009	851-056-0006	11-26-2008	Amend	1-1-2009
839-003-0220	12-5-2008	Amend	1-1-2009	851-056-0022	11-26-2008	Amend	1-1-2009
839-003-0225	12-5-2008	Amend	1-1-2009	851-062-0020	11-26-2008	Amend	1-1-2009
839-003-0230	12-5-2008	Amend	1-1-2009	855-007-0010	1-5-2009	Adopt(T)	2-1-2009
839-003-0235	12-5-2008	Amend	1-1-2009	855-007-0020	1-5-2009	Adopt(T)	2-1-2009
839-003-0240	12-5-2008	Amend	1-1-2009	855-007-0030	1-5-2009	Adopt(T)	2-1-2009
839-003-0245	12-5-2008	Amend	1-1-2009	855-007-0040	1-5-2009	Adopt(T)	2-1-2009
839-005-0000	12-5-2008	Amend	1-1-2009	855-007-0050	1-5-2009	Adopt(T)	2-1-2009
839-005-0003	12-5-2008	Amend	1-1-2009	855-007-0060	1-5-2009	Adopt(T)	2-1-2009
839-005-0010	12-5-2008	Amend	1-1-2009	855-007-0080	1-5-2009	Adopt(T)	2-1-2009
839-005-0016	12-5-2008	Amend	1-1-2009	855-007-0090	1-5-2009	Adopt(T)	2-1-2009
839-005-0026	12-5-2008	Amend	1-1-2009	855-007-0100	1-5-2009	Adopt(T)	2-1-2009
839-005-0195	12-5-2008	Amend	1-1-2009	855-007-0110	1-5-2009	Adopt(T)	2-1-2009
839-005-0200	12-5-2008	Amend	1-1-2009	855-007-0120	1-5-2009	Adopt(T)	2-1-2009
839-005-0205	12-5-2008	Amend	1-1-2009	856-010-0015	2-10-2009	Amend(T)	3-1-2009
839-005-0220	12-5-2008	Amend	1-1-2009	859-040-0010	12-17-2008	Amend(T)	2-1-2009
839-020-0050	1-12-2009	Amend	2-1-2009	859-040-0015	12-17-2008	Amend(T)	2-1-2009
839-025-0700	12-1-2008	Amend	1-1-2009	860-024-0010	12-29-2008	Amend	2-1-2009
839-025-0700	12-29-2008	Amend	2-1-2009	860-027-0400	2-5-2009	Adopt	3-1-2009
839-025-0700	1-1-2009	Amend	2-1-2009	863-014-0000	1-1-2009	Adopt	1-1-2009
839-025-0700	1-6-2009	Amend	2-1-2009	863-014-0003	1-1-2009	Adopt	1-1-2009
839-025-0700	1-12-2009	Amend	2-1-2009	863-014-0038	1-1-2009	Adopt	1-1-2009
839-025-0700	2-11-2009	Amend	3-1-2009	863-014-0042	1-1-2009	Adopt	1-1-2009
845-010-0154	12-20-2008	Adopt	2-1-2009	863-015-0000	1-1-2009	Adopt	1-1-2009
845-020-0025	1-1-2009	Amend	2-1-2009	863-015-0005	1-1-2009	Am. & Ren.	1-1-2009
845-020-0035	1-1-2009	Amend	2-1-2009	863-015-0010	1-1-2009	Am. & Ren.	1-1-2009
847-005-0005	1-22-2009	Amend	3-1-2009	863-015-0015	1-1-2009	Am. & Ren.	1-1-2009
847-008-0020	1-22-2009	Amend	3-1-2009	863-015-0020	1-1-2009	Am. & Ren.	1-1-2009
847-008-0040	1-22-2009	Amend	3-1-2009	863-015-0025	1-1-2009	Repeal	1-1-2009
847-008-0070	1-22-2009	Adopt	3-1-2009	863-015-0030	1-1-2009	Am. & Ren.	1-1-2009
847-010-0054	1-22-2009	Repeal	3-1-2009	863-015-0035	1-1-2009	Am. & Ren.	1-1-2009
847-010-0055	1-22-2009	Repeal	3-1-2009	863-015-0040	1-1-2009	Am. & Ren.	1-1-2009
847-010-0100	1-22-2009	Amend	3-1-2009	863-015-0045	1-1-2009	Am. & Ren.	1-1-2009
847-020-0130	1-22-2009	Amend	3-1-2009	863-015-0050	1-1-2009	Am. & Ren.	1-1-2009
847-070-0019	1-22-2009	Amend	3-1-2009	863-015-0055	1-1-2009	Am. & Ren.	1-1-2009
847-070-0020	1-22-2009	Amend	3-1-2009	863-015-0060	1-1-2009	Am. & Ren.	1-1-2009
847-070-0045	1-22-2009	Amend	3-1-2009	863-015-0061	1-1-2009	Am. & Ren.	1-1-2009
848-010-0015	1-2-2009	Amend	2-1-2009	863-015-0062	1-1-2009	Am. & Ren.	1-1-2009
848-010-0020	1-2-2009	Amend	2-1-2009	863-015-0063	1-1-2009	Am. & Ren.	1-1-2009
848-010-0022	1-2-2009	Adopt	2-1-2009	863-015-0065	1-1-2009	Am. & Ren.	1-1-2009
848-010-0026	1-2-2009	Amend	2-1-2009	863-015-0070	1-1-2009	Am. & Ren.	1-1-2009
848-010-0044	1-2-2009	Amend	2-1-2009	863-015-0075	1-1-2009	Am. & Ren.	1-1-2009
848-015-0030	1-2-2009	Amend	2-1-2009	863-015-0076	1-1-2009	Am. & Ren.	1-1-2009
848-020-0030	1-2-2009	Amend	2-1-2009	863-015-0080	1-1-2009	Am. & Ren.	1-1-2009
848-020-0060	1-2-2009	Amend	2-1-2009	863-015-0085	1-1-2009	Am. & Ren.	1-1-2009
848-035-0020	1-2-2009	Amend	2-1-2009	863-015-0095	1-1-2009	Am. & Ren.	1-1-2009
848-035-0030	1-2-2009	Amend	2-1-2009	863-015-0100	1-1-2009	Am. & Ren.	1-1-2009
848-035-0035	1-2-2009	Adopt	2-1-2009	863-015-0120	1-1-2009	Am. & Ren.	1-1-2009
848-035-0040	1-2-2009	Amend	2-1-2009	863-015-0130	1-1-2009	Amend	1-1-2009
848-040-0100	1-2-2009	Amend	2-1-2009	863-015-0135	1-1-2009	Amend	1-1-2009
848-040-0117	1-2-2009	Amend	2-1-2009	863-015-0140	1-1-2009	Amend	1-1-2009
848-040-0145	1-2-2009	Amend	2-1-2009	863-015-0145	1-1-2009	Amend	1-1-2009
848-040-0160	1-2-2009	Amend	2-1-2009	863-015-0150	1-1-2009	Amend	1-1-2009
848-040-0175	1-2-2009	Adopt	2-1-2009	863-015-0155	1-1-2009	Amend	1-1-2009
848-045-0020	1-2-2009	Amend	2-1-2009	863-015-0160	1-1-2009	Am. & Ren.	1-1-2009
850-060-0225	12-8-2008	Amend	1-1-2009	863-015-0165	1-1-2009	Repeal	1-1-2009

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863-015-0180	1-1-2009	Repeal	1-1-2009	863-050-0025	1-1-2009	Amend	1-1-2009
863-015-0185	1-1-2009	Repeal	1-1-2009	863-050-0030	1-1-2009	Amend	1-1-2009
863-015-0186	1-1-2009	Amend	1-1-2009	863-050-0033	1-1-2009	Amend	1-1-2009
863-015-0188	1-1-2009	Adopt	1-1-2009	863-050-0035	1-1-2009	Amend	1-1-2009
863-015-0190	1-1-2009	Amend	1-1-2009	863-050-0040	1-1-2009	Repeal	1-1-2009
863-015-0195	1-1-2009	Repeal	1-1-2009	863-050-0050	1-1-2009	Amend	1-1-2009
863-015-0200	1-1-2009	Amend	1-1-2009	863-050-0052	1-1-2009	Adopt	1-1-2009
863-015-0205	1-1-2009	Amend	1-1-2009	863-050-0055	1-1-2009	Amend	1-1-2009
863-015-0210	1-1-2009	Amend	1-1-2009	863-050-0060	1-1-2009	Amend	1-1-2009
863-015-0215	1-1-2009	Amend	1-1-2009	863-050-0065	1-1-2009	Amend	1-1-2009
863-015-0220	1-1-2009	Repeal	1-1-2009	863-050-0066	1-1-2009	Amend	1-1-2009
863-015-0225	1-1-2009	Am. & Ren.	1-1-2009	863-050-0100	1-1-2009	Amend	1-1-2009
863-015-0230	1-1-2009	Am. & Ren.	1-1-2009	863-050-0105	1-1-2009	Amend	1-1-2009
863-015-0250	1-1-2009	Amend	1-1-2009	863-050-0115	1-1-2009	Amend	1-1-2009
863-015-0255	1-1-2009	Amend	1-1-2009	863-050-0150	1-1-2009	Amend	1-1-2009
863-015-0260	1-1-2009	Amend	1-1-2009	863-050-0151	1-1-2009	Repeal	1-1-2009
863-015-0265	1-1-2009	Amend	1-1-2009	863-050-0205	1-1-2009	Repeal	1-1-2009
863-015-0275	1-1-2009	Amend	1-1-2009	863-050-0210	1-1-2009	Repeal	1-1-2009
863-024-0000	1-1-2009	Adopt	1-1-2009	863-050-0215	1-1-2009	Repeal	1-1-2009
863-024-0003	1-1-2009	Adopt	1-1-2009	863-050-0220	1-1-2009	Repeal	1-1-2009
863-024-0005	1-1-2009	Adopt	1-1-2009	863-050-0225	1-1-2009	Repeal	1-1-2009
863-024-0010	1-1-2009	Adopt	1-1-2009	863-050-0230	1-1-2009	Repeal	1-1-2009
863-024-0015	1-1-2009	Adopt	1-1-2009	863-050-0235	1-1-2009	Repeal	1-1-2009
863-024-0020	1-1-2009	Adopt	1-1-2009	863-050-0240	1-1-2009	Amend	1-1-2009
863-024-0030	1-1-2009	Adopt	1-1-2009	875-010-0090	12-15-2008	Amend	1-1-2009
863-024-0050	1-1-2009	Adopt	1-1-2009	875-020-0005	12-15-2008	Amend	1-1-2009
863-024-0055	1-1-2009	Adopt	1-1-2009	875-030-0010	12-15-2008	Amend	1-1-2009
863-024-0060	1-1-2009	Adopt	1-1-2009	875-030-0050	12-15-2008	Amend	1-1-2009
863-024-0061	1-1-2009	Adopt	1-1-2009	918-008-0075	1-1-2009	Amend	2-1-2009
863-024-0062	1-1-2009	Adopt	1-1-2009	918-008-0080	1-1-2009	Amend	2-1-2009
863-024-0063	1-1-2009	Adopt	1-1-2009	918-008-0085	1-1-2009	Amend	2-1-2009
863-024-0065	1-1-2009	Adopt	1-1-2009	918-008-0090	1-1-2009	Amend	2-1-2009
863-024-0070	1-1-2009	Adopt	1-1-2009	918-008-0095	1-1-2009	Amend	2-1-2009
863-024-0075	1-1-2009	Adopt	1-1-2009	918-008-0110	1-1-2009	Amend	2-1-2009
863-024-0076	1-1-2009	Adopt	1-1-2009	918-008-0115	1-1-2009	Amend	2-1-2009
863-024-0085	1-1-2009	Adopt	1-1-2009	918-020-0370	1-1-2009	Adopt	2-1-2009
863-024-0095	1-1-2009	Adopt	1-1-2009	918-050-0000	1-1-2009	Amend	1-1-2009
863-024-0100	1-1-2009	Adopt	1-1-2009	918-050-0010	1-1-2009	Amend	1-1-2009
863-025-0005	1-1-2009	Amend	1-1-2009	918-050-0020	1-1-2009	Amend	1-1-2009
863-025-0010	1-1-2009	Amend	1-1-2009	918-050-0030	1-1-2009	Amend	1-1-2009
863-025-0015	1-1-2009	Amend	1-1-2009	918-050-0100	1-1-2009	Amend	1-1-2009
863-025-0020	1-1-2009	Amend	1-1-2009	918-050-0110	1-1-2009	Amend	1-1-2009
863-025-0025	1-1-2009	Amend	1-1-2009	918-050-0120	1-1-2009	Amend	1-1-2009
863-025-0030	1-1-2009	Amend	1-1-2009	918-050-0130	1-1-2009	Amend	1-1-2009
863-025-0035	1-1-2009	Amend	1-1-2009	918-050-0140	1-1-2009	Amend	1-1-2009
863-025-0040	1-1-2009	Amend	1-1-2009	918-050-0150	1-1-2009	Amend	1-1-2009
863-025-0045	1-1-2009	Amend	1-1-2009	918-050-0160	1-1-2009	Amend	1-1-2009
863-025-0050	1-1-2009	Amend	1-1-2009	918-050-0170	1-1-2009	Amend	1-1-2009
863-025-0055	1-1-2009	Amend	1-1-2009	918-225-0430	1-1-2009	Amend	2-1-2009
863-025-0060	1-1-2009	Amend	1-1-2009	918-225-0435	1-1-2009	Amend	2-1-2009
863-025-0065	1-1-2009	Amend	1-1-2009	918-225-0445	1-1-2009	Adopt	2-1-2009
863-025-0070	1-1-2009	Amend	1-1-2009	918-225-0450	1-1-2009	Amend	2-1-2009
863-025-0080	1-1-2009	Amend	1-1-2009	918-225-0570	1-1-2009	Amend	2-1-2009
863-027-0000	1-1-2009	Adopt	1-1-2009	918-261-0015	1-1-2009	Adopt	2-1-2009
863-027-0005	1-1-2009	Adopt	1-1-2009	918-261-0015(T)	1-1-2009	Repeal	2-1-2009
863-050-0000	1-1-2009	Amend	1-1-2009	918-311-0065	1-1-2009	Adopt	2-1-2009
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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				